Northern Ireland
Assembly

COMMITTEE FOR AGRICULTURE AND RURAL DEVELOPMENT

OFFICIAL REPORT (Hansard)

Forestry Bill

8 February 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Ian Paisley Jnr (Chairperson)
Mr Tom Elliott (Deputy Chairperson)
Mr Thomas Burns
Mr Willie Clarke
Mr William Irwin
Mr Patsy McGlone
Mr Francie Molloy
Mr George Savage
Mr Jim Shannon

Witnesses:

Mr Roger Pollen	) British Association for Shooting and Conservation
Mr Rupert Pigott	) Confederation of Forest Industries
Dr Caro-Lynne Ferris	) Countryside Access and Activities Network
Mr Dawson Stelfox	)
Mr Michael McCann	)
Mr Stuart Morwood	) Department of Agriculture and Rural Development
Mr David Small	)
Professor Sue Christie	) Northern Ireland Environment Link
Mr John Martin	) Royal Society for the Protection of Birds
Mr Patrick Cregg	) Woodland Trust

The Chairperson (Mr Paisley Jnr):

I thank everyone for attending this round table evidence session on the Forestry Bill. I am sorry that the Senate Chamber is not big enough, nor the table round enough, to accommodate everyone. I am glad that people want to be at this table, unlike some tables, and I hope that the meeting leads to a productive outcome.

You are all very welcome. In particular, I welcome representatives from the private and the charitable sectors, who are here to contribute to the legislation that we want to see progress through the Assembly. I remind people to switch off their mobile phones, as they can interfere with the recording. Witnesses should indicate to the Committee Clerk or me that they wish to speak and then come forward to the microphone. I remind everyone to speak up so that they can be heard properly. That is not usually something I have to be told to do.

I welcome the representatives from the Department, who are David Small and his team, which comprises Michael McCann and Stuart Morwood. Stakeholders who are represented are Rupert Pigott, who is the head of policy at the Confederation of Forest Industries (ConFor); John Martin, who is the policy officer for the Royal Society for the Protection of Birds (RSPB); Patrick Cregg, who is the director of the Woodland Trust; Roger Pollen, who is the Northern Ireland director of the British Association for Shooting and Conservation (BASC); Caro-Lynne Ferris, who is the network director of the Countryside Access and Activities Network (CAAN), and Dawson Stelfox, who is chairman of the CAAN board; and Sue Christie, who is the director of Northern Ireland Environment Link.

As everyone will know, there has been some discussion around clause 1, which deals with the general duty of promoting forestry. We are trying to ensure that the Bill does what it says on the tin, so to speak. We want to ensure that we get the legislation that we want out of this exercise. We want legislation that achieves the Department's objectives and, more importantly, those of the Assembly, in order to make the most of our Forest Service, for those who make a living out of it, those who want to make a living out of it and those who want to enjoy it in its fullness.

David, have you anything to tell us on the general duty?

Mr David Small (Department of Agriculture and Rural Development):

We have now presented an amended clause 1, which, we hope, clearly addresses the comments that the Committee and stakeholders made about the need for the clause to deal with issues such as biodiversity, climate change and forest recreation, as well as the wider sustainable forestry commitment. We discussed the clause at the Committee's two previous meetings, and the proposed amended clause now captures the sentiment of the issues that were raised.

The Chairperson:

Are you satisfied that there is no obligation on the Department or Forest Service to achieve the objectives or targets defined in the strategies and that to designate them would provide a strong additional assurance to the Committee and the wider Northern Ireland community?

Mr Small:

I am satisfied that, when it publishes a strategy, the Department is committed to delivering any targets included in it. For example, the recreation strategy, which was published last year, contains two pages of specific action points, with associated targets.

The Chairperson:

Is there not a way in which to incorporate those strategies into the Bill? Unless they are recorded in some way, one could say that they will be like most reports: intended to gather dust on shelves. If that is the case, they will not achieve their intended dynamic.

Mr Small:

That is certainly not the intention of any strategy that we publish.

The Chairperson:

I know, but intentions and long paths.

Mr Small:

Our view is that well-established procedures are in place. We consult with the Committee, while it plays a scrutiny role in developing strategies and policy, and an advisory role when it comes to how the Minister and her Department administer policy. In the normal course of events, we will bring strategies to the Committee.

We view the idea of designating strategies as simply another piece of almost unnecessary bureaucracy, because the established procedures are already very robust. I am not aware of a situation in which the Department has failed to bring a strategy to the Committee in that way. Indeed, our intention will be that any strategies that we develop will be agreed with the Committee and will be subject to this kind of discussion.

The Chairperson:

To play devil's advocate, if you fail to attain a goal in one of the strategies, where is the comeback on the Department if that strategy is not included in legislation? I know that you would never dream of it, but an official could say in future that a strategy is not enshrined in legislation and was merely a strategy document.

Mr Small:

I appreciate that. The strategy commits us to making an annual report to the Minister, so we will be directly answerable to the Minister in each year of the strategy. We will also report progress in our annual reports, so stakeholders and the Committee will have the opportunity, if it is the case, to question why we have not performed as well as we had hoped or to question why targets have not been achieved. Where that happens, we will then put in place plans to ensure that, in the following year, we do all that we can to achieve each individual target. I appreciate that if the strategy were designated in subordinate legislation, some weight would be added to that requirement, but I am quite satisfied that the existing arrangements —

The Chairperson:

Are you going to go into the trenches on this one? To cut to the chase, if the Committee recommends designation, will the Department oppose it?

Mr Small:

The Department questions the need to do it. If it is possible, I could meet separately with the Committee Clerk. I would like to establish the Committee's precise objective through this kind of measure and discuss with the Committee Clerk how that might be achieved, either in the idea of designating strategies in legislation or in other means.

The Chairperson:

If Committee members are content with the proposal that David and his team meet with the

Committee Clerk, we will see whether that goal might be achieved. I would have been minded to make the proposal that you designate the strategy, but I am happy for us to have a discussion first. Do any colleagues wish to comment on that?

Mr Dawson Stelfox (Countryside Access and Activities Network):

As you might expect, my comment relates to the duty to provide for recreation. There is a slight improvement in the revised wording that Forest Service has proposed, but I do not think that it goes far enough to holding Forest Service responsible for providing —

The Chairperson:

What wording would you like to see in clause 1?

Mr Stelfox:

At present, the wording in the proposed amended clause 1(2)(a) reads:

"in relation to forestry land in such a way as to encourage the enjoyment and recreational use of that land".

That is promoting forestry land, but we would like to see the word "encourage" replaced with "actively promote and develop" or "actively develop".

Forest Service should have a duty to be involved in the promotion and development of recreation. To my mind, the word "encourage" does not go far enough in placing a duty on Forest Service to do that.

The Chairperson:

The point that you have made is familiar, Dawson, and it is something that we have said before. If we want to achieve the goal of getting the most out of Forest Service, the general duty must be absolutely exacting in what it is trying to achieve.

Does Dawson's proposal do violence to the Department's position?

Mr Small:

Dawson proposes two aspects. The first is to "actively promote", and we have no difficulty with that, as you are making the point that encouragement is about promoting.

When it comes to "develop", it is a question of what that means. If that requires the

Department to do the tourism development — that is, to develop the projects, to develop the tourism potential and to fund the projects — we would have concerns about that. We have been working with a range of stakeholders, both commercial and public authority —

The Chairperson:

Instead of silo thinking, can the clause be worded in such a way that it brings in the Northern Ireland Tourist Board (NITB), the Department of Enterprise, Trade and Investment (DETI) or whoever else, so that the legislation does not place on you responsibilities or expenses that are not necessarily the Department's yet does make it a duty that you develop and deliver the enjoyment and recreational use of forestry land?

Mr Small:

Yes. It is probably all down to the wording. Once the wording is in primary legislation, it is there, and we need to be —

The Chairperson:

Clause 4(1) uses the words:

"The Department may use or develop forestry land for a purpose other than forestry."

If you were to use a similar form of words in clause 1, you could list how that would be achieved in consultation with other Departments, and so on.

Mr Stelfox:

Forest Service has a duty actively to promote and develop the use of forestry land. That does not necessarily mean that Forest Service pay for that to happen, nor does it necessarily mean that Forest Service bring in the stakeholders. Rather, it means that Forest Service has a responsibility to ensure that it happens. That is the crucial point, whatever the wording of the clause.

The Chairperson:

We are all on the one page on that, Dawson. The issue is that David wants to make sure that the legislation does not allow some clever lawyer to tie the Department up and have it pay for something for which it is not responsible.

Mr Small:

In fairness, the proposed amended clause 1(2) starts off by stating:

"The Department must carry out that duty–

(a) in relation to forestry land in such a way as to encourage the enjoyment and recreational use of that land by the public".

If the duty is about actively promoting the recreational use or development of land, there may be some form of words that can be used. However, there was a suggestion that the Department should take on a statutory duty to provide tourism.

The Chairperson:

All that the Committee is asking the Department to do is to insert in the proposed amended clause 1(2)(a) the words "to develop".

Mr Small:

Sorry, I missed that point.

The Chairperson:

In the proposed amended clause 1(2)(a), under "General duty of the Department", the Committee is asking for an amendment that allows the Department to encourage the enjoyment of forestry land and to develop recreational use of forestry land by the public. It is really asking for the insertion of two words, but, if inserted, those words would give the clause more thrust, thus adding to what the Bill is trying to achieve for forests, and for people who wish to make greater use of our forests. I don't think that we are a million miles away, David. Perhaps you are being very cautious.

Mr Small:

May I look at that clause again in the light of the points raised to determine whether there is some amendment with which the Department would be comfortable?

The Chairperson:

You could find a form of words that would allow "to develop" to be inserted. People would then be able to say that the Department has the duty to be the dynamo to drive the legislation forward.

Mr Small:

That is the Department's intention with clause 1. Our existing proposed amended wording at clause 1(2) is very strong. It states that the Department

"must carry out that duty … to encourage the enjoyment and recreational use of that land by the

public".

Mr Stelfox:

The clause needs to go further than just "to encourage".

The Chairperson:

Yes; it does.

Mr Stelfox:

It needs to deliver.

Mr Small:

We will look at the wording.

Mr John Martin (Royal Society for the Protection of Birds):

The Woodland Trust and the RSPB support the Department's proposed amendment as it stands. The general duty needs to be right from the start, because that dictates the rest of the legislation. Therefore, it is important that we get it right from the start, and I thank the Committee and the Chairperson for inviting us to discuss the Bill.

If we were to ask for an amendment to clause 1, we would look for the words "and enhancement" to be inserted after "to contribute to the protection" in the proposed amended clause 1(3)(b), when that refers to the environment and sustainability.

Moreover, on clause 4, if Forest Service is to have a general duty to encourage partnerships, which it wants to do and which we encourage, and to develop bodies corporate to enable that, those bodies corporate should have to adhere to the requirements of the general duty. Therefore, if Forest Service is going to enter into those partnerships —

The Chairperson:

We will come to those matters when we get to clause 4.

Mr Martin:

I was just making the point that if Forest Service is going to encourage partnerships as part of

clause 1, it need to be held to that in clause 1.

The Chairperson:

Absolutely; it needs to be in the legislation.

Would you be happy with a further proposed change to clause 1 after what you heard from your colleague from CAAN about ensuring that the general duty is tied down and that the enjoyment and recreational use of forestry land be actively developed?

Mr Martin:

I think that the RSPB would be in support of that.

Mr Stelfox:

May I make one further point? In the proposed clause 1(3), paragraphs (a) and (b) describe what "forestry" includes. If possible, I wish to suggest a further use of "forestry", for a third paragraph:

"the development of forests so as to contribute to the wider economy through recreation and tourism".

Mr Small:

Yes. All that I can offer to do is take away some of the proposals that have been made.

The Chairperson:

Does it do violence with what we have discussed here?

Mr Small:

It does not. I think that it is down to wording, but it is consistent with Dawson Stelfox's first proposal and expands it further.

The Chairperson:

It is important to have the definition right, so that, first, it makes sense to forest practitioners who are reading the legislation, and, secondly, it has a name and a strategy to get the most out of it. That is what we are trying to do with the legislation.

Mr Small:

Yes.

The Chairperson:

Are members content to move on from clause 1?

Mr Elliott:

We need to strike a balance and ensure that tourism developments and leisure facilities are provided where there is a potential and opportunity for them, but we do not want to tie up the Department so much that it must provide them at every request. Do you understand what I mean by balance? It is important that the Department provides them, in some areas by itself or in partnership with others, but we do not want to have the Department tied to having to provide the facilities for every lobby group that comes in looking for a wee forest park somewhere where it will be of no benefit to anyone.

The Chairperson:

I imagine that there will be a need for a business case to make it a reality. I think that you will agree that we need legislation that has the teeth to achieve that. The question of balance will depend on how that is interpreted vis-à-vis the situation on the ground.

Mr Roger Pollen (British Association for Shooting and Conservation):

Our issues are with clauses 4 and 5, but I want to refer forward to them. In setting out the objectives, it comes down to what Tom Elliott said about balance and judgement. The subjectivity of the legislation raised concerns; it is a matter of judgement. If we are not in any way able to hold the Department to account, it will be difficult for us to support the general objectives at this stage. I highlight the objective of climate change mitigation. Under that guise, compulsory purchase powers and other issues that are set out later, it would be possible to disrupt enormously the activities of our members in the sporting shooting community — which is worth £45 million to the Northern Ireland economy — without a clear feeling that there is a mechanism for raising those concerns on a small individual basis with the Department as it goes on with its business.

The Chairperson:

We need to have absolute certainty as to what the legislation is about and what can be achieved under it. You are in tune with Tom Elliott with regard to making sure that the balance can be achieved through the legislation. I am worried that we have a piece of legislation that does not

change things dramatically. If so, what is the point of legislating? If we are going to legislate, let us ensure that we open up opportunities and, at the same time, protect where protection has to be afforded.

Mr Small:

The mitigation of climate change is in there because it was seen as being important by stakeholders and the Committee. Our main vehicle for delivering the mitigation of climate change will be the creation of more forests. I do not see that as being a threat.

Mr Pollen:

You are creating legislation within which officials will be working further down the line, as you said at the beginning. We have a piece of legislation that is almost 60 years old. Therefore we need to get this right. As an example, one of our members stated that if the Forest Service owned half a hill and he owned the other half, Forest Service might feel that they could vest the entire hill and set up a wind farm on it as a means of complying with the requirements.

Mr Small:

Our vesting powers are subject to the scrutiny of the Committee.

The Chairperson:

We will come to those powers shortly. Are you content with where we are with regard to the general duty?

Mr Pollen:

Yes, subject to how other measures and proposals in relation to other clauses are addressed.

Mr Savage:

I welcome a lot of things in clause 3, but pony-trekking, which we mentioned at last week's Committee meeting, is not mentioned. A lot of people now take part in that, and few facilities are available for them. I would like the words "equine industry" or "pony-trekking" included so that people are clear that that facility is available if they want to use it.

Mr Small:

Significant provision is made already for pony-trekking and horse riding. We are in discussions

with the British Horse Society about an approach to the issue that would address provision across the Province. The powers in clause 3 give us the power to create bridle paths or pony-trekking trails. We have the provisions and powers that we need, and, through our strategic work, we are committed to try to develop those facilities better.

The Chairperson:

Clause 3 states that the Department may provide:

"viewing points, bridlepaths, nature trails … such other recreational, conservational or educational facilities as the Department considers appropriate."

That provides quite a bit of scope.

Mr Small:

I think that that is pretty broad.

The Chairperson:

It is.

We will move on to clause 4, unless anyone wishes to discuss clause 2. Clause 4 deals with the use or development of forestry land. I see that you have done some major redrafting since the original Bill.

Mr Small:

We propose to remove subsections (2) and (3) of clause 4 and amalgamate them with clause 7, because they deal with the same issue of establishing partnerships and bodies corporate. Earlier, a point was made about the need for balance in the use of the powers. Clause 4(4) requires us to have due regard to the general duty under clause 1(1), and that is how balance on the appropriate scale of development will be ensured.

The Chairperson:

Are members content with clause 4 as it stands? We will come to the proposed changes to clause 7 later.

Mr Small:

Clause 4 is about giving broader powers to the Department to develop projects such as tourism

and renewable energy.

The Chairperson:

Clause 5 deals with the compulsory acquisition of land — a minor matter that has not caused any controversy.

Mr Small:

We have proposed an amended clause which significantly reduces the scope of the compulsory purchase powers. The Committee and some stakeholders raised a lot of concern about the wide, sweeping nature of some of the wording in the clause. We propose that the clause be reworded to restrict its use to providing or improving access to land.

We also approached our legal advisers about the alternative idea of temporary acquisition. Their advice was that clause 2(1)(a), which sets out the arrangements for voluntary purchase of land, allows the temporary or permanent acquisition of land, rights of way or way leaves. Therefore, clause 2 allows sufficient discretion. Similarly, the restricted compulsory purchase powers that we now propose under clause 5 can be used either for a temporary purpose or a more permanent purpose, but only as a last resort. The issue of last resort has been important to the Committee.

The Chairperson:

Major changes have been proposed to clause 5. I remind Committee members that the Bill originally gave the Department the right to:

"acquire compulsorily any land … for … the carrying out of any of its functions under this Act."

This narrows it down considerably — actually, it changes the clause dramatically:

"The Department may acquire compulsorily any land which it requires for the purposes of or in connection with providing or improving access to any land so as to facilitate the carrying out of any of its functions".

It is a much narrower area, which addresses some of the suspicions that many of us had about handing the Department such a blank cheque with regard to its activities.

Mr Elliott:

I am not convinced by Mr Small's argument that temporary acquisition is not a good idea or one that can be taken forward. The Scottish Parliament has legislation for such an option in respect of railways. There are templates for the temporary acquisition of land; I suggest that the Department looks at what the Forestry Commission does in conjunction with the railways in Scotland and

brings back a basis on which we can build our legislation. If necessary, the Committee could do some research on it as well, because I have some information. There are different options in the Scottish legislation for temporary and permanent acquisition of land.

The Chairperson:

That seems to be a sensible option. The legislation could say that, as a first step, the Department would explore temporary leasing before, subsequently, moving to acquisition. This will not be new to you, Mr Small. I know that the Ulster Farmers' Union made similar representation.

Mr Small:

I agree, and that is, essentially, the proposal that we put to the Office of the Legislative Counsel (OLC). The legal advice is that it is unnecessary, because clause 5 captures the temporary and permanent options that would be available to us. It is unnecessary to separate them.

We have proposed that we will be developing a set of guidelines which will dictate how we approach any decision to compulsorily acquire land and force us to go through a range of options, to include voluntary acquisition; acquisition on a temporary basis; compulsory purchase on a temporary basis; and, if all else fails, permanent compulsory purchase.

The Chairperson:

The Diseases of Animals Bill, for example, has a specific code of practice which details the steps that the Department must take along the route to finally seizing land. That is in the legislation. As Tom Elliott said, there is a template in other situations on the mainland, but there is a template in the Diseases of Animals Bill as well, which the Department could lift and apply.

Mr Small:

Do you mean in respect of establishing a code of practice?

The Chairperson:

Yes.

Mr Small:

We are offering a code of practice.

The Chairperson:

It is not here.

Mr Small:

We differ in that we are not proposing a statutory code of practice, and that decision is based on legal advice. It would be the only such code that we are aware of.

The Chairperson:

Have you received advice from the Departmental Solicitor's Office (DSO) on this?

Mr Small:

We received advice from OLC.

The Chairperson:

That is not really legal advice; that is a drafter's opinion. DSO provides legal advice.

Mr Small:

It is the opinion of the drafter of the Bill that —

The Chairperson:

With respect, you are his paymaster; you tell him what you want in the legislation. It is not the other way round. I think that there is something there which would afford you the opportunity to include that option in clause 5. It has been good practice elsewhere, and it would stand to the Department and show that the proposed legislation is not about taking a sledgehammer to crack a nut. I accept that clause 5 has changed dramatically from where it started life, and I welcome that. However, an additional caveat would allow for the steps to be seen to be taken and show that there is a course of action and that permanent acquisition is very much a last option.

Mr Small:

I can only agree to have a look at that again and report back to the Committee.

Mr Molloy:

There has been improvement from what we first saw. With previous legislation, we have had to see the guidelines beforehand, and I think that that would be useful in this case. The Department

should start to accept that it cannot promise guidelines; we need to see what you are talking about.

There is probably no other way of describing compulsory acquisition. However, there needs to be a statement that, like anyone else, the Department must pay a price to enter or acquire land. Anyone who wants to open an entrance, for example, has to buy the land. Compulsory acquisition needs to be based on market value. The use of the word "compulsory" seems to indicate that the Department will take land by whatever means necessary. We need to see the guidelines on how the Department will acquire land and whether it will pay the market price.

Mr Small:

The Bill will contain compensation provisions for circumstances in which we use the compulsory purchase powers. Those provisions will be guided by Land and Property Services valuers, who will determine an appropriate market value for that land. Landowners will receive an appropriate market value, so they will not lose out.

Mr Michael McCann (Department of Agriculture and Rural Development):

Landowners can also appeal to the Lands Tribunal if they feel that they are not being offered a fair price.

The Chairperson:

Did you know that there has never been an appeal to the Lands Tribunal? I spoke to the commissioner last week and asked him whether he had ever had to exercise his powers. He said that he had not, because it is far too expensive for people to go down that route. That is something of a sideline, but I appreciate your point. The provision for appealing to the Lands Tribunal is contained in the original Bill.

The public will see the compulsory acquisition power as draconian; Francie is absolutely right. The individual or community affected by that power must be clear that there are proper compensatory measures in place. It is in the interests of the Department that the compulsory acquisition power be seen as a last resort in dealing with a difficult problem.

Mr Shannon:

I apologise for not being here for the presentation. I, too, have deep concerns about the

compulsory acquisition of land. I have fears about how the Department, rather than you as individuals, will interpret the powers for compulsory purchase. You mentioned that the guidelines would refer to temporary acquisition. However, with great respect, I do not want hear about guidelines that we do not know about at this moment in time. I would rather have it down in black and white in the Bill that the Department will not have the power for compulsory purchase at any stage.

The Chairperson, the Deputy Chairperson, Francie and, I suspect, every other member of the Committee has consistently asked the Department to respect and listen to the points that we make and to draw up legislation that we can support. We want to work with the Department, but we also want the Department to work with the Committee.

The Chairperson:

I must say, with respect, that the Department has listened to our representations on the substance of the clause by reducing it and making it more focused. However, you are right that there is more to be done.

Mr Shannon:

That is exactly the point that I wanted to make.

The Chairperson:

I do not mind you having a go at the officials, but I have to defend them sometimes.

Mr Shannon:

It is all right for the Chairperson to have a go at you, but I am not allowed to. I would like the legislation to be worded in a way that gives protection. If I am going to sit on the Committee and endorse legislation, I want to be able to live with that legislation.

The Chairperson:

A code of practice would help in that regard.

Mr Shannon:

I would like to see what it is first.

Mr Small:

We have agreed to look at the idea of a code of practice and report back to the Committee.

Mr W Clarke:

I broadly welcome the amendments that you have proposed. They are a huge improvement, and they have taken on board a lot of what members have said about clarifying that the power will mainly be required for access purposes. The development of road infrastructure and access is very costly, so I see these as permanent structures. I do not see the logic in investing a lot of money to develop temporary infrastructure only to take it away again.

However, there may be a situation where, for example, neighbours do not get on so well and one of them needs to cross the other's land to access forestry. Maybe that was the sort of situation that Tom Elliot was trying to tease out, and I back him. Nevertheless, overall, I welcome the proposed amendment. Were compulsory purchase powers not in the Forestry Act (Northern Ireland) 1953?

Mr Small:

This is a new proposal.

Mr McGlone:

I am intrigued by the notion that there should not be a statutory code of practice.

The Chairperson:

The Office of the Legislative Counsel does not want to bother writing it.

Mr McGlone:

That is the point that I was trying to tease out. If people were to have some degree of security about the process through which they are likely to have to go, it would absolve the Department of a lot of its difficulties. Acquiring land by compulsory methods is not the best way to encourage landowners and people from rural backgrounds to interact with the Department.

Mr Small:

We took the view that the statute book already contains many examples of compulsory purchase powers, none of which are supported by a statutory code of practice, so introducing one in this

instance would be a brand new approach and would break with precedent. I appreciate that that is not always a reason not to do something, but it was one of the points that were raised. In addition, the compulsory purchase process is so complex and time-consuming that it almost inevitably becomes an option of last resort. Even without a code of practice, that is how things work out in any given case. I appreciate the Committee's desire for clarity and certainty, and a statutory code of practice would strengthen that position, so we will look at the proposal.

I suppose we are trying to achieve a balance between the general duty to which clause 1 commits us and the powers that we need in the rest of the Bill to help us to deliver that duty. That does not mean that we need unreasonable powers, but we need sufficient powers to deliver the general duty.

The Chairperson:

You are not being pushed back on the ultimate right to have compulsory purchase powers. You are being pushed back on the intermediate step to using them, which could be seen on the face of the Bill and, from a public relations point of view, would make the Department look better.

Mr Small:

I have taken note of two issues that we will look at again: the temporary provision that Tom Elliott mentioned, and the idea of a statutory code of practice.

Mr Pollen:

This is what I was alluding to when we looked at clause 1. Clause 4(1) states:

"The Department may use or develop forestry land for a purpose other than forestry."

Clause 5(1) states that the Department can acquire land for:

"the carrying out of any of its functions under this Act."

It seems to me that the Department's scope has not been refined at all. Under clause 5, it will be able to carry out any of its functions with the support of compulsory purchase powers.

Then Chairperson:

According to the proposed amendment to clause 5(1), the Department can only use those powers:

"in connection with providing or improving access to any land so as to facilitate the carrying out of any of its functions under this Act."

The clause has been constrained to an access provision, which is the way that we asked for it to be

framed. I understand your suspicions, and I want clarity, but the Department will not be able to go beyond that provision. Is my interpretation correct?

Mr Small:

Yes, that is right. We deliberately tried to narrow the scope of the clause to one of facilitating access.

The Chairperson:

Originally, clause 5(1) provided the Department with an open cheque book:

"The Department may acquire compulsorily any land which it requires for the purposes of, or in connection with, the carrying out of any of its functions under this Act."

That amounted to open season for the Department, but it has been narrowed down so that the only land that it can compulsorily purchase is any land that is for access to allow it to carry out its functions on its land or associated with that. It is now a narrow piece of legislation.

Mr Pollen:

It will still cause us concern that it is not clearly sufficiently narrow, and that concern has just been echoed in the Chamber.

The Chairperson:

If the Department wants our backing, the Committee would like to see a different schedule that would state that before it can come to compulsory acquisition, it must talk to the landowner about leasing the land and having some sort of interim measure before there would be any compulsory purchase, so that the notion of vesting would be a thing of the past — except in the last resort.

Mr Pollen:

Your comment, and that of Mr Small, about the complexity and the time-consuming nature and the fact there have not been any challenges in the past under similar provisions is causing our members an awful lot of concern.

The Chairperson:

It is very pricey.

Mr Pollen:

There is also the thought of going up against the might of the Department. If the Department

wants something, the individual man will not be able to sustain a fight to achieve or maintain his rights.

The Chairperson:

We will come back to that matter. You have heard the consensus around the table that this could achieve our support, but we want this for that support.

Mr Rupert Pigott (Confederation of Forest Industries):

I welcome the clarification for improving access, but will that mean that the Forest Service will be able to act on behalf of the private sector to perform compulsory purchases, purely as a last resort?

Mr Small:

We discussed and dealt with that previously. That proposal was raised by the Committee and some stakeholders earlier, and we took legal advice from DSO on that point. The advice is that, to use compulsory purchase powers, the Department must go through a public interest test to be compatible with human rights legislation, and there must be a very clear public interest involved to justify the use of such extreme powers. The advice is that one needs to have a clear, tangible public benefit. The Department can demonstrate that public benefit in securing timber from its forests where there has been public investment in the past. It is much more difficult — DSO took the view that it was probably almost impossible — to demonstrate that same public interest when the powers are being used to take land from one private individual for the benefit of another private individual or concern. On that basis, we cannot use it in that way.

The Chairperson:

I do not think that you are entirely surprised by that.

Mr Pigott:

No.

The Chairperson:

If no other member wants to speak to clause 5, we move on to clause 6.

Mr Small:

The issue here was that there was no provision in the original Bill for woodland inventory. Comments were made that there should be that provision and, on reflection, the Department's last paper to the Committee included a proposal to introduce a provision that would require us to maintain a woodland inventory of size and forest cover in Northern Ireland. In response to that, the Committee expressed some concern that the proposal was not going far enough and that issues around woodland type and location should also be included.

The proposal that the Department is bringing forward now is that we will compile and maintain a woodland inventory covering location, size and woodland type. We talked about the difficulties and the burden of moving the inventory beyond that point to include issues such as the quantity of timber in a forest, the quality of timber, and flora and fauna issues, and the task that that would involve. We indicated that our preference was to restrict it to size, location and type of woodland.

The Department feels that that should be the statutory obligation.

The Committee also expressed concern that there was no requirement to carry out that process within a given time frame, that the process was open-ended and that, in practice, it could be many years before the Department compiled an inventory again. The Department has considered that point and proposed in the Bill that all that information will be refreshed and renewed every 10 years. That time frame was chosen because the long-term aspiration is to double forest cover over a 50-year period, and a 10-year slot would provide five fresh looks at how that longer-term target is being met.

The Chairperson:

The Committee made the novel suggestion that the Department should encourage people to supply it with information. Has the Department had a chance to consider our suggestion?

Mr Small:

That issue was discussed at the previous meeting when we talked about the felling licence application process that is to be introduced, and that may provide an opportunity to obtain that information. The Department is happy to include a provision on the application form that would allow individuals to provide that information if they were willing to do so. However, I am still not sure that the Department should require individuals to make that information available,

because we want to keep the process as simple and straightforward as possible. It is a possible means of securing additional data, and the Department is happy to include it in that way.

Mr Patrick Cregg (Woodland Trust):

We welcome what David has proposed. However, we are keen that any inventory be map-based, preferably using a geographic information system (GIS), rather than have the Forest Service collect files of papers on various sites. We agree with David that, if possible, information should be collated on all sites over two hectares, as that would bring Northern Ireland into line with the national inventory of woodland and trees in Great Britain.

One concern that we have over the fact that woodland cover is to be monitored only every 10 years is that that will make it impossible to judge how successful we have been in doubling woodland cover if we cannot measure the woodland loss in that 10-year period. We feel that the data must be updated yearly. Furthermore, I agree with the Chairperson that the cost of producing that information should be minimal, because many organisations — including my organisation, the RSPB, the National Trust and the Northern Ireland Environment Agency (NIEA) — already hold that information.

The Chairperson:

We will take those issues one at a time. How does the Department respond to the first issue of consistency with Great Britain?

Mr Stuart Morwood (Department of Agriculture and Rural Development):

All the information collected would be GIS-based, involving the use of computerised mapping, spatial databases. That would fulfil all the requirements that Patrick mentioned.

The Chairperson:

As far as I understand it, Forest Service conducts research in that area for private companies. If that information is received and factored into the Department's overview, I assume that it can be sold on to the private sector. Is that correct?

Mr Morwood:

Forest Service receives information from several public bodies. For example, our information on woodland is derived from the NIEA. That is the type of information that could be encompassed

in the GIS. The Department does not purchase that information; it is made freely available to us.

The Chairperson:

That is good, because one of the big concerns is expense, and no one wants to create an additional or unnecessary burden. Patrick Cregg said that the RSPB and other organisations routinely gather such information. If that information can be used in a way that will help to create an overall picture, the Department should grasp that opportunity.

Mr Morwood:

The use of GIS will mean that the Department can analyse a wide range of layers of information, allowing it, for example, to ensure that there is no double counting. It will also allow the Department to cut through the systems and ensure that it is receiving all the available information.

The Chairperson:

Patrick, are you happy with that? We will return to the issue of woodlands being monitored on a 10-year basis in a moment.

Mr Cregg:

Excellent. There is no point in reinventing the wheel in Northern Ireland. I would be happy to replicate the successful GB model.

The Chairperson:

Does the 10-year plan offer a sufficiently robust approach? Should it be shortened? A proposal has been made to switch to a yearly programme.

Mr Small:

The changes that could be made through use of a year-on-year model would be minimal. We hope to see more forest creation in the years ahead, and at a better rate than was the case previously. Nevertheless, doubling or even trebling our current rate of forest creation will, year on year, result in only a small increase in overall forest cover.

The Chairperson:

In contrast, a programme of measuring change every 10 years might be too long a time between inventories. If such a programme were to come into operation today, it would mean that we

would not revisit it until 2020. Could there be a compromise at five years?

Mr Small:

I do not know. Each year, we will set our own targets for forest creation and will report each year in our annual report on our achievement of those targets. There will be some assessment annually of what has been happening. That will focus primarily on woodland creation through the woodland grant scheme, capturing the kind of creation that the Woodland Trust is able to promote.

The Chairperson:

Is that a yes or a no?

Mr Small:

Our view is that, because we are looking at a 50-year period in which to double forest cover, breaking that into five 10-year periods is reasonable and will allow us to monitor trends as we move towards the 50-year target. I am not sure whether a five-year target would be of any great additional assistance in monitoring trends.

Mr Cregg:

A five-year target, coupled with the aspiration to double woodland cover in Northern Ireland, would mean that, at the end of the five-year period, we should have created an additional 8,000 hectares of woodland across the Province. As far as I am concerned, that is not insignificant. If we look at the situation annually, and if we are to achieve our targets — hopefully, the targets for which the Committee and the public will hold Forest Service accountable — 1,650 hectares per annum of new woodland will need to be produced to achieve that 50-year target. That is a significant amount of woodland, because 1,650 hectares is equivalent to 150 Windsor Parks or Clandeboye Parks. That would to be recorded, because we could not judge the success or failure of the targets that we aspire to unless we know what is there and what is being added year on year.

The Chairperson:

David, if it is not measured, it is not done. Your measurements are too broad.

Mr Small:

In fairness, Chairman, the predominant element of woodland creation each year will be that which is created through the woodland grant scheme. That would include the kind of woodland that the Woodland Trust encourages and promotes. Patrick is right: we need to double or treble our current rate of woodland creation. However, that is something that we will monitor every year, and we will record that information, and adjust and update our records accordingly.

We are talking about a mechanism that will allow us to look at longer-term trends in our woodland inventory. We will monitor annually the woodland that we grant-aid and create. We will be able to see the beginning of a trend, but one cannot see a trend develop over a single year. Our feeling is that —

The Chairperson:

Is it not fair to say that you would see a trend over a five-year period?

Mr Small:

Over five years, yes.

The Chairperson:

Would you accept having a five-year period rather than a 10-year period?

Mr Small:

I do not know. Each year, we will carry out our own data recording of the woodland that we create, and we will adjust the baseline figure each year. We thought that to have a 10-year period was reasonable.

Mr McGlone:

I want to tie some matters down precisely, because several figures were mentioned as to how to quantify the development proposals.

Forgive me for saying this, but you came out with two or three generalisations. The predominant woodland growth will be that which is funded through grant aid or that which is overseen by the Department. Not all woodland will be grant-aided, so how do you quantify the inventory? Every potential will exist for other organisations or individuals from private industry

to plant or cut down trees.

Mr Small:

I appreciate that.

Mr McGlone:

The Department does not have the capacity to measure that. Therefore, how do you measure that unquantifiable element?

Mr Small:

On a year-to-year basis, even taking account of the —

Mr McGlone:

That was not my point. My point is that there is an element that cannot be gauged or measured. I am making the case for measuring it. Whether that is done annually or every five years is another issue. However, in the expansion and reduction of woodland, you are dealing with something that has an aspect — I do not know how significant an aspect — that is unquantifiable, and, therefore, unmeasured.

Mr Small:

I agree that there is an element that is unquantifiable, but our understanding is that that is a very small element. Perhaps Stuart can expand on that point.

We will take away our 10-year proposal and look at it again in the context of a possible five-year proposal.

Mr Morwood:

I think —

The Chairperson:

Sorry, Stuart. That would be a useful compromise, and one that does not really ask that much of you.

Mr Morwood:

Our experience is that the vast majority of woodland creation occurs under the woodland grant scheme. However, you are quite right to say that the potential is there for an element of woodland to be created outside the schemes that the Department operates. However, the creation of new woodland is subject to the Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006. Therefore, if a landowner is creating woodland over a certain threshold, he is required to inform the Department. Likewise, if he is removing woodland over a certain threshold, he is required to inform the Department. That legislation is the basis on which we are kept aware of trends in woodland creation outside the woodland grant scheme.

Mr McGlone:

I may be being presumptuous, but the data that you have is fed into the data that you would be monitoring anyway.

Mr Morwood:

We will have access to data on deforestation under the aforementioned regulations.

The Chairperson:

Do any other Committee members wish to comment before we move on to clause 7?

Mr Shannon:

Have we received any confirmation around the recommendation that the Committee made at its previous meeting concerning clause 6 and the Department's exemption under the Wildlife (Northern Ireland) Order 1985? I am not sure whether the exemption that I asked for has been included in the redrafted clause. For example, in relation to the Game Preservation (Amendment) Act (Northern Ireland) 2002, which covers shooting deer and hares on other people's land, we want the Department to be subject to —

The Chairperson:

We are dealing with clause 6, but we will come to clause 8 in a minute, Jim. Break your barrels, Jim.

Mr Shannon:

Hold fire?

The Chairperson:

Yes. Clause 7 deals with incidental powers. David, can you give us your view on that clause?

Mr Small:

The concern with clause 7 was over the wide, sweeping nature of the powers that the Department proposed in subsection (1), which would allow the Department to:

"do anything which appears to it to be conducive or incidental to the discharge of its general duty".

We accepted, straight away, that that power was too broad and sweeping.

We plan to remove the offending words and narrow the powers that would be available to the Department. Those powers essentially revolve around entering into partnerships and agreements with other organisations or forming bodies corporate. The powers available to the Department have been narrowed to prescribe specifically those powers.

Professor Sue Christie (Northern Ireland Environment Link):

We welcome the changes that have been proposed to clause 7. However, we still think that it would be a good idea to have an independent committee of stakeholders rather than the Department of Finance and Personnel (DFP) approve the use of those powers. We accept the Department's argument that there are already a number of committees involved. I see no reason why the roles of the existing committees could not be expanded, or why the committees could not be combined into one, to include that scrutiny role. We feel that an independent committee would reassure the public that the Department would not exercise draconian powers, which the clause could otherwise be seen to allow.

Mr Small:

Clause 7 will essentially allow the Department to enter into partnerships with groups to help us to deliver some of the Bill's general aspirations. Those partnerships may be with local councils, a local community group, or something more formal, such as a body corporate. I am not quite sure what a stakeholder grouping would be considering when we enter such arrangements.

Professor Christie:

Our concern is not with that aspect of the clause but with the bit that refers back to subsection (2)(b) to (d) of clause 2, which concerns the principal powers of the Department to "dispose of",

and so on. We are not concerned about the provisions for entering into partnership but about the referral back to clause 2 and clause 4.

Mr Small:

I can see how what you say is more relevant to clause 4, which deals with how the Department uses or develops forestry land. I suppose that the view is that if we are going to develop a piece of land for a tourism project or a renewable energy project, it will be subject to the normal planning process, with full public consultation and everything that goes with it. I would have thought that that would offer the public some degree of assurance about what is proposed. I do not know what an additional stakeholder grouping would add to that public process.

Ms Christie:

It would give the public an additional assurance that the Department was not engaging in activities that could be viewed as inappropriate. We feel that there are several areas of business in which an independent stakeholder body would offer assurance to the public and the House that the Department does not have such wide powers that it is able to enter into —

The Chairperson:

I think what you really want is for the Department to be obliged to listen to representations that are made, as opposed to its deciding to whom it should speak. Rather, there should be some balance. Is that a fair representation of your view?

Ms Christie:

That summarises it very well.

The Chairperson:

We know that you are totally genuine, David; it is your colleagues whom we do not trust. *[Laughter.]* Not the people whom you have brought with you, obviously.

Mr Small:

The proposed amended clause 4 will give the Department new powers. We are deliberately seeking those powers in order to enable us to make available the wider types of provision that people have been asking for, such as recreation, tourism and renewable energy. Proposed new subsection (2) of clause 4 requires the Department to have "due regard" to the general duty.

There is, therefore, a check and balance built into that clause. As I said, any new proposals that are made will be subject to the planning process, like any other form of development, and the Planning Service will exercise a form of control.

The idea of having an advisory body or group of stakeholders has been raised before, and we have responded by indicating that established processes are in place whereby the Department will consult, and then create forums to discuss new ideas or proposals. We question what a separate grouping would offer that we cannot already achieve through existing processes. I suppose that your suggestion falls into the same category.

Ms Christie:

We are saying that it would not need to be an additional body but could be an existing body with an expanded remit.

The Chairperson:

There is a way in which to try to achieve that. I understand part of the dilemma. For the purposes of the exercising of its functions under part 1 of the Bill, the Department lists paragraphs (a), (b), (c), and (d) of clause 7(2) as things that the Department can do. We are saying that another subsection could be inserted that states that, instead of "may", the Department "will" consult already established organisations that might have an interest. That simply places the obligation on the Department to consult. Let us be honest: you are going to consult anyway. You have to consult. If that provision were included in the Bill, and, as I said, you would be doing it anyway, that at least gives the Department leverage to say that because the Department could be held to account, an organisation must consult it.

Mr Small:

The developments that we propose under clause 4 require public consultation under the UK woodland assurance scheme (UKWAS).

The Chairperson:

That is what I am saying: if you will be doing it anyway, why not include it in the Bill?

Mr Small:

There are two proposals. That is one, while the other is for an advisory body.

The Chairperson:

That is a separate issue. That becomes a question of to whom you listen. If you go out and consult, say, all the stakeholders who are in this room anyway, the fact that they are not a unilateral body is as irrelevant as the number of angels that can dance on the head of a pin. The fact is that you consult those groups because they have expertise in various areas. To me, that is a separate debate. The issue is that it be included in the Bill that you will consult them. At least that assures those groups that their views are expressed and their voices heard.

Mr Small:

We will consider that proposal. When we propose a development, whether it be for tourism or recreation, we must go through a form of consultation anyway. In developing the likes of a recreation strategy, we meet groups that we believe have an interest. That could be the Tourist Board, councils or CAAN. If we are dealing with such issues as forest expansion, we meet groups that we believe have a legitimate interest. They include the Woodland Trust, the RSPB and similar organisations.

The Chairperson:

Exactly. You do that anyway.

Mr Small:

We do do it. However, we tend to do it in a focused way, depending on the issue.

The Chairperson:

I am asking you to give expression to the fact that you are going to do that anyway by including a subsection or paragraph to that effect in clause 7. Come back to us on that.

Mr Shannon:

I want to return to an earlier point. Is it possible to consider suggestions that the Chairman and other Committee members have made about having an Ofcom-type organisation — I am not sure whether that is a good or bad example — when it comes to issues and decisions that are made by Forest Service? Can there be a body that assesses independently whether those decisions have been made correctly and fairly? There would then be a system under which those decisions could be appealed quickly and overturned.

The reason that I ask is because whether the matter is tree-felling licences, compulsory acquisition of land, accessing private land or even the tourism projects that you mentioned earlier, David, there needs to be a system that everyone believes results in equal treatment. Perhaps by having such a body would enable that fairness, clarity and transparency — words that are used constantly at present. The Chairman has already suggested that. Could that be done? That is my suggestion. I am not sure how you feel about that, gentlemen.

The Chairperson:
Do you not have an interest to declare, Jim? Surely you are with Ofcom, given that your phone rings that often.

Mr Shannon:
My phone is on silent.

The Chairperson:
We have had that discussion. Officials will get back to us on that point. Do you want to elaborate further, David?

Mr Small:
No, except to say that we will look at that proposal again.

The Chairperson:
We shall move on to clause 8. The Committee Clerk advises me that this discussion should be fairly straightforward. It deals with control of animals in forests.

Mr Small:
Chairman, over the past two or three weeks, we have proposed a number of amendments to clause 8 to take account of comments that were made by the Committee and stakeholders. At our previous meeting, the Committee took the view that, more or less, the clause was acceptable. Proposals to amend the clause have now been made on the basis of earlier discussions.

The only other point worth making about clause 8 is that it is not very different from the 1953 Act. Its provisions have largely been carried forward. It is consistent with the obligations and

requirements of the 1985 Order and has been agreed with Department of the Environment colleagues (DOE) to ensure that it is consistent.

Mr Savage:

My only concern over clause 8 is with subsection (3), which states:

"The occupier of the land may at any time kill, take or destroy any wild animals".

I assume that "wild animals" includes deer, and hares other than the Irish hare. The landowner and Forest Service should each have adequate fencing erected so that no animal can trespass on either portion of land. That fencing should be good enough to protect trees, or whatever. That is a grey area and could cause confusion. I know that it is very hard to keep some animals out, but —

The Chairperson:

Why does the Department not have private sector bailiffs to manage such things so that when a shooting has to take place, it is done by an expert? Let us be honest: some people who may be doing the killing really do not give a toss about how they shoot a deer, whereas others will take great interest and use precision to ensure that it is done humanely and appropriately.

Mr Small:

The Department has a well-managed process. We have BASC-qualified wildlife wardens who are very experienced in culling.

The Chairperson:

Are all the Department's stalkers qualified?

Mr Small:

Yes. We adopt a specific approach to managing deer in our forests and the level of damage that they cause. We set culling targets based on that.

The Chairperson:

How many wardens does the Department have?

Mr Small:

We have three full-time wildlife wardens.

The Chairperson:

For the whole of Ulster?

Mr Small:

Yes.

The Chairperson:

Busy boys.

Mr Small:

Yes; they are. They are fully employed. If the Department felt that it needed another warden, that is another resource that we would have to try to deal with. At present, however, we are satisfied that we are managing deer numbers in our forests and minimising the damage that is being caused. We have experienced people who do that for the Department, and they take full account of the obligations of the 1985 Order when they carry out their deer management duties. We are satisfied that the system is working.

The Chairperson:

How many deer are shot by people under the Department's control who are not wardens?

Mr Small:

Last year, we culled 247 deer across all Forest Service woodland.

The Chairperson:

Were they all shot by that group of three?

Mr Small:

Yes, by our three wildlife wardens. Their culling obviously follows from their observations to try to establish the number of deer in the forests and their assessment of the level and type of damage being caused. They then set cull targets, which will keep deer numbers at a sustainable level.

Mr Savage:

I asked that question because many people who have land close to forests would be signed up to

the countryside management scheme. They must have good boundary fencing, with five strands of wire. One requirement of scheme membership is to protect wildlife. It baffles me to hear that 247 deer were killed last year. I did not think that there were that many deer in Northern Ireland.

Clause 8 concerns me. Could it be reworded in such a way as to protect the Department and the farmer? Something is missing in the clause that needs to be addressed.

Mr Small:

We acknowledge that good fencing on the boundaries is one way of trying to address the issue. We certainly would not want to include anything in the Bill that created statutory obligations on landowners to properly or effectively fence their boundaries. However, there is an expectation that every woodland landowner will do his best.

Mr Savage:

Are there specific areas in which the most wildlife trespasses? What areas are they?

Mr Small:

The culling statistic that I cited with respect to last year was compiled from 20 different woodland areas right across Northern Ireland. This is not something located in one area; it relates to management across all the forests in the North.

The Chairperson:

Does a person have a right to roam and shoot on his own land as a result of this?

Mr Morwood:

No.

Mr Small:

Clause 8 allows a woodland owner — and that includes the Forest Service — to cull deer on his own woodland.

The Chairperson:

So trespass is not affected by this Bill.

Mr Small:

The person will not be able to go onto the adjacent land of another owner and cull deer.

The Chairperson:

A forestry stalker can go onto anyone else's land.

Mr Small:

Under clause 9, we are trying to secure a power that will enable us to go onto adjacent land. That is to try to deal with situations where the deer have roamed. Roaming is in the nature of deer, and there may be occasions when an area of woodland is simply too small to enable culling to take place. To meet all the obligations of the Wildlife (Northern Ireland) Order 1985, one must follow a certain process, and sometimes it is not possible, within a small area of woodland, to do that. One needs open space. Only in such circumstances would we want to use the power in clause 9, which enables the Forest Service to go onto a private piece of land to cull a deer, but only after consultation with the landowner and after asking him to take action.

The Chairperson:

One needs a clear line of sight to cull deer, is that not so?

Mr Small:

Yes.

The Chairperson:

So the deer have to be on open land to be shot, which more than likely would not be forestry land. It would be adjacent land.

Mr Small:

In our own forests, we have a lot of open space. We are required to keep it open for reasons of certification. In our own forests, we can cull deer and manage deer numbers because we have that open space. Private woodland owners who own one hectare of woodland will not have open space and will be unable to deal with a deer problem, if there is one.

The Chairperson:

Of the 247 deer that were shot, how many were shot on Forest Service land?

Mr Small:

They were all shot on our own land.

The Chairperson:

That poses a question. I do not think you have a problem.

Mr Small:

We are consistently told, and have been for many years, that deer numbers will increase. If there were to be no more forest creation, we would not need this power, because we can deal with the current deer situation and we believe that we do. However, we aim to double the amount of forest cover in Northern Ireland, and that additional half will be on private land; it will be private woodland where we cannot interfere. We cannot go into the forest of a private woodland owner and control his deer for him. However, the private owners will find it extremely difficult to do that themselves, because they may not have the expertise to do it or because their forest area is so small that they do not have the scope to do so. They will not be able to go onto the land of adjacent owners to do it.

The Chairperson:

You are legislating for a problem that does not yet exist.

Mr Small:

That is right. I think that that reflects the fact that this legislation will, I hope, provide the statutory framework for forestry for the next 20 or 30 years.

The Chairperson:

Is there not a tourist or sporting opportunity here, of which you are depriving people?

Mr Small:

No. Clause 8 is a provision allowing a woodland owner to deal with a deer problem in his own forest if he is able to do so. If he has adequate open space to deal with the problem but does not have the expertise to cull deer, there is nothing to stop him calling in an organisation that specialises in culling deer to do it. I suppose that there is an opportunity in that.

The Chairperson:

He might also sell the shooting rights.

Mr Small:

He could.

The Chairperson:

That is possibly quite a lucrative opportunity.

Mr Small:

There will be nothing to stop a private woodland owner from doing that. Clause 9 will only be required in circumstances where a deer problem begins to emerge — that would be evident from deer numbers and from the damage being caused — and where our consultation with the private owner of woodland, adjacent to the forest, has not resulted in any action being taken. Again, we would consult the private woodland owner to indicate that there is a deer problem in the area and that we know that they are roaming onto land. We give them three months to try to address that problem through, for example, contacting a specialist group who can cull deer. It could be a lucrative business for people on whose land deer are roaming. We will only use the proposed powers in circumstances where that does not happen and where we know that forest, particularly young woodland, is still being damaged.

Mr Morwood:

With regard to Mr Savage's query about fencing of woodlands, I think that the implication was that we should fence woodlands to prevent entry of deer. One difficulty, particularly for private woodland owners who own very small woodlands, is that the cost of building the necessary fencing can be disproportionate to the overall cost of establishing and maintaining the plantation. In essence, the better option to manage the problem is to reduce the deer population to a level that causes an acceptable level of damage in the forest. There is an acceptance that forests will always be damaged.

Mr Shannon:

I am quite pleased about the significant changes that have been made; you have done a lot of good things. I gave you a bit of hassle earlier on, but when you do it right I will tell you. Under the legislative power that you have, the occupier of the land may take, kill or destroy any deer or

hares on the land or on adjoining land that the person also occupies. Does the same rule apply to the adjoining landowners? Can they enter Forest Service land to control deer and hares that are causing problems on their land?

The Chairperson:

Pests owned by the Forest Service.

Mr Small:

We have no proposal for that.

Mr Shannon:

I am sure that those three stockers are terribly busy. There might a possibility that, at some time in the future, you would want to ensure that people have the right to control pests that destroy woodland on their land.

Mr Small:

We are satisfied that deer numbers in forests are under control at the moment. If, in five or 10 years' time, we feel that that is becoming too difficult, we may have to look at other options to address that, possibly by increasing the number of wildlife wardens or looking at an alternative methodology.

Mr Shannon:

Is it not a good idea to include that proviso in the legislation? If, as you rightly say, forestry land increases in the way that you and I hope that it will, is it not good to have the legislative power to address that rather than leave it to the future and look for something then?

Mr Small:

I am not sure that we need legislative power. If we hold the shooting rights in our forest estate but struggle to deal with deer management, there is nothing to stop us entering an agreement with an external group of deer experts who can go in and cull deer under some suitable arrangement. That is possible.

Mr Shannon:

You can do that at this moment in time?

Mr Small:

Yes.

Mr Pollen:

I saw in the minutes of last week's meeting that Mr Small undertook to consult with BASC —

Mr Small:

I think that it was the British Deer Society (BDS).

Mr Pollen:

No; the Hansard report says the British Association for Shooting and Conservation.

Mr Small:

Are you sure?

Mr Pollen:

I am certain. I know that you have been in touch with BDS, but the Hansard report says BASC.

The Chairperson:

Say that again?

Mr Pollen:

The Hansard report records that, at the meeting on 1 February, Forest Service undertook to consult BASC.

The Chairperson:

I think that I asked that question.

Mr Small:

You did.

Mr Pollen:

You did. There was an exchange about it, and you said that you welcomed the fact that they were consulting us. We have not heard from them yet. Mr Small has just said that there is potential to bring in other groups to do deer stalking. I will put on record the fact that we met Forest Service two or three years ago to put forward that proposal, alongside the BDS. The Forest Service very nimbly missed the point that we were trying to get access for recreational stalking on Forest Service lands and said that it was able to meet the requirement for deer stalking itself with its three rangers. It appears that a lot of statistics are being bandied around, but the devil is always in the detail. The Forest Service has three rangers covering its estate, which is about 60,000 hectares, is it?

Mr Small:

Yes.

Mr Pollen:

Therefore, one ranger can deal with 20,000 hectares. Taking into account the 240-odd deer, that means that each ranger is taking 80 deer from 20,000 hectares. Therefore, people who have one hectare of woodland, which the Department is proposing to take powers for in clause 9, really have no problem — statistically, it is absolutely insignificant. If you can only take 80 deer off 20,000 hectares, then to be looking for legislative powers to allow the Department to go in and cull deer on sites of one hectare around the country is, I suggest —

The Chairperson:

It is a bit Communist.

Mr Pollen:

It is.

Mr Small:

We are being told that, as private woodland expands in size, there is the possibility of deer herd numbers increasing. We are trying to make a provision that would allow us, having gone through the process of making the landowner aware and giving him the opportunity to try to deal with a situation if it emerged, to be able to go in and deal with the problem as a last resort.

The Chairperson:

But this is admittedly a problem does not exist.

Mr Small:

If the problem never emerges, then the Department will not need those powers.

The Chairperson:

Why are you legislating in such precise detail for something that does not yet exist, if the issue is about good husbandry?

Mr Small:

Because the advice from groups such as BASC is that we are not managing deer numbers effectively and that we are likely to see an increase in numbers. We are taking a discretionary power that would allow us to deal with the situation in circumstances where that happened. As I said, it would only be used after we have gone through the process of consulting with the landowner and giving him the opportunity to deal with the situation, which might involve contacting a group who could do that for him.

Mr Pollen:

If I can cut in there —

The Chairperson:

Could we live without clause 9?

Mr Small:

I think, today, we probably could. However, the Bill has to provide a legislative framework for the next 20 or 30 years. We do not want a serious problem to develop that we would have no ability to deal with.

The Chairperson:

Your evidence is that there is not a problem, that there has not been a problem since 1953, and that we are legislating for something that might become a problem. You are telling us that removing clause 9 would not cause a significant different to the legislation —

Mr Small:

Today.

The Chairperson:

Today, and probably, realistically, for the next 10 to 15 years. Why do we not cut to the chase and remove the clause, have a wrap-up on good husbandry practice, etc, and take the clause out altogether?

Mr Small:

I made the point earlier that we are trying to balance our ability to deliver the general duty under clause 1. We have spent quite a bit of time trying to get clause 1 right and expanding the duties under clause 1, particularly the duty around sustainable forest management. Our view is that protecting woodlands is one part of sustainable forest management. If we do not have the provisions that enable us to do that, it will make it difficult for us to deliver clause 1. We are trying to get a balance.

The Chairperson:

I do not mind your getting a balance, but I do not see the point of putting something in the Bill when there is no problem, and legislating for it and getting worked up on it. I am not accusing you of getting worked up, but you know what I mean. As you said, if the clause were removed, it would not really change things dramatically. It is something that you could come back to later and amend. If there was a noticeable problem in 10 or 15 years, this piece of very good legislation could be easily amended.

Mr Pollen:

That is the best suggestion that I have heard. That would remove most of my association's concerns about the Bill; we welcome and support a lot of its other provisions. However, what is being included here is wholly unrealistic.

I will pick out a couple of examples that undermine the premise that has been put forward. Clause 9 refers to "land A" and "land B" and defines land B as any land that "adjoins land A". The whole island of Ireland adjoins the Stormont estate, so that potentially gives you the power to go anywhere to achieve your objectives. It is not limited. The Bill does not say that land B must adjoin land A and be within 500 m; it says "or … within 500 metres".

Clause 9 also calls for three months' notice. What if three months' notice were given at the start of the close season? That would require does and hinds to be shot when they are pregnant or lactating. If the occupier were not to do it because they felt that that was an unacceptable way to proceed, the Department could overrule them and carry that out.

When we gave evidence before Christmas, we raised the question of what would happen if the landowner did not give approval to the Department. The Department could go on to land with its rifles and shoot without the approval of the landowner. The Bill contains no provision to square it with firearms legislation. The Chairperson's suggestion that clause 9 be removed would make the Bill much more workable.

The Chairperson:

There is a legislative device that can be used to say that legislation might be introduced in the future to cover the power "to control animals on land adjacent to, etc". A minor amendment could be made 10 years from now or when it is required. That would take the heat out of the Bill. I think that that is a very good suggestion, and I do not mind saying so.

Mr Small:

We will take that away.

Mr Pollen:

Will you take the clause out or take it away?

Mr Small:

We will take the issue away and consider and reflect on it. We will report back to the Committee.

Mr Pollen:

Clause 11 contains provision for exemption from conviction under the Wildlife (Northern Ireland) Order 1985 and the Game Preservation Act (Northern Ireland) 1928. I do not have a copy of the 1985 Order with me, and I am not clear what is now being proposed.

The Chairperson:

We will return to that. I have a question on that.

Mr Small:

Mr Pollen raised a point about the Department's meeting BASC. We were about to arrange a meeting with BASC, but we saw mention in Hansard of the British Deer Society, so we arranged a meeting with that organisation. It may be that there are three Hansard reports running around, because we have had a sequence of several different meetings. The reference to meeting BASC may be included in a report of an earlier meeting. The one that we read contained an obligation to meet BDS. When we get last week's Hansard report, we will look for a reference to meeting BASC.

The Chairperson:

Last week's Hansard report, which is published on the Internet, refers to a meeting with BASC. The important point is that you will have that meeting.

Mr W Clarke:

Given that you are taking clause 9 away and having a look at it, I will wait until you come back.

The Chairperson:

We now move to clause 10.

Mr Small:

The proposals to amend clause 10 acknowledge the Committee's concerns. Clause 10 provides the ability for the Department to go on to other people's land to remove vegetation that we believe to cause a fire risk. Some concern was raised about the definition of "uncultivated land" and the use of the word "vegetation". We agreed to look at that, and I hope to bring proposals to the Committee later this week to confirm more clearly how we see that clause operating, to confirm the types of vegetation that are talking about and to prescribe more clearly what the clause means.

The Chairperson:

The point that has been reiterated to me is that, if the Department wishes to create a firebreak, it should do so on its own land. We have made that point to you on a number of occasions.

Mr Savage:

Clause 10 is self-explanatory. It is common sense.

The Chairperson:

Mr Small will come back with what is meant by "uncultivated land" and will clarify the circumstances under which the clause will apply.

Mr Small:

We will consider the definition of "uncultivated land" and the type of vegetation that the Bill will try to address. It is clear from some previous meetings that the Committee is concerned that the Department might misuse that power. That is not our intention, but if we can define more clearly the circumstances that we are likely to deal with, it may be more obvious to the Committee why the provisions are necessary. We hope to bring that advice later this week.

The Chairperson:

We move to clause 11. Can the Department explain its proposed amendment and the relevance of section 7(1)(a) and section 7A(1)(a) of the Game Preservation Act (Northern Ireland) 1928? That seems to be the basis of the amendment.

Mr Small:

I am not sure whether I can go into that level of detail. The references to the 1928 Act and the 1985 Order are protections which protect the Department against those specific provisions. Some of those deal with animals that are protected under schedule 5 to the 1985 Order and would have given us protection. We would have been in contravention of article 10(1) of the 1985 Order if we had killed any animals listed in schedule 5. We are not doing that any more, so we have removed the protection. Similarly, as we have agreed amendments with the Committee, other protections will no longer be needed. The protection under article 19(2) of the 1985 Order, which was about killing at night, will no longer be needed. Therefore, we will be removing that protection. I can put this in writing —

The Chairperson:

I want an explanatory note on that. It is probably straightforward, as you say, but it would be useful to get an explanatory note.

Mr Small:

I can provide that in writing. Without having immediate reference to what those specific clauses refer to, it can be difficult.

The Chairperson:

I want to turn to fees and Part 3 of the Bill, which deals with felling licences. I understand that you want that matter to be resolved by the next meeting. The Committee is opposed to the levying of any fees that are not applied in the rest of the United Kingdom or the Republic of Ireland. As has been made clear to us in public evidence sessions, it would be perverse to apply fees, and it would go against the interests of the people who try to make a living from forestry. Have you a solution to that point, or will you have a solution by the next meeting?

Mr Small:

I do not have a solution today. I hope to have a solution later this week, and we will communicate it to the Committee as soon as we have it, or by next week's meeting. We are sympathetic to the points raised by the Committee with regard to the need to secure parity with GB and the South, where fees are waived. We are awaiting advice and comments from some of our colleagues. As soon as I have those, we will be able to make a judgement on the extent to which we can waive the fees or deal with the fee issue. I hope to be able to come back to the Committee on that later this week.

The Chairperson:

Following our most recent meeting, we wrote to you on 3 February about stakeholders who are concerned with the processes and time frames around applying for felling licences. We requested that the Forest Service consider drawing up a forestry charter which would clarify and define the service which any applicant can expect from the Forest Service and set out the timeline for actions from the point of application through to the granting or refusal of a felling licence. We also requested that the Forest Service seek further legal clarification on the issue of payment of compensation in cases in which a felling licence has been refused. Have you any response to those points?

Mr Small:

We are content to develop a charter which would set out how we would deal with felling applications and some of the issues around timelines. We are content with that proposal.

We were surprised at the Committee's comment on compensation, because we have reviewed GB's Forestry Act 1967 and our understanding is that compensation provisions are included in England, Scotland and Wales. We understand that they may not have been used very often and that compensation may not have been paid very often, but the provisions do exist in the 1967 Act. I suppose that the Human Rights Act 1998 has brought a sharper focus to compensation more recently, because it requires that a proportionate approach be taken when an individual's right to use his or her property is interfered with. Our advice, as I have rehearsed, is that if we are to seek to do that through the felling licensing system, there needs to be an appropriate balancing tool in place, and that is the compensation provision.

The Chairperson:

Have you taken legal advice on that?

Mr Small:

Yes.

The Chairperson:

I would not mind a synopsis of that, if possible. We got that steer from the head of grants in the Forestry Commission. That is why we posed the question.

Mr M McCann:

The 1967 Act contains a compensation provision. In fact, we based our proposals on the principles of that Act, which we ran past the DSO.

Mr Small:

The other point that you raised was on the subject of tree preservation orders (TPOs). You suggested that the compensation provisions have changed, and they have. Although compensation provisions are still in place in the TPO system, compensation can no longer be secured for development value lost as the result of a TPO decision. It was that element that was creating very large compensation payments. In this Bill, the Department has limited any compensation payable to the loss in timber value; therefore, it will not be a free-for-all. It will be prescribed and restricted, and that will limit the amount of compensation that would be payable if the Department refused permission to fell.

Mr Shannon:

I am sorry; I am juking in and out. I am supposed to be speaking in the Chamber, and I was trying to see where I was. However, I am not due to speak until after Question Time.

The Chairperson:

Do you know where you are now?

Mr Shannon:

I always know where I am, Chairman; I just wanted to know where I was on the speaking list in the Chamber.

I am sorry to go back, but I also feel that clause 9 is unnecessary and should be scrapped. I understand that the Department will be looking at that. Scrapping the clause would reflect the views of the majority on this Committee and many of those who have made a contribution to its proceedings. We are all for legislation if it is necessary, but, if it is not, do not bother doing it.

Mr Cregg:

I want to recap on the issue of compensation, because I have done a little bit of research on it. Mr Small is quite right that, under the Planning (Trees) (Amendment) Regulations (Northern Ireland) 2007 and the Planning (Amendment) (Northern Ireland) Order 2003, provision is made for compensation where permission to fell trees has been denied. However, I suggest that the Forest Service should use the same language in the Forestry Bill that is used in the 2003 Order, which closes all of the loopholes that allow people to exploit the opportunity to make money.

As the Chairman said the last time we met, as the owners of ancient woodland the Woodland Trust could apply on an annual basis to the Department for permission to fell its woodlands, and, when refused permission, could ask for compensation. We are a charity, and that could be a nice earner.

More generally, as a conservation charity, the Woodland Trust sees the felling controls as one of the most important tools in the legislation. However, it is concerned at the Department's continued reluctance to put a presumption against the granting of felling licences on ancient woodland into writing. We can see no reason why there should be such reluctance. PPS 9 — the

planning policy statement in England — and PPS 2 — which the Minister of the Environment here is about to release — both contain references to ancient woodland and the necessity to conserve it. We would like to see a presumption against the felling of ancient woodland in the black and white so that future generations and future occupiers of Mr Small's post are aware of it.

Ancient woodland in Northern Ireland makes up less than 1% of the land area or 10,000 hectares. Over the past 40 years we have lost 13% of it, because of the lack of a requirement for a felling licence. The Bill is a golden opportunity to put down a presumption against any further loss of ancient woodland in black and white once and for all.

The Chairperson:

Special protection for ancient woodland, Mr Small?

Mr Small:

The Department has looked at that issue and discussed the issue of presumption against felling. We have discussed it with the Woodland Trust as well, and we both accepted that, as part of the normal process of managing a piece of ancient woodland, there will be occasions when some form of felling is necessary. That is what made the Department take a step back from a presumption against such felling.

I suppose, Patrick, that we are all agreed about the desire to protect ancient woodland as far as we can. Through this process, we will seek, as far as we can within the confines of human rights, to do that.

The Chairperson:

Is the felling licence for every tree or is it for a certain number?

Mr Small:

It is for a volume of timber. Is that correct, Stuart?

Mr Morwood:

It is for a volume of timber over a specified area.

Mr Small:

It could amount to one large oak tree.

Mr Morwood:

It could cover the thinning of individual trees throughout a woodland area. The thinning would be subject to the felling licence, but, in itself, the operation can enhance the biodiversity of the woodland. The other issue to bear in mind is that a private owner of that ancient woodland will still wish to derive some tangible benefits in the way of timber. It is a question of how that is done. That should then be prescribed in accordance with good forestry practice as set out in the felling management plan.

The Chairperson:

How do you define "ancient woodland"?

Mr Morwood:

Ancient woodland is woodland that is identified on the ancient woodland inventory. Patrick Cregg mentioned that there are approximately 10,000 hectares of that woodland in Northern Ireland. That includes ancient woodland and other long-established woodland, both of which are divided into a number of different categories. We also have to bear in mind that such woodland could have conifer plantation on it. It does not necessarily have to include native woodland species. The resource effectively amounts to approximately 10,000 hectares in a wide variety of states, which will require —

The Chairperson:

I was not asking a trick question, nor was I testing you. I know that you know what "ancient woodland" is. However, should it be defined in the legislation? It is not defined in clause 35, which deals with interpretation. If ancient woodland were to be defined in that clause, it would go some way to protecting that woodland without taking the proverbial sledgehammer to crack a nut. It would allow for the thinning out, protection and removal of conifers where necessary, but the protection of the most important ancient woodland could be afforded if it were to be defined in clause 35.

Mr Morwood:

If we are looking for specific definitions of ancient woodland, we would refer back to the UK forestry standard, with its appropriate guidelines. That is where one can go into the detail of what the various states of ancient woodland comprise. Where we indicate that the woodland will be

managed in accordance with good forestry practice, it will incorporate the definition.

I am conscious that it is useful to have reference to the UK forestry standard.

The Chairperson:

Can you designate it?

Mr Morwood:

The precise definition can change slightly over time. It is not a precise subject.

The Chairperson:

Why do you not designate the reference to the standard?

Mr Morwood:

Let us suppose, for example, that we made reference to the UK forestry standard. That standard is currently being revised after consultation. My concern is simply that the standard is subject to change over time.

The Chairperson:

We recognise that it is right that the standard be subject to change, but we should have a rule of thumb that, under clause 35, which, as I said, deals with interpretation, the definition of "ancient woodland" should be checked against the current standing of the UK forestry standard.

Mr Morwood:

The UK forestry standard is the Government's approach to sustainable forest management, to which the Department is committed.

The Chairperson:

The Bill is 19 pages long, yet it includes no definition of "ancient woodland". A definition could be included by designating the UK forestry standard as part of the definition.

Mr Morwood:

Reference to the forestry standard as good forestry practice could be a mechanism that we would consider.

Mr Cregg:

Perhaps I am naive. There are 2,500 woods in the Province, comprising 10,000 hectares. Those are generally accepted as being the Rolls-Royce of woodland in Northern Ireland. When we created our inventory at end of the last millennium, we agreed with Forest Service, Government and the erstwhile Environment and Heritage Service which woods were worth capturing and protecting.

We all agreed to include everything in the first edition Ordnance Survey map, and everything that could be traced back to pre-1600. We came up with those 2,500 woods, which are the cream of woodlands in the Province, and less than 1% of the land area. I am at a loss to understand why there is a reluctance to grant those woods absolute protection. Perhaps one of the easiest ways in which to do that is to include something in the legislation that says that there will be no net loss in the area of woodland that is on the ancient woodland inventory.

The Chairperson:

That is a straightforward question.

Mr Morwood:

Provision of a felling licence to an ancient woodland of the category that Patrick describes does not effectively mean loss of that woodland. Thinning and felling in ancient woodland in accordance with good forestry practice can be quite beneficial to that woodland's biodiversity. We have to separate in our minds that felling or thinning in a woodland is a forest operation, which, when carried out properly —

The Chairperson:

You are not facing opposition on that point. You said that there is an industry standard, and people would accept that. However, why the reluctance to designate the agreed UK forestry standard in the legislation as a definition of ancient woodland, and protect ancient woodland in that way?

Mr Small:

The Department would be more open to that idea than to the absolute presumption. Our difficulty with the absolute presumption is that some sites on the ancient woodland inventory are conifer

plantation. It would be good at some point to remove the conifer plantation and replant appropriate native woodland.

The Chairperson:

Will you then designate the forestry standard in the interpretation clause?

Mr Small:

Possibly. I would like to take advice on that. It is not our standard but a UK-wide forestry standard, which has been the subject of recent UK-wide consultation.

The Chairperson:

Would that help, Patrick?

Mr Cregg:

That certainly would help. I remind David that the Department is a signatory to the UK forestry standard here in Northern Ireland. Therefore, it would be beholden on the Department to do that. I do not want to prolong the debate, but Forest Service, because of its certification, has an absolute duty to restore back to what they were sites that have been degraded as a result of being planted with conifers. That will mean removing conifers, but it will mean putting back native trees.

Mr Small:

It could also involve saving forests.

The Chairperson:

Will you come back to the Committee on that point?

Mr Small:

Yes.

Mr W Clarke:

There should be a presumption against granting a felling licence for ancient woodlands. I am not sure either why the Department is resistant to that. Both sides seem to be calling for the same thing. If we presume that no felling licence will be granted, the owner would have to go to the

Department and outline the tree surgery, thinning and other work required to remove conifers.

After it is presented with the management plan, and if officials are of the opinion that felling would be beneficial for that forest, the Department would issue a felling licence. Surely, then, we can go ahead and include that provision in the Bill.

Mr Small:

The Bill requires any individual who wants to fell a piece of woodland to outline to the Department the obligations that you have described. That is already a requirement in the Bill. We are debating something further to that: an absolute presumption against felling on ancient woodland sites. However, an ancient woodland site may be filled with conifers that we want to get rid of, through felling, and replace with appropriate native woodland.

Mr W Clarke:

There used to be a presumption against building in the countryside unless certain criteria were met. That is the same as the presumption against granting felling licences for ancient woodlands, because criteria must be met before a felling licence will be granted. Those criteria include the removal of conifers to thin the forest, for its well-being and for biodiversity, and the completion of necessary tree surgery. Those criteria should be met before a felling licence is granted.

Mr Small:

There is no difficulty around granting felling licences in areas of broadleaf native woodland on ancient sites, because our expectation is that that woodland would be replaced with something similar. A difficulty exists where there is a conifer plantation on an ancient woodland site and around how the compensation provisions will trigger, if required. We would not object to such a conifer plantation being felled. However, our preference would be to require an appropriate restocking with native woodland or broadleaf. We believe that that is when the compensation provisions would be triggered. If we force restocking on a private woodland owner, compensation provisions would be triggered under the Human Rights Act 1998.

We do not necessarily have a presumption against that type of felling, and we view as a good thing getting rid of conifers and getting broadleaf trees on to a site. That is why I am unsure about the absolute presumption against felling. Of the 10,000 hectares of ancient woodland sites, approximately 6,000 are conifer; therefore, more than half the ancient woodland sites in Northern

Ireland are planted with conifer. To create a presumption against felling those conifer plantations, which we want to get rid of and replace with broadleaf, does not make sense. The focus should be on restocking.

The Chairperson:

I suggest designating the UK forestry standard. That would allow for the clearing of conifer, where necessary for good management, but it would also set the standard that the area is one that is special.

Mr Small:

We would probably be content to consider a properly designated reference to the forestry standard or an acceptable definition of "ancient woodland". However, to carry that through to an absolute requirement to replace a conifer plantation with broadleaf trees would trigger the compensation provisions. Through the woodland grant scheme, we would hope to persuade people to replace conifer with broadleaf, and we would refer them to the UK forestry standard. We may designate that standard and its obligations around assessing the site, looking for evidence of ancient woodland and taking appropriate restocking action. That would be done instead of an absolute presumption to put in place native woodland, which would create compensation pressures.

Mr Elliott:

Thank you for that explanation. Ancient woodland certainly has a different meaning to that which I had interpreted. For clarification, 60% of forest classified as ancient woodland is conifer?

Mr Small:

Sixty per cent of forest classified as ancient woodland sites.

Mr Elliott:

I see that Patrick is shaking his head, but we will hear from him later.

Is that because there was ancient woodland on a site but conifers have now been planted on that site?

Mr Small:

Yes.

Mr Elliott:

We can achieve a reasonable solution. I would not like to see a presumption against felling conifers and replacing them with something better. However, I would like to protect what I classify as being ancient woodland — our ancient native trees — from being felled.

There is an opportunity for us, through working together, to resolve this problem relatively easily, through exercising a little common sense. It is good to have heard that discussion of the conifer issue, because I knew nothing of that.

The Chairperson:

Do you wish to add something, Patrick?

Mr Cregg:

I want only to clarify the situation. There are 10,000 hectares of ancient woodland sites across the Province. Of those, one third is planted with conifers, not 60%. Therefore, 3,000 hectares are planted with conifers. For that, the greatest culprit — if I may use the word lightly — is Forest Service, in that 2,000 of those hectares were planted by Forest Service. Therefore, we are talking about 1,000 hectares in private ownership. Let me be clear: when it comes to the removal of those conifers, we have no objection to whether they are in private or public ownership. However, we want the net area protected, because they are ancient woodland sites. We are talking about the 1,000 hectares that are in private ownership.

The Chairperson:

Clarification of the figures is helpful in that respect.

Mr Pigott:

I want to reiterate our concerns about charging for felling licences. The fees will be a barrier to managing woodlands and counterproductive to the essence of the Bill. Any added bureaucracy is bad.

The Chairperson:

Let us be honest: it will destroy your livelihood and that of an industry that is trying to make something of itself.

Mr Pigott:

Exactly.

The Chairperson:

The case was made very powerfully to the Committee at Castlewellan by representations from the industry.

I was struck by the fact that we have here legislation that could, perversely, destroy an industry in Northern Ireland to the tune of £13 million or £14 million a year. That is just stupid. We have said it time and again, and I will say it again: if the Department proceeds with a Bill that puts a fee on felling licences, we will oppose it — end of story. We do not want to be in that position. We look forward next week to good news.

Mr Pigott:

Thank you, Chairman; that is a good point.

Mr Pollen:

One of our BASC members wants me to draw your attention to the timescales for the application of the licence and approval of it.

One member was in an unusual position. He was approached by one of the saw mills and asked whether he would sell it some timber. Had that taken place under the proposed regime, he would have had to apply for a felling licence. He was approached at short notice because the quality of timber on offer from Forest Service was not what the mill was looking for. Under the proposed legislation, he would then be in the odd situation in which the regulator has the ability to frustrate the passage of a licence for a private sector operator, and, by so doing, the regulator, as the main operator, would benefit. It is one of those situations that may well happen. Clarity on the timescales and appeals process would be interesting. He was given two months' notice for the sale. The mill did not want to fell in two months' time but wanted to fell two months after it struck the deal. He would, therefore, have needed to know within a few days whether he was to

be granted a licence.

The Chairperson:

That situation could be disastrous.

Will the opportunity exist to apply the provision retrospectively?

Mr Small:

The Department would want to avoid that.

It is worth making the point that the felling licence that we contemplate is a five-year licence. If such a situation arose at the very start of that five-year period, when the owner is just about to apply for his five-year licence, we would have to process the licence as quickly as possible. However, if it happened in the middle of the five-year period, it would be considered an amendment to an existing licence — perhaps an adjustment that brought forward felling from year three to year two. That is something that we could turn around very quickly. It is not our intention to frustrate the interests of private landowners.

The Chairperson:

What if the company were in competition with Forest Service? If a licence were delayed bureaucratically, it could be in the interests of Forest Service. I know that that would not happen, but I am trying to think of all eventualities.

Mr Small:

We operate on long-term contracts, which run for three or four years. Our arrangements with saw mills are agreed and planned well in advance. I cannot envisage a situation in which one sale will be of any significance to Forest Service and bring us into competition.

Mr Pollen:

It may well be a very rare occurrence. However, the case that I outlined involved a six-figure sum from sale of timber, and that was obviously valuable to a private landowner. He wanted to ascertain the time frame in which a licence is expected to be issued in the, admittedly, rare circumstances when it is not a five-year licence.

The Chairperson:

Are you looking at a licence turnaround of a couple of weeks?

Mr Small:

We have agreed to develop a charter that will set out how we hope to deal with planning and felling applications and the relevant timelines.

The Chairperson:

It makes good business sense for licences to be turned around as expeditiously as possible.

Mr Small:

We will aim to turn applications around as quickly as possible. We will be able to deal with amendments to existing five-year licences most quickly.

Mr Elliott:

The difficulty with the charter is that there is no comeback on it. Civil servants might get their knuckles rapped, but that is about the height of it. It would be much tighter if time frames were set out in legislation. I have heard from private industry about the same issue that Roger Pollen exemplified. It relates to the issue of —

The Chairperson:

Your constituency.

Mr Elliott:

No; it is not a constituency issue. It relates to the old issue of the Department's having an unfair advantage over people in the commercial forestry business.

The Chairperson:

A charter may state that the Department is fairly happy for licences to be turned around in time frame x. However, having it set out in legislation that licences have to be turned around in x number of weeks would remove the concerns that the Deputy Chairperson, the industry and its representatives expressed. Will you take that suggestion on board and come back to us on it?

Mr Small:

We have agreed to look at developing a charter. You are now suggesting that it should be designated. The arrangements for felling licence applications and the nature of a felling plan will be subject to subordinate legislation. The process will be scrutinised further, but we will look at developing a charter and at designation.

The Chairperson:

There are a number of issues on which you need to come back to us, but we would like to sign off positively on the legislation line by line next week and agree the revisions and the clauses. We will produce a report within two weeks of that sign-off. That report will go to the Business Office, which will decide on a date for the Bill's Consideration Stage. We could make good progress if you were to come back to us on some of the key points this week.

I do not think that we have made any suggestions that should place additional burden on the Department or cause it concern. There are competing needs and competing industries, but I am delighted at the great deal of harmony that has been struck between the Committee and the stakeholders/witnesses. As the lead official in this legislative process, David, your name could go down in history. I encourage you to make the amendments that the Committee has suggested today.

Mr Savage:

David, you were concerned about the possibility of deer numbers increasing to the point that they hinder Forest Service. Could the removal of those animals from forests not be put out for tender every year? Rather than have the Department pay someone to remove deer, private firms could pay you to come in and do it.

Mr Small:

We have an arrangement for the management and culling of deer in place already, and we are satisfied with how that arrangement operates. Before allowing such an arrangement, we would have to consider carefully due diligence-type issues. I am not saying that it could not happen, but we would have to think very carefully about how health and safety issues would be addressed. In many cases, we deal with forests that are used for recreation, with people out walking, and so on.

Mr Savage:

There are now many places in Northern Ireland that specialise in game activities, so huge opportunities exist.

The Chairperson:

They certainly do.

Mr Shannon:

In support of what George said, there are estates in Northern Ireland that cater for deerstalking, thus cashing in on the potential for sporting tourism. They manage their deer herds in such a way that quality heads can be got. Consequently, they achieve better prices and increased revenue. If Forest Service were to manage its land along similar lines, whether by renting its land and leaving it for someone else to manage or by managing that land itself, it could probably realise and benefit from that potential as well. Nevertheless, marvellous potential exists. Colebrooke Park in Fermanagh is one such estate, and there are other parts of Northern Ireland in which serious deerstalking takes place. Therefore, there is potential to be realised, and it would be remiss of Forest Service not to consider the commercial advantages.

The Chairperson:

On that harmonious note, we shall adjourn today's evidence session. I thank all the witnesses from the officials from the Department for taking the time to speak to us, and I look forward to next week's meeting, which, hopefully, will be the last public evidence session on the Bill.