



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Forestry Bill

15 February 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR AGRICULTURE AND
RURAL DEVELOPMENT**

Forestry Bill

15 February 2010

Members present for all or part of the proceedings:

Mr Ian Paisley Jnr (Chairperson)
Mr Tom Elliott (Deputy Chairperson)
Mr Willie Clarke
Mr Pat Doherty
Mr William Irwin
Mr George Savage
Mr Jim Shannon

Witnesses:

Mr Michael McCann)
Mr Stuart Morwood) Department of Agriculture and Rural Development
Mr John Joe O'Boyle)
Mr David Small)

The Chairperson (Mr Paisley Jnr):

I welcome to the meeting Christopher Shanks who is studying AS-level politics and is on work experience with the Committee for Agriculture and Rural Development for the next couple of

days. I hope that you have a good time, Christopher, and that your experience helps you to determine whether you wish to pursue a career in politics or one on the other side of the bench.

Mr Shannon:

Or to do the real work. *[Laughter.]*

The Chairperson:

I welcome to the meeting David Small, John Joe O'Boyle, Michael McCann and Stuart Morwood from the Department of Agriculture and Rural Development (DARD).

The Department has sent the Committee papers, which Committee members have examined. Today's meeting follows on from the Committee's previous meeting on the Forestry Bill. I invite you to begin by describing where the Department has proposed making some significant changes to the Bill.

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

Thank you, Chairman. I intend to work through the various clauses to which the Committee had suggested amendments and to elaborate a little on our written submission.

The Chairperson:

We will not begin with the suggestion that strategies be designated in the Bill. Instead, we will begin with the Committee's request that a statutory code of practice be produced for compulsory acquisition of land under clause 5.

Mr Small:

Several issues were raised about clause 5. One issue concerned the Committee's desire to have a clear reference in the Bill to land that the Department could develop or take an interest in, either under the voluntary acquisition arrangements in clause 2 or the compulsory arrangements in clause 5. Issues raised were rights of way, easements, and so on.

The Department spoke to the Office of the Legislative Counsel (OLC) to establish whether a

reference could be included in the Bill to capture the aspects of an interest in an estate. George Gray from the OLC came back very strongly on that issue, and I will outline some of the comments that the Department received from him.

The starting point is that Northern Ireland legislation is drafted in accordance with the rules set out in the Interpretation Act (Northern Ireland) 1954. The Act deals in detail with matters relating to land and lays down general rules that apply to all Assembly legislation.

Section 45(1)(a)(iii) of that Act states that “land” shall include “any estate in land”, and that definition includes issues such as interest, easement, right of way, and so on. The OLC advised the Department that if legislation is not drafted in conformity to the Interpretation Act, the whole statute book loses its coherence. George Gray’s advice is that there is no need to provide any further reference to the different aspects of land, an estate in land or an interest in land. Those provisions are already dealt with under the 1954 Act, and, therefore, it is simply wrong to seek to repeat them again in primary legislation.

The second issue on which we went to the OLC concerned an example that was quoted of a private Scottish Act, in which temporary arrangements had been included. George Gray had previously told us that temporary options are already included in clause 2 and clause 5, and he said that the example of the private Scottish Act, which was about the construction of a railway, is completely different to the Forestry Bill. He explained that the private Scottish Act was a complex set of provisions, appropriate only to a private Act, and that to take a similar approach in the Forestry Bill would simply be inappropriate.

George Gray reminded us again that clause 5 as currently drafted allows the Department to compulsorily purchase land, or else to purchase by agreement a temporary or permanent interest in land. That could be a temporary or permanent interest in an easement, or a right of way, or full transfer of estate. Therefore, both issues are already covered in the clause as drafted, and there is no need to try to draw out those issues any further. As I said, he referred to the 1954 Act and the importance of conforming to its provisions.

The third issue that the Committee raised concerned a statutory code of practice, which would

set out how we would go about using compulsory purchase powers. We would follow a prescribed approach. Our first consideration would always be acquisition by agreement, be it of an easement, right of way or full acquisition. The next option would be some sort of temporary compulsory purchase or some sort of compulsory right of way or easement. The final stage in our consideration would be to use full compulsory purchase powers, but a sequence of events would be followed before we got to that stage.

That is how we would intend to proceed, and any compulsory purchase power is always one of last resort. It is not an unfettered power. We are guided by all sorts of checks and balances and protections, which are already in place. Reference was made to the first protocol in schedule 1 to the Human Rights Act 1998 and all the protections that are already in place.

The compulsory purchase powers that we have proposed have been narrowed significantly to deal just with the access issue. Nevertheless, even use of the powers in that way would be subject to all the normal procedures and protocols already in place in domestic legislation around the use of compulsory purchase powers, as well as the wider human rights-type considerations.

In conclusion, so many protections are already in place that a statutory code of practice simply is not necessary.

The Chairperson:

OK. The Committee has considered a couple of matters, and I will say at the outset that we welcome the fact that the compulsory acquisition of land would not be an unfettered power. That is standard practice. However, that is probably as good as it gets from this side of the table.

Compulsory purchase powers have never been needed in the past, and there is evidence to suggest that they may never be required in the future. In your words, David, such a power is a “last resort”, but it does not say that in the Bill. Therefore, what we are agreeing to, and what is written in the Bill, is that the Department has the ability to acquire compulsorily any land that it requires. Obviously, the purpose is to facilitate access, and we welcome that proposed significant change to clause 5(1), but the issue of compulsory purchase always causes problems.

Clause 2(1)(a) states that the Department may:

“acquire by agreement any land which it requires for the purposes of, or in connection with, the carrying out of any of its functions under this Act;”.

We would like to see the word “compulsorily” removed from clause 5(1) and the words “by agreement” inserted so that the Department may acquire land by agreement. That would make clause 5(1) consistent with clause 2(1)(a).

We are trying to achieve a halfway house between our requirement and the Department’s requirement. The strength of the argument falls on our side, because you have not required the power in the past and, as you said, you may never require it in the future. Its inclusion in the Bill has caused some concern. Some stakeholders have described it as draconian. We must try to strike a balance.

There are a few ways in which to deal with the issue. Clause 5(1) could come before the Committee without any proposed change, and were the Committee minded to table an

amendment, the Minister could give notice of her intention oppose it at Consideration Stage. Alternatively, you could propose that clause 5(1) be withdrawn, and we retain clause 2(1)(a). Furthermore, you could propose amending clause 5(1) by replacing “compulsorily” with “by agreement”, or with wording that indicates that the power will be used only as a last resort.

It was also suggested that the Minister, at Consideration Stage, could make a strong statement setting out the very narrow circumstances under which the power could be used. That would provide a ministerial interpretation of the clause, which would be up for interpretation at a later stage — say, in five or 10 years’ time — when there may be a different Minister in post.

Therefore, the Committee must try to reach agreement with you on a number of issues. Committee members can bear those issues in mind when they ask new questions or make their positions clear.

Mr Elliott:

I still have a huge concern over the compulsory acquisition of land. I appreciate your view,

David, that the provision will be used only as a last resort, but that is not what it says on the tin. I will be holding fast on this point. Speaking in a personal capacity, I could live with temporary acquisition, as long as it was used as a last resort.

You mentioned the Interpretation Act. Will you inform us from where you are taking your guidance and state why you feel that a provision for temporary acquisition cannot be included in the Bill?

Mr Small:

I can quote only the advice that we have been given. As I understand it, the Interpretation Act applies to all forms of primary legislation in Northern Ireland. It provides the interpretation of terms and deals with, for example, terms such as “estate in land” and what that means in any piece of primary legislation. Our use of “land” in clause 2 and clause 5 is defined by the interpretation of “land” in the 1954 Act. The OLC advised us that section 45(2) of the Interpretation Act states:

“‘estate’, when used with reference to land, includes any legal or equitable estate or interest, easement, right, title, claim, demand, charge, lien or encumbrance in, over, to or in respect of the land.”

The Act defines what is meant by “land”. To define “land” again in the Bill would simply be wrong. The advice to us is that if legislation is not drafted in conformity to the Interpretation Act, the whole statute book loses its coherence.

Mr Elliott:

There would be no conflict if temporary acquisition were used rather than permanent acquisition.

Mr Small:

The advice to us is that the terminology in clause 2 and clause 5 already allows us to acquire the temporary use of a piece of land or a right of way, by agreement or by using the powers under clause 5 on a temporary basis, in a way that we feel meets our needs.

Mr Elliott:

Clause 5 will permit the compulsory permanent acquisition of land, and that is the difference.

Mr Small:

We would do that only as a last resort. Our preference will always be for a temporary arrangement, should that meet our needs. It is important to say that we can foresee very few circumstances in which a temporary arrangement will meet our needs. We made the point previously that we could not clear-fell 3,000 hectares of forest in one go. We would have to go into a forest of that size every year for 20 years. A temporary arrangement that we had to renegotiate every year would not meet our longer-term needs. In more circumstances than not, it is likely that our requirement will be for some permanent transfer of the interest in the land, but, as we said before, we propose to narrow the scope of the clause to access only. Essentially, that will allow us to broaden out an access lane. We are not contemplating a large-scale compulsory purchase of hectares of land; that is not the purpose of the Bill, and we have proposed to narrow clause 5 to reflect the Committee's concerns.

The Chairperson:

That is your intention, and I do not question the integrity of that intention. However, do you accept that the power, as drafted, will give you powers beyond that intention?

Mr Small:

The proposed amendment to clause 5(1) would enable us to use the power for access purposes. If we were to use the power for any other purpose or in a manner that went beyond our need, we would be subject immediately to judicial review and challenge. The compulsory purchase system will allow for public inquiries and appeals, so the process will be extremely tightly controlled by the existing systems and protocols.

From the points that you have made, Tom, I can appreciate your sense of concern about any proposal to take land permanently from an individual. As I said, however, the power will be used sparingly. Even having the power will address many circumstances similar to those that have arisen in the past in which we found it impossible to reach agreement by negotiation, which is always our preference. We would use the compulsory purchase powers in clause 5 only in

circumstances in which negotiation failed utterly, and then only in the most limited, reasonable way. If we did not, we would be immediately subject to judicial review.

We have proposed to narrow the clause significantly, and we have indicated that the power will be used sparingly and will be subject to ministerial supervision. Forest Service will not be able to use the power simply as it chooses; its use will be tightly controlled.

Mr Elliott:

On the one hand, the power could be used as a last resort. In fairness, however, on the other hand, the power could be used widely. For example, Forest Service might have difficulty with a neighbour and ask him whether it can get access to his land. If he refused, you would have the power to acquire his land without getting into any further negotiations with him. That is a realistic possibility.

Mr Small:

I do not think that we would move quite as quickly as that.

Mr Elliott:

You would have the option of doing so, however. The power to acquire land should be temporary rather than permanent. I take your point that you might have to go in and out of a forest for 20 years, but it is up to the Department to ensure that an agreement is in place before it makes a compulsory temporary acquisition. My experience of working with Forest Service and of trying to do deals with it — on swapping land with farmers, for example — is not good. Forest Service takes a determined attitude to co-operation with some of the farmers with whom I have been involved.

Mr Small:

Obviously, we have to work within boundaries and parameters.

Mr Elliott:

My experiences have been difficult. As you said, you have to work within the remit of the legislation. That is why I am determined to get the legislation right for people who own land

adjacent to forests. There is a way around the issue that is suitable to both of us, but you are not prepared to accept it. I will be holding fast.

Mr Small:

I am not sure what the way around it is, Tom. Do you mean that a temporary approach should be taken? If a temporary arrangement would meet our needs, I have indicated that it would be our first approach, under either clause 2 or clause 5. Where we feel that a temporary approach would suit our needs, we would take it.

Mr Elliott:

David, you have not provided me with any instance in which a temporary acquisition would not meet the Department's needs, nor with a reason why Department needs a provision in the Bill to acquire land permanently. You gave an example of a scenario in which the Department has a large area of forest to which it may need to gain access every year for 20 years, but that could also be achieved through temporary acquisition yearly or every five years.

Mr Small:

One arrangement might be to obtain a long-term or fixed-term lease, and those are options that the Department will consider.

Mr Elliott:

Therefore, why does the Department require a permanent acquisition provision?

The Chairperson:

It provides muscle, does it not? Clause 5 gives the Department the ability to make an agreement with an individual, but if the individual does not want to make that agreement, the Department can use the powers available under the clause as muscle. I am not saying that that is wrong, but, on balance, the provision is in the Bill to provide muscle.

Mr John Joe O'Boyle (Department of Agriculture and Rural Development):

There are some circumstances in which major upgrading may be required on an access route, such as when a bridge needs to be built across a river. Therefore, it makes sense for the

Department to have a longer-term interest in the land if it is undertaking such projects at public expense.

Mr Small:

Indeed. Such projects could involve quite significant public investment, and there is a question as to whether the Department should return that land after one year or two years, or retain it.

The Chairperson:

The Department could do that under temporary arrangements. It could be a long temporary arrangement.

Mr Small:

Yes. The Department appreciates that.

Mr Shannon:

I will not go over all the matters that Tom and the Chairman have raised. However, they floated some good ideas, which could provide a halfway house.

If the temporary acquisition of land were for one or five years, would either Forest Service or the landowner be legally disadvantaged? Would temporary acquisition give the Department more rights than a landowner? I am unsure as to whether that is a question for the Department or our own legal team.

The Chairperson:

It will be by agreement.

Mr Shannon:

OK. Does that imply that neither party will be disadvantaged?

Mr Small:

No advantage will be given. It will also depend on the terms that are written into the lease or agreement with the landowner.

Mr Shannon:

I wholeheartedly agree with the opinions of the Chairperson and the Deputy Chairperson. Temporary acquisition is a methodology that safeguards the landowner and provides the Department with an opportunity to take advantage of land that it owns or wants to access. Some cost may be involved in that, and John Joe mentioned the example of bridges needing to be constructed, which I can understand. However, at the same time, I see no reason why a five-year temporary acquisition could not be extended. That would give the Committee some security and leave it confident in what the Department is proposing, but if such a provision is not included in the Bill, I will not be supporting clause 5.

Mr Irwin:

As a farmer, I do not like the idea of the compulsory acquisition of land, the provision for which

is contained in clause 5. I feel that the clause should have been worded differently. I do not support compulsory acquisition of land, but I understand that it may be wise to have such a provision in the Bill for instances in which a narrow lane needs widening or a drain needs piped and only a few square feet of land needs to be acquired. The clause is too broadly worded, making it difficult for the Committee to support it. However, I fully understand the Department's position that it would be wise to have such a power in certain situations.

I am unsure as to how clause 5 could be worded differently. If it is an issue of access, normally a few square feet of land will be enough. However, the Department could encounter an uncooperative landowner, and that could prove quite difficult. However, if the clause were worded slightly differently, it might be better. "Compulsory acquisition" may sound more stringent than the Department means it to sound.

The Chairperson:

David, I think that you will find that there is sympathy around the table for the Department to include in the legislation what it needs to include. The Committee will ensure that, by agreement

or temporary acquisition of land, the Department gets what it needs. However, I would caution the Department against setting that sympathy aside in favour of the desire to have a power that it has never used in the past and that it will probably never have to use in the future.

Bearing that in mind, there should be a way around this that allows the Department to achieve something without upsetting the important balance that others have spoken about.

Mr W Clarke:

On the same train of thought, I would like to see the temporary solution used on most occasions. However, I am pragmatic enough to know that there will be occasions on which a permanent solution is needed. It has never been needed in the past, but there are new responsibilities for the Forest Service. How does it provide renewable energy and wind farms? There may be tourism facilities, biomass facilities and a lot of different projects that may require the widening of lanes or the creation of bridges on a permanent basis. We cannot put the public's money into a temporary agreement. That is my reading of it.

We have to be realistic and the Bill has to be fit for purpose. I cannot see the Department wanting to invest a couple of hundred thousand pounds in a lane-widening exercise or a new bridge. I do not see that happening on a regular basis unless it is for the public good. There has been a narrowing of the wording around access, and that is important. It is for access only. We have to look at the bigger picture and the public good. From that point of view, you are right, but there will be limited opportunities to do that, and that should be clarified.

Mr Small:

That is a helpful point. Tom asked what the circumstances would be where a permanent purchase might be necessary, and Willie referred to the possibility of a tourism-type project. A temporary arrangement for a multi-million pound tourist investment would probably not be the right kind of arrangement, and something more permanent would be needed. There might be circumstances even in forestry or timber removal where we make a significant investment. Given the investment and the value-for-money issues, it is important that we retain a permanent interest so that we can use it again.

The Chairman mentioned the Committee's need for greater reassurance over how to use these powers. He mentioned the possibility of a statement from the Minister at a later stage, possibly at the next stage of the Bill. The Minister would be more than happy to give her assurances around how sparingly that power will be used and the kind of supervision that will be exercised in its use. It is important that we retain both the temporary and the permanent options, with the preference being that we use the temporary one where possible. Our advice is that, in drafting terms, the Bill already does that for us.

The Chairperson:

We can try to get an agreement on temporary solutions. I think that you are picking up a sense from the Committee that there is goodwill towards what the Department requires, but we think that there is another way of cracking the nut. The Department has the opportunity and the option to continue with this, and the Committee may decide to propose an amendment. I am trying to save the Committee and the Department an amendment that may mean that the Bill changes our way. We want to try to reach agreement.

Mr Savage:

How many instances have there been where the Department has had to get involved with vesting in the past? Considering the amount of land that the Forest Service owns, is it not a matter of taking a bit more scope and widening the whole place? That would give the Department peace of mind about its property and leave other landowners alone. I am speaking as a farmer and I know exactly what difficulties there can be from time to time. However, is that not possible?

Mr Small:

Yes; it is. Our first consideration is to use our forest estate to gain access, because we could not justify the public investment in acquiring a new access, either through agreement or through the use of compulsory purchase powers if we had them. When it is possible to use our land, that is always our first consideration. Our second consideration is always to try to negotiate by agreement. We have never had compulsory purchase powers, but we have been in some very difficult situations in which a lot of time and public investment has been spent on securing an access through agreement, only to find that the nature of that access has been adapted or adjusted by the landowner through the use of gates or some other mechanism. That has meant that we have lost access again, having spent a lot of public investment. I suppose that we could be

criticised for that, but we did not foresee or anticipate those circumstances. Situations such as that suggest that we need some form of additional provision, even though we would hope never to have to use it, because it would be so difficult to do so in practice.

Mr Savage:

The amount of land that Forest Service owns means that it does not have to depend on anyone.

Mr Small:

Unfortunately, that does not deal with every circumstance; that is the problem.

Mr Doherty:

How many hectares of landlocked land does Forest Service own?

Mr O'Boyle:

We looked at that situation recently. There are something like 100 areas of land, some large and

some not that large, that require upgraded access to get to a road frontage. A significant amount of the forest estate sits behind other people's land. We may have only acquired a right of way through the farmer's land at the front when we made the acquisition in the first place, and that may have sufficed for us over the years in planting and managing the land until the harvesting stage, but there may be a need to be able to upgrade those facilities in order to continue the forest's productive cycle.

Mr Doherty:

Having harvested the trees, is it your general practice to replant in the same area?

Mr O'Boyle:

Yes. Trees are replanted in the same area, unless there is some other reason under the management plan for a certain section to be managed more for biodiversity than timber. There may be some actions in the management plan that allow us to take small pieces of land for other uses. Primarily, however, the land is replanted with trees of some sort.

Mr Doherty:

You have already answered this question, but to reiterate, are you saying that you have never had to use compulsory purchase powers?

Mr O'Boyle:

We have never actually had compulsory purchase powers. We have no history of using it.

Mr Doherty:

You have never had it to use?

Mr O'Boyle:

No. That power has never been available to us.

Mr Elliott:

I would not mind if farmers had the power through legislation to compulsorily purchase land that

bordered on Forest Service land. They do not have that facility.

The Chairperson:

You have made temporary agreements over the years.

Mr O'Boyle:

Yes. We have entered into agreements over small forest blocks which, according to our management plans, we would not have to return to very often. We may make an agreement with a farmer for a temporary upgrade of our access. We have even erected temporary bridges in some areas to get across streams and then removed them when we were finished. When it comes to bigger areas of land, we have obligations under sustainable forestry management criteria to harvest in a broken up and fragmented way. We do not have the opportunities to meet our sustainable forestry targets by clearing a forest out at one time and stepping back out of the forest again. We need to maintain an ongoing presence; our duty is to break the forest down into as many manageable coops as we can, and to harvest those with gaps of three to seven years between each felling.

The Chairperson:

There is nothing then that a temporary arrangement would not facilitate.

Mr Small:

Willie Clarke talked about some of the tourism-type projects that we might want to try to facilitate in the future; I do not think that temporary arrangements would suit those circumstances.

The Chairperson:

A 99-year lease, as you would have with the National Trust, would be more than ample. It would allow for the position that acquiring land is done not by muscle but by agreement.

Mr Shannon:

The National Trust has an arrangement and a 99-year lease with Bill Montgomery of Rosemount estate, who owns a number of the islands on Strangford Lough. The National Trust also has an arrangement and a 99-year lease with Mount Stewart, and I presume that everyone here is well

aware of the attractions of Mount Stewart and its estate. That does not stop the National Trust from developing the potential of tourism on those sites, and it has been very successful in doing that. That keeps the ownership with the landowner and enables the lessee to develop the site as they want. Those are two factual examples.

Mr Chairman, you are making a very clear point. Why not have a 99-year lease? That would enable the Department to do what it wants, increase the potential for tourism, wind farms and other projects, and, at the same time, be a good way of going forward.

Mr Doherty:

I noted from your explanatory notes that GB and the South have compulsory powers. Did the Department have any dialogue with them on their experience and on how often, or not, they have had to use those powers?

Mr Small:

We have had some discussions. We found that, in most circumstances, those powers are not used

very often. The power is not designed to be used regularly. It is a last resort when all other efforts have failed. The very presence of a power such as that means that one is, more often than not, more successful in finding negotiation by agreement because, ultimately, if all else fails, that provision would be there. That is not a threat; the power is not designed that way. However, its purpose is to help fulfil some public aspirations, objectives and goals. The emphasis will always be on acquiring land by agreement where that is possible. It ought not to be used very often.

Mr W Clarke:

Mr Small made the point that I was going to make. A 99-year lease or a 50-year lease or whatever is probably what everyone would want. However, that would be in circumstances where everybody is in agreement. If, for example, somebody was being dogmatic and would not move on improving a laneway, and if everybody else was in agreement, that extra stick would be needed to at least encourage them to come to some sort of agreement. However, in many circumstances, I do not think that the power will be used.

Mr Small:

The important point is that, as drafted, the current provisions allow us to look at a range of temporary options, such as a 99-year lease. It may be that, in most circumstances, that kind of option will meet our needs. However, where it does not, this power will give us further discretion. I probably cannot give you an example of when that will happen or what the circumstances will be. However, it will give us that additional discretion.

The Chairperson:

If that discretion could be articulated in the Bill, which it cannot, that would be ideal.

Mr Small:

That would clarify it for members.

The Chairperson:

That is the problem. Although everyone around the table believes in your sincerity and the Department's sincerity, there may be others who do not. In legislative form, that is a problem.

Mr Doherty:

We cannot put sincerity into law.

Mr Small:

You said that assurances from the Minister might help.

The Chairperson:

The trouble is that they are time-bounded. Other Ministers have recently made similar comments that have been challenged by up-and-coming attorneys general and basically set to the side. That is the other problem. A statement that is made with good intentions is open to the interpretation of some Johnny-come-lately and can be dismissed.

Mr Small:

Such a statement would be supported by all of the other protections in the Human Rights Act 1998 and in domestic legislation.

Mr Irwin:

I am looking at your proposed wording:

“for the purposes of, or in connection with providing or improving access to any land”.

“Providing” is different to “improving”. “Providing” could mean looking at new access. If it was written in that this was to improve existing access, I am not sure that anyone could disagree with that.

I, for one, believe that in certain circumstances it could be useful to have the power. As the Chairman said, it is difficult to nail that down. I could live with it if it was for the widening of existing accesses.

The Chairperson:

You have a fair idea of the Committee’s position. We sympathise with what you are trying to do, but we want to avoid the big stick approach. We will take some advice on other examples of temporary treatment, and we will probably have to come back to this to sign it off one way or another. You will have to decide whether to run with it in the knowledge that an amendment is likely. I cannot prejudge the House’s view on that amendment. It is not an ideal situation. I would far rather get agreement and pass the Bill with full support.

Mr Small:

We want to proceed like that too, Chairman.

The Chairperson:

I take you to clause 9.

Mr Small:

We indicated that we have some reservations about the Committee's proposal last week to drop the clause. It is there to protect woodland and, in doing so, support our general duty to promote sustainable forestry.

Last week, we discussed whether there is a current problem that we are trying to deal with, and we acknowledged that a serious problem does not currently exist. However, reference has recently been made to a 2002 survey that was taken forward by the Department of the Environment (DOE) in association with the British Deer Society, which indicated that, at that time, there was clear evidence of increasing deer populations. That work has not been refreshed.

Our concern is that, as forest cover begins to expand, that trend will continue. Through this clause, we were trying to secure the ability to begin to deal with that problem as it emerges, and to do so in the least intrusive way and, if possible, a minimalistic way. Our concern is that not creating such a power now and having to renegotiate it at a later date would mean that, when evidence of a problem emerges, we would have no ability to deal with it in a minimalistic way. We would have to wait until the power was agreed before we could use it.

We were trying to put in place a discretionary power that would enable us to deal with a problem that we are pretty sure will develop. Evidence in the South and in GB suggests that this is a developing and increasing problem, and we are trying to put in place some discretionary provision that will enable us to deal with it when it happens. I have made the point that it is not an unfettered power. It will be circumscribed by significant protections that are already in place.

The Chairperson:

In light of the representations that have been made, will you agree to an enabling power or to the dropping of the clause?

Mr Small:

That suggestion was made last week. Our preference is to take the provision, if it satisfies the Committee and enables us to reach agreement.

The Chairperson:

We know that that is your preference. The issue is that you will get the enabling power if you bring it forward as that, but you will have to come back with subordinate legislation to take the power if the problem that you have identified arises. If you do that, we can get an agreement, and the clause in its current form would be dropped.

Mr Small:

The clause, as previously drafted, included the ability to go onto land and deal with the control of vermin and of rabbits, hares and deer. One of the concerns that has arisen is to do with the fact that that provision will allow us to control deer on adjacent land. We want to retain the provision to deal with vermin, hares and rabbits, because, in almost every circumstance, that will be a problem.

The Chairperson:

Will you bring it to us in that way?

Mr Small:

If we were to draft it that way, it would satisfy our concern on that point.

The Chairperson:

Are members content with what they have heard on that?

Members indicated assent

The Chairperson:

Woodland inventory was an outstanding issue from last week.

Mr Small:

Last week, we proposed that, rather than have an open-ended arrangement, we would review the inventory at least every 10 years after carrying out the initial inventory work. There was a suggestion that it be reviewed every year, but we do not think that that is appropriate or necessary. We considered whether a compromise of every five years or every seven years would work. We feel that, in practice, a 10-year review is appropriate. As I said last week, that would allow for five such reviews as we move towards our 50-year target of doubling forest cover.

Within those 10-year periods, we will be reviewing every year the increase in woodland that we have secured through our woodland grant scheme. We have good data on the Department's own forest cover. We suspect that the changes each year will come primarily through the woodland grant scheme, and we will have good data on that anyway. Beyond that, any increase or loss in woodland will likely be quite minor and will be captured in each 10-year review. Therefore, if any gaps were to develop, we would capture them every 10 years.

The Chairperson:

I want to establish that those reviews will be of something that is tangible. I want a commitment from the Department that you will establish a baseline that starts from year one of this Act to carry out a significant piece of work that draws down on the data that is already there and which establishes a baseline from then onwards. If you were prepared to do that, to update it regularly and review it as a substantial piece of work every 10 years, we would be up for that. We would like the work on the baseline to be done so that we have something to work from.

Mr Small:

That is our intention.

The Chairperson:

Will you give us that?

Mr Small:

Yes.

Mr Elliott:

I do not have much to add. I support that. There is no real need to conduct a review every year; that would be a waste of time and effort. It is difficult to encompass all of the woodland in an inventory, but as long as the inventory is set to a reasonable standard at the start, I am fairly confident that it will be kept up to date. Will an inventory of ancient woodland be carried out at the same time, or is there a different set of circumstances for that?

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

That will be conducted at the same time, and the data that is available on the ancient woodland inventory will feed in substantially to the production of any baseline.

Mr Elliott:

You want to protect the ancient woodland, and I wonder whether regular reviews of it should be conducted. I am not so sure about the conifers, but broadly we agree that it is important that the ancient woodland be protected. Can anything be added to provide for such reviews to be carried out on a shorter timescale to ensure that there is no damage or disease?

The Chairperson:

We want to add an additional clause to protect ancient woodland of high biodiversity value.

Mr Small:

The ancient woodland inventory was, I believe, sponsored by DOE, with the assistance of the Woodland Trust. I am not sure how often that is to be reviewed and updated. If it is to be updated and reviewed, we will want to capture any fresh data that come through that process.

The Chairperson:

I want to see a clear definition of “ancient woodland” so that people know why a given piece of woodland is being protected.

Mr Small:

We need a mechanism to find a way to offer targeted protection for ancient and long-established woodland, or at least for woodland with the highest biodiversity value.

The Chairperson:

Will you bring that back to the Committee quite quickly?

Mr Small:

Yes.

The Chairperson:

I would like to wrap this up next week. The other issue is felling licences and fees. I believe that the Department will see the light on that.

Mr Small:

We said last week, and possibly the previous week, that we are aware of the Committee's concerns and the issues that it raised about fees for felling licences, and that we were carefully reviewing the appropriateness of fees and whether those fees can be waived. We have been seeking advice from colleagues, but I am still not able to report today on whether that is possible.

The issues that we are considering relate to the balance between public benefit from felling licences as against private, individual gain. The Department feels that the main benefit from that regulatory system will be the public interest that is served by ensuring sustainable forest management and forest cover, and the benefits that flow from increased forestry. On that basis, there is a case to be made that it would be inappropriate to impose a fee on the individual woodland owner. However, we are still not able to report finally our position on that. Our hope is that there may be some mechanism whereby we can waive fees, and I hope to report to the Committee on that in the next few days.

The Chairperson:

That has been an issue, and it has the ability to scupper the good work and good intentions in the Bill and send out all the wrong signals to those who make a living from forestry. No one around this table, including your side, wants to do that. I realise that you have to wait for the Finance Department to get back to you, but hopefully the Committee will encourage them to get back to you as expeditiously as possible.

Mr Savage:

I am just —

The Chairperson:

We are on fees, George.

Mr Savage:

Pardon?

The Chairperson:

On fees.

Mr Savage:

Sorry?

The Chairperson:

On fees.

Mr Savage:

No, actually, I am on clause 9. Perhaps you have jumped it.

The Chairperson:

We have it well sorted.

Mr Savage:

Oh, that is all right. I was afraid that you were going to close the meeting there.

The Chairperson:

Don't worry about it. We have closed it down. We are happy.

The other big issue is the general duty of the Department. The Committee suggested designating certain Government strategies. Is there a way around that? Can you suggest anything that would help?

Mr Small:

We still have concerns about designating strategies. However, we appreciate the Committee's desire to find some link between the general duty that the Department will take under the Bill and how it will be delivered. The core issue is how we create that link.

The Chairperson:

Have you any suggestions?

Mr Small:

We were hoping to propose an implementation plan that would indicate to the Committee and to stakeholders how we plan to take forward the duty in the Bill, using its new provisions. That is a proposal that we would like to put to you.

The Chairperson:

An implementation plan?

Mr Small:

Yes.

The Chairperson:

That would be like a kind of delivery guide.

Mr Small:

Delivery plan.

The Chairperson:

Delivery plan. OK.

Mr Small:

It would indicate how we intend to deliver against the new duties that we will take.

Mr Elliott:

Such woolly language, Chairperson. I am surprised at you.

The Chairperson:

Tom, please. It is called the art of compromise.

Mr Small:

You cannot win.

Mr Savage:

That was a piece of the general duty of the Department. The piece that I raised last week was about the leisure side of things — pony-trekking and the equine industry.

I would have loved to have seen the equine industry mentioned in the Bill. People who use land for equine pursuits should be subject to a tight code of conduct. There is a big demand for pony-trekking, yet riders cannot go on the roads, so they need somewhere to go. Equine pursuits are an important part of the leisure industry, and I would like to see them included in the Bill. I can trust David to use his jargon to include it.

The Chairperson:

That could be written into the delivery plan or an implementation plan.

Mr Small:

It is the kind of thing that could be captured in a delivery plan.

The Chairperson:

I think that that covers all the clauses, unless there is something that you want to draw to our attention, David.

Mr Small:

The only other outstanding issue was that of the advisory body, which came up again at last Monday's round table meeting. We remain unconvinced that the establishment of an advisory body would add any new benefits or advantages to the current arrangements. I appreciate that those arrangements rely on our working with stakeholders and calling groups of stakeholders together when we have a particular consultation or piece of work to undertake. That is how we intend to do business in future. Last year, we had a good experience with a group of stakeholders, including councils, the Northern Ireland Tourist Board (NITB) and Disability Action, who came together and worked with us as we developed our proposals for a recreation strategy. They made some very helpful suggestions. That process worked well, and that is the focus that we would like to take forward, rather than a more general approach.

The Chairperson:

How do you propose to take that forward? Under what aegis would that happen?

Mr Small:

It would happen under the aegis of a clear commitment to a stakeholder approach when we undertake new areas of policy or new areas of work. That is something, again, that could be referenced in a delivery plan, but we intend to have a strong focus on stakeholder engagement as we do business. That more focused approach —

The Chairperson:

There is so much good will and expertise out there that the Department should bring under its wing and use to its advantage.

Mr Small:

I agree, but our preference is to do that in a focused way. There are groups of stakeholders that, for example, can make a real contribution to the development of a recreation strategy. Other woodland stakeholders, however, do not have the same level of interest. Our focus should be on those stakeholders that have a real interest in a particular piece of work and that can assist us in our work. I am not sure that a more general, broad-ranging advisory panel would deliver what we

need.

The Chairperson:

If you are going to suggest that that course of action be included in a delivery plan, we need urgently to see all that written up. I would like to sign off on all the outstanding issues next Monday afternoon, one way or the other. We will go through the Bill line by line so that you can produce the final proposed draft.

To achieve that, we need all those issues to be resolved and we need clarity on all the points and definitions.

Mr W Clarke:

I want a commitment from the Department, through the delivery plan or some other means, to meet with stakeholders at least once a year, when all work programmes can be discussed. The stakeholders would appreciate such a commitment that, at least once a year, the Department will set out its plans and strategies and outline its progress. That would be useful. There is no need

for an advisory body, but there should be a mechanism that will allow you to engage with stakeholders annually. You might not have a strategy in place for another two or three years, so an annual meeting is not a big ask.

Mr Small:

Again, that sort of commitment is something that could be dealt with in a delivery plan. We already meet regularly with our stakeholders.

The Chairperson:

We do not want to limit you to meeting stakeholders once a year.

Mr O'Boyle:

We adopt a cyclical approach to developing our forest plans across our forest estate. As part of that approach, we have enshrined processes that require us to consult with stakeholders at a geographical and an activity-based level when we propose specific plans for those areas and when we develop strategies such as the broader forest recreation strategy. Therefore, we are already

obliged to consult on how implementation is progressing at a local level.

Mr Small:

That would involve groups such as the NITB, local councils, the Countryside Access and Activities Network (CAAN), the Royal Society for the Protection of Birds (RSPB) and environmental groups. We will follow that type of consultation process every time we undertake a forest plan review.

Mr O'Boyle:

One of our sustainable management obligations — I know that “sustainable management” is a broad term — that the independent audits that are carried out every year focus on is the extent to which we engage with our stakeholders, as well as the effectiveness of that engagement. Whether we maintain a certificate of sustainable forest management will hinge on that demonstration of stakeholder consultation.

The Chairperson:

That brings us to the end of our meeting. Thank you for coming and giving of your time and expertise.