



Northern Ireland  
Assembly

**Committee for Agriculture and Rural  
Development**

**OFFICIAL REPORT  
(Hansard)**

**Draft Forestry Land Byelaws and draft  
Forestry (Felling of Trees) Regulations**

**31 January 2012**

# NORTHERN IRELAND ASSEMBLY

## Committee for Agriculture and Rural Development

### Draft Forestry Land Byelaws and draft Forestry (Felling of Trees) Regulations

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**Members present for all or part of the proceedings:**

Mr Paul Frew (Chairperson)  
Mrs Dolores Kelly (Deputy Chairperson)  
Ms Michaela Boyle  
Mr Trevor Clarke  
Mr Willie Clarke  
Mrs Jo-Anne Dobson  
Mr William Irwin  
Mr Oliver McMullan  
Mr Robin Swann

**Witnesses:**

Mr Malcolm Beatty	Department of Agriculture and Rural Development
Mr Michael McCann	Department of Agriculture and Rural Development
Mr John Joe O'Boyle	Department of Agriculture and Rural Development

**The Chairperson:** I welcome to the table representatives of the Department of Agriculture and Rural Development's (DARD) Forest Service. They are Malcolm Beatty, the chief executive of the Forest Service, John Joe O'Boyle, the director of forestry, and Michael McCann, the deputy principal. Thank you very much, gentlemen. You are very welcome to the Committee. I thank you for your patience; I know that you have been waiting a long time through what was a very thorough line of questioning to your colleagues. This session might well be the same. I invite you to make a presentation, if you have one, and then we will go straight into questions.

**Mr Malcolm Beatty (Department of Agriculture and Rural Development):** Thank you very much for your welcome, Chairman.

We were here in November, when we gave you some feedback on the responses to the consultation on the by-laws. Today, we have presented to members a near complete draft of the forestry by-laws, but we have quite a bit of tidying up to do on those with the lawyers. We have also given you our first draft of the felling regulations, and I am particularly interested in how you view those. We still have one bit of work to bring forward to you, which is a very short regulation on how to measure the areas that will be subject to the felling regulations. Given that you have covered maps already, however, it might be a good idea not to do that again.

You might want to focus today on the content of the regulations, and it would also be helpful to think a little bit about the process and the form of the regulations, particularly the draft Forestry (Felling of Trees) Regulations, which have schedules. Schedule 3, for example, has a table that contains the information and the form of the information that are needed. We have some thoughts ourselves on how that might be usefully represented for applicants.

The other big thing that we want the Committee to focus on is consultation. There was consultation on the by-laws in the spring, I think. There was a lot of comment on them at that time and from the Committee in November, and the form of the by-laws is now much shorter. They have changed so much that it may mean that they ought to go out to consultation again. The important thing is to make sure that the by-laws have the confidence of the Committee and of the people who use forests, rather than being put in place just to meet a timetable. So, those are the sorts of things that I think are worth thinking about.

**Mrs Dobson:** I welcome the adjustments, as I think that the previous draft legislation was impractical. However, one area that consultation respondents were critical of remains, and that is the lighting of fires, stoves or barbecues. We all know that campfires are a customary part of the outdoor experience, and I think that it is excessive to restrict what can often be the only source of heat in a designated area. Why have you not taken on board respondents' objections to that?

**Mr Beatty:** First, I am a practising forester, and I am very nervous about fire in forests. I have fought many forest fires, and it is the one bit of my profession that I am very nervous about. We do not mind people lighting fires, but we want to know where they are, and we want to make sure that they are under control. Therefore, if people ask us for permission and come up with sensible proposals, I like to give it.

Secondly, you may not be aware that, if fires lit under trees, especially conifers, it predisposes the trees to a disease called dieback. I can give you an anecdote to illustrate that. We went to Tollymore as part of an investigation into the disease *P. ramorum*, and we saw in a photograph that there were some dead trees in another bit of Tollymore. We went to look at them, and because we saw that campfires had been lit underneath the trees, we were able to rule that the disease was not *P. ramorum* but dieback. It is recorded in the literature that fungus is able to germinate because of the higher temperatures around a fire. Therefore, there are lots of reasons to not have campfires under conifers, including the practical reason of starting a forest fire.

**Mrs Dobson:** Under the new by-laws, would someone who got lost in a forest at night be breaking the law if they were to light a fire?

**Mr Beatty:** If they were lost in a forest, we would be much more concerned about rescuing them. It would not be an issue if someone had to light a fire to preserve life.

**Mrs Dobson:** Does that mean that they would not be breaking the law?

**Mr Beatty:** I do not think that we would prosecute them. However, the corollary is that, if they consequently burned the whole forest down, that could be a different story.

**Mrs Dobson:** The new by-laws will mean that a considerable number of signs will need to be put up to let the public know quickly what is and what is not allowed. Do you plan to do that quickly?

**Mr Beatty:** Nowadays, we can publish by-laws on the internet, so, if people need to know something, it will be there as a source of information. We have had a practice over the years of publishing by-laws on noticeboards in forests, but I have never been happy with that, because the signs get covered in mildew very quickly and you cannot read them. Therefore, I have some doubts about the best way to do that. I think that it would be most useful to publish a users' guide that would be almost like a code of conduct for a forest, and it would include the sort of things that you might usefully do rather than a list of all the things that thou shalt not do. I think that that would be a better way to go. We have not thought our way through that, but we have thought previously about the need to have a code of conduct of some sort to allow people to enjoy forests responsibly. We need to do that anyway so that people do not fall foul of the things that are in the by-laws.

**Mrs Dobson:** If the signage were not correctly displayed, I would be concerned about members of the public being prosecuted.

**Mr Beatty:** Quite a few of the by-laws depend on the signage being displayed. For example, if a by-law says that you should follow the traffic signs, and there are no traffic signs, that is a good defence, so you would not prosecute that. It is in our interest, as good public servants, if you like, to show that we have given the information that the public need to comply with the by-laws. If we have not provided that information, there is a defence. I do not know of any prosecutions under the by-laws in all the years of the Forest Service. They provide much more of a standard, whereby we are saying, "This is what is required, and at a certain point, we can intervene". We are not the kind of organisation that is keen to get involved in prosecutions.

**Mr W Clarke:** Thanks for your presentation. I obviously welcome the changes. They are a common-sense approach, particularly for people who use forests in a responsible manner. I think that the original drafting penalised responsible people, particularly those who use forests at sunset, be it for cycling, walking or whatever. I think that the Forest Service has listened to a lot of the concerns that were raised, and, from that point of view, I congratulate you.

Rule 7 in the draft Forestry Land Byelaws deals with the protection of forestry land and wildlife. Rule 7(1)(f) states:

*"A person shall not ... do anything which is likely to interfere with the flow of any water."*

I am thinking of a situation where flooding has been caused to a property because the drainage was not up to standard or was not maintained in a certain way by Forest Service. Say, for example, there were a real concern that there was going to be major flooding in an area. If somebody intervened and diverted water to prevent perhaps hundreds of houses from being flooded, where would that leave you? Is there an exception to the rule?

**Mr Beatty:** That rule is really drafted the other way round to ensure that such a flooding problem would not be created. If there is a watercourse, let us not build beaver dams, as it were, and create a problem. If an obstruction is impeding the normal flow of water, people should not put their lives at risk to remove it. In cases involving the volume of water that you are thinking about, I would advise people not to get involved.

**Mr W Clarke:** If you were going to save 200 households —

**Mr Beatty:** Not at the cost of your life.

**Mr W Clarke:** Sometimes you have to do these things.

**Mr Beatty:** Maybe, but Forest Service and Rivers Agency should be doing that.

**Mr W Clarke:** I am just pointing that out, because I can see circumstances where that might happen. I remember a couple of years ago there was a lot of flooding in August due to the amount of water that had fallen, and people had to intervene and knock down bridges to allow the water to escape. So there are circumstances where you have to interfere with the flow of water.

**Mr Beatty:** Those are things that an official should be doing. If something is causing a problem on our land, it is up to someone, under authority of the Department, to deal with it. I do not think that people should be going in to do that sort of thing or taking it on themselves.

**Mr W Clarke:** As long as the Department does it —

**Mr Beatty:** The Department can do it.

**Mr W Clarke:** — when it is told to. That is fair enough.

My other point is about the section in the Forestry Act 2010 that deals with access on foot to forestry land and the upkeep of roads in forests, particularly in areas that large volumes of tourists use. In my experience, the upkeep of roads for pedestrian use, particularly in the forest at Newcastle, is not satisfactory. Can you say something about that? Such roads are looked after and resurfaced if they are usually used by timber production vehicles, but the same cannot be said for those that are used for tourist access and activities that are related to well-being.

**Mr Beatty:** The Act creates an access right. You can go on foot and access roads in the condition that you find them. We should not put a burden on ourselves to make those roads better than they are to, for example, promote tourism. If that is something that we ought to do, we should budget for it and do it as part of planned improvements. That is a matter for resource and for those whose liability it is. I know that you have been involved in raising the issue, particularly where the forest at Donard is concerned, and I also know that there are legal arguments about that. In general, if it is important and there is an agreement that it should be done, it would fall to us to do it or to engage somebody else to do it. That is a budgeting, rather than a legal, issue.

**Mr W Clarke:** That is dead on. Thank you.

**Mr McMullan:** I have three points to make. What is happening with turf cutting?

**Mr Beatty:** That is not part of the by-laws.

**Mr McMullan:** I thought that I saw the removal of turf or peat mentioned.

**Mr Beatty:** It is mentioned in the sense that you should not cause damage. However, the by-laws do not get in the way of your continued right to cut turf.

**Mr McMullan:** Say, for example, there was a gun club in a forest and its members had dogs. It would be hard for those people to keep their dogs on leads.

**Mr Beatty:** Again, I think that, if we have granted a gun club a licence and have given it permission to operate, including letting members take their dogs off leads, that practice can continue.

**Mr McMullan:** Does that permission cover it?

**Mr Beatty:** The point of the by-laws is to give direction to most people most of the time. There are exceptions, and we can license those; the by-laws explicitly provide for that. There is an issue in that, if you are given such permission, you must use it responsibly. So, you will have to explain to someone who asks, "Well if his dog is off the lead, why can't mine be"?

**Mr McMullan:** The other issue is about uncultivated ground. If somebody has ground beside forestry, do you have the right to ask them to clean it up to a distance of 15 metres?

**Mr Beatty:** That is provided for under the parent Act, and it applies to fire protection. It is not part of the by-laws; it is part of the primary legislation, and it is there for the specific reason that we do not lose the forest if there is a fire.

**Mr McMullan:** Can you lease the forestry out to clubs to shoot wild deer?

**Mr Beatty:** We do. We own the shooting rights, and we lease them to gun clubs or sports clubs.

**Mr McMullan:** What if the club owns the shooting rights?

**Mr Beatty:** It does not need our permission.

**Mr McMullan:** So, who does the public liability fall to?

**Mr Beatty:** It falls to the gun club.

**Mr McMullan:** If you let it out to them for profit —

**Mr Beatty:** No. If the gun club has a right to be there, any liability of accessing that right is with it, if that is what you are asking.

**Mr McMullan:** Yes.

**Mr Beatty:** If it is something that we have leased to the club, we make sure that it carries insurance.

**Mr T Clarke:** I welcome the changes. The document is completely changed, and the changes have addressed many of the issues that I raised at the previous meeting. Can I take it that we will still consult on this with stakeholders, as well as considering it as a Committee?

**The Chairperson:** I was going to ask the officials about their timeline. What opportunity will there be for consultation? What are you doing about consultation, if it is needed, because the document has changed to a certain degree? Will you clarify that for us?

**Mr Beatty:** We have spoken to forestry stakeholders very informally. We invited them to a meeting, and, like the Committee, they welcomed the changes. On the back of that, and without prejudicing what consultees may say, I do not expect many changes if we were to go to a wider consultation. That is not to say that some people who liked the previous version do not like the new one.

**Mr T Clarke:** That would be true to form for those who were consulted, provided that they are those who lobbied us as well. It may be useful for us to get a copy of who you consulted. The Committee may then have a discussion, even informally, with them or write to them to make sure that they have no objections, rather than prolonging this phase any longer than necessary. If they can write back to us, as opposed to the Committee's taking evidence from them, we can speed up the whole process. What I am reading in the by-laws has entirely changed, and quite a lot of it makes more common sense than it did previously. I will not rehearse what was said then, but if we can have that list and make sure that people who spoke to us individually are satisfied — we can do that informally by letter — we can speed this process up.

**Mr Beatty:** We will do that if possible. It is in our business plan to make these regulations before the end of the business year. As I said, that should not necessarily drive the process; it is better to have good regulations than to be on top of the timetable. Nevertheless, if we can do it, I think that we should. It would help me if we give you the information and you can then come back to me. My plan is to bring this back to you in March and say that it is subject to negative resolution and then ask whether it goes through. There is no point in doing that if you have reservations about it.

**The Chairperson:** You have obviously sought legal opinion about the process. Is it OK legally?

**Mr Beatty:** Yes. It is a matter of judgement. Lawyers always advise, they never direct. *[Laughter.]*

**The Chairperson:** Yes.

**Mr T Clarke:** Were you a lawyer in a former life?

**The Chairperson:** Have they advised that you can go ahead?

**Mr Beatty:** No. They have advised the Department to "consider". *[Laughter.]*

**The Chairperson:** Further consultation?

**Mr Beatty:** They advised us to consider further consultation, yes. They have not said, "You must do it". They just said, "be aware", and that is why we are —

**The Chairperson:** Sorry, in case I missed this, what has the Department come up with on this? What has the Department decided about the advice that it has received?

**Mr Beatty:** I am looking for your advice.

**The Chairperson:** So you want the Committee to lead the Department? Well, that is very refreshing. We can give you advice, but we need to have that request in writing so that we can assess the information and make sure that we are 100% right. It is very good, reassuring and refreshing that the Department is using the Committee for that, but we need to be very sure.

**Mr Beatty:** Yes.

**The Chairperson:** I have read the document, scoured it and yes, I can see that there are good changes. However, just to be clear, I will ask this specific question. The old by-law 5(1), which is now under section 31 of the Act and which precludes access between sunset and sunrise, is away. Is that not anywhere else in the document?

**Mr Beatty:** No. I have not hidden it anywhere.

**The Chairperson:** By-law 13(2) of the draft Forestry Land Byelaws used to read:

*"A person shall not ride a cycle other than in an area designated for cycling. "*

Has that, too, been removed?

**Mr Beatty:** It is not there. We will rely on an occupier's liability to deal with any of those things. We still have to act reasonably, but we will make it our defence that we expect people to cycle in forests with knowledge of the conditions that they are likely to encounter.

**The Chairperson:** OK. On some of the other issues, the paperwork can be described as "common sense", but that is not really a fair way to put it. In one rule, you had banned the use of metal detectors. That really meant that you were not allowed to dig.

**Mr Beatty:** I misinformed you about that the previous time I was here. We think that that came in because there was legislation from the heritage side of the Department to protect ancient monuments, and we think that it crept into our by-laws as a way for Forest Service to enforce such protection. In reality, it is heritage legislation. If heritage officials want us to protect ancient monuments, they can tell us to do it. We do not need to replicate it here.

**The Chairperson:** We do not have to have these by-laws all-embracing and with everything in but the kitchen sink.

**Mr Beatty:** Not on this bit one of paper; that is exactly right.

**The Chairperson:** We should take a common-sense approach and keep the document as streamlined and as simple as possible.

We spoke the previous time about movement in the forest, and I said that there should be an educational aspect to that. I know how to move in a forest at night and during the day. I know how to use trails and well-worn paths. At night, you come in through the foliage to make a harbour, a getting-up area where you would rest, but you would never dream of doing that in the road. You would do it in the forest, but you would not dream of walking through the thicket of the forest.

Is any educational facility mentioned in the by-laws? Will there be anything on that in the future?

**Mr Beatty:** It will not be in the by-laws. If there were a demand for it, we should take that on and start to do some educational work on it or produce some guidance. More likely, we should ask a body such as the Sports Council to do that for us.

**The Chairperson:** If there were educational opportunities, it would promote use of the forest.

**Mr Swann:** The regulations for the felling of trees lie outside the by-laws. Is there scope anywhere to extend it to the subcontracting of certain areas of forestry land? Perhaps someone could come in and take over complete management, from restocking to felling, on behalf of the Forestry Service.

**Mr Beatty:** That is not what this piece of legislation is about. It is a separate thing that we, as an organisation, might do. In fact, we do that. We contract out the harvesting of trees anyway. We actually sell —

**Mr Swann:** I am asking about contracting out the felling of trees and restocking, so I am thinking about subcontracting the complete management of part of the forest to a third party.

**Mr Beatty:** We can do that. There is nothing legislation that will stop us doing that.

**Mr Swann:** Do you do it currently?

**Mr Beatty:** We might have arrangements with the National Trust that come close to that, whereby we lease land and sometimes they want to manage it back. However, we do not do that as a matter of practice.

**Mr Swann:** Is it something that you consider?

**Mr Beatty:** We have talked about it with some sawmills, for example. However, we do not have a commercial model that works yet.

**The Chairperson:** Do members have any further comments to make or questions to ask? So, there are two aspects to this: the by-laws and the felling of trees. Will you give us the nuts and bolts of the felling of trees? We have had debates and questions on the by-laws but not on the felling of trees.

**Mr Beatty:** The parent Act brought in a new regulation, which was to manage the felling of trees. Previously, we did not have felling licences. The principal reason for that is so that trees can be replaced when they are cut down. There is a second part to it, namely, if permission is refused, there must be reasons for that. There must be some sort of public interest test. The consequence of that refusal is a right of appeal, because it is somebody's property and the public are intervening, so what right does that person have to it? Secondly, if, as a consequence of that refusal, the trees diminish in quality and rot, there is compensation liable for that. It is all about the rules that set that out.

The regulation itself is about the information that has to be provided. Obviously, to make that decision, we need certain information about who you are and about the trees, such as asking where they are. There is also the question of the plans that the applicant has to restore them and the time that is required to do that. For example, after you fell your trees, it may take four or five years into your licence for them to be re-established. The failure to re-establish is of more concern to us than the harvesting, thence the time, because somebody's licence could run on for many years. That is pretty much it in a nutshell.

The second part is the form of the regulation. I mentioned the schedules to the regulations on the felling of trees. Schedule 1, I think, lists information that the applicant has to provide. Schedule 3 puts the way that people must apply in tabular form. My preference, and I would welcome the Committee's views on this, is to go for schedule 1, because you cannot change it once it is in the regulations. Even if we wanted to move a word to another part of a box and it is in tabular form, we cannot do that without coming back here.

So, my preference is to put that in the schedule, meaning that we will tell people the sort of information they have to provide. We can provide an application form, but it would not be an offence if they wanted to have a form of their own. Common sense has to apply there.

**The Chairperson:** Do members have any comments or further questions? We are happy enough with that at this moment in time. Mr Beatty, we will ask you to write in detail to us about everything you would ask of the Committee so that, given time, we can at least assess and debate the matter. It is



fine if you want to include timescales so that we know where we can put it in our forward work programme.

It is a piece of work that we will have to take time to assess just to make sure that we are 100% clear. You can hear from members that we welcome the changes that have been made. That is fair to say. Given that you are putting a certain onus of responsibility on us, it is only right that we take due care and diligence on the issue and make sure that we are 100% right with it and can form an opinion on it.

**Mr Beatty:** I did not give you the third part, but we can cover that in the correspondence. That is the next bit of regulation, which is by affirmative resolution. I am not terribly sure what the process with that is, except that I think it happens in the Assembly.

**The Chairperson:** OK. Thank you very much for your time.