



Northern Ireland
Assembly

**COMMITTEE FOR
AGRICULTURE AND
RURAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

Forestry Bill

23 February 2010

NORTHERN IRELAND ASSEMBLY

**COMMITTEE FOR AGRICULTURE AND
RURAL DEVELOPMENT**

Forestry Bill

23 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
Dr William McCrea
Mr George Savage
Mr Jim Shannon

Witnesses:

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

The Chairperson (Mr Paisley Jnr):

I welcome to the meeting David Small, John Joe O'Boyle and Michael McCann. Mr Morwood is not with you today. Have we worn him out?

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

Yes.

Mr Elliott:

I again declare an interest as a landowner.

The Chairperson:

OK. Following legal advice, it was considered that although there was scope for clause-by-clause amendments, we will go straight to clause 5, which deals with compulsory acquisition.

Clause 5 (Compulsory acquisition of land)

The Chairperson:

We had a detailed discussion about clause 5 yesterday. Is there anything that you want to put to us before we hear members' views?

Mr Small:

I reaffirm that the Office of the Legislative Counsel (OLC) and the Departmental Solicitor's Office (DSO) came back to us yesterday and advised that it would not be appropriate to insert a clause indicating that the clause 5 powers would only be used as a last resort. I think that members have a copy of that advice.

OLC and DSO advise very strongly against doing that for a whole range of reasons, one of which is that that does not exist, to their knowledge, anywhere else. They made the point that it is important that all compulsory purchase powers be exercised and expressed in the same way in statute to retain uniformity. There is a very strong view that whenever compulsory purchase powers are being considered, that will always be after all other options have been exhausted. That is described by our legal people in DSO as being a matter of course. Against that background, the strong advice is that it is inappropriate to include that kind of clause.

The Chairperson:

Could you publish on the website your administrative guidance showing the processes that have to be undertaken if there is to be compulsory acquisition? That would mean that people would see that the Department has to go through clause 2 and show all of the negotiations. It is only as a very last resort that the Department can to move to clause 5, and what that entails in terms of Wednesbury reasonableness and having to go over all of the proper hurdles.

Mr Small:

We could possibly do that.

The Chairperson:

It would give the public certainty when they look at that.

Mr Small:

It might look a bit odd on the website. We would need to establish just where it would sit in the website without sticking out like a sore thumb. One alternative is that the Minister, in her Consideration Stage speech, could refer explicitly to the issue and the steps that we will take before we even consider clause 5 provisions. I assume that that would be recorded and available in the Hansard report. The guidance might look a bit odd on the website.

The Chairperson:

I certainly have no difficulty with the Minister making a detailed statement on the issues and giving the interpretation. However, there is an issue because the guidance could be published. I am sure that a suitable place on the website could be found, or there could be a reference to it in documentation so that people know where they can get it and see what the administrative guidance is to the process of compulsory acquisition.

Mr Small:

I hesitate because when we discussed the idea of a statutory code setting out the various procedural steps in statute, we were advised very strongly against that by our legal advisers.

The Chairperson:

That is why I am talking about your administrative guidance as opposed to a statutory code.

Mr Small:

The legal advice was that there was absolutely no reason why a Department should not have internal procedure that dictates clearly how it will deal with an issue. However, the more public that procedure is made, the more expectation it raises and the more substance it then carries in respect of potential legal challenges. If that were done, it would raise the whole prospect of a judicial review or legal challenge. I am not suggesting that is a reason for not doing it, but it puts the matter in a different arena.

The Chairperson:

At this point, some transparency about the process and the guidance that you would follow is all that is being sought. That is a very small ask.

Mr Small:

My only hesitation is around the legal advice. I have it in the back of my mind that the more public one makes the issue, the more difficulties are created.

Mr Elliott:

However, the more public it is made, the less suspicious the public are.

Mr Small:

I appreciate that, yes.

Mr Elliott:

That is where we are coming from, and I agree with the Chairperson. I am automatically suspicious to hear that the Department has reservations about making the whole issue public on its website.

Mr Small:

That is for legal reasons only, Tom. There are no other reasons.

Mr Elliott:

Nobody is going to challenge you unless you take land off them first.

Mr Small:

The DSO made that point. When and if a Department seeks to use its compulsory purchase powers, it moves into a strongly contested legal arena in which protection is afforded by the Human Rights Act 1998 and by domestic law. There is every chance of a challenge, and the more information that is public the stronger that challenge will be. In practice, I have no difficulty with the idea of the information being on the website, other than my concern about that legal advice.

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

It comes down to the level of detail that might be put on the website, because the DSO also advised us that every case was a bit different and, for example, different administrative procedures are brought to bear in different circumstances. Thus, it is difficult to have a best-fit administrative procedure that covers all circumstances. Part of the difficulty is that the Department would have to explore the approach to be taken in each and every set of circumstances. Legal difficulties arise from it not being easy to have a catch-all administrative process.

Mr Small:

The Department was also advised that its internal procedure would have to change from time to time. Therefore, an internal procedure now might differ from an internal procedure that predated the Human Rights Act 1998. Human rights legislation means that our present internal procedure is very different.

Mr Elliott:

I do not accept any of that argument. All that the Department has to do is update its advice on the website for the public’s information. I must say that I have had difficulty with this clause the whole way through, and you are making me extremely suspicious. I am having enough difficulty coming round to accepting the Committee Clerk’s advice on the matter without you making it more difficult.

Mr Small:

I am not trying to make it difficult, Tom. Before I give a commitment in Hansard, I am thinking through the issues in my head and reflecting on some of the legal advice. Having done so, I think that, on balance, the Department would be content to put some information on the website that will set out the very obvious steps that must be taken before we even consider using clause 5, including all the clause 2 opportunities, the negotiations with the landowner and our attempt to acquire the land by agreement. That is the kind of information that will be set out, all of which is consistent with our responsibilities and obligations under the 1998 Act and the European Convention on Human Rights (ECHR). I see no difficulty with that, because we must meet and pursue those obligations and procedures anyway. Therefore, Chairman, I am content to give a commitment on that.

Mr Shannon:

There you are, Tom. You dragged that out of him.

Mr Elliott:

Was the advice from the OLC and the DSO given orally or in writing?

Mr Small:

It was in writing. We reflected it in a note to the Committee Clerk.

Mr Elliott:

Had we received that before today, Committee Clerk?

The Committee Clerk:

No, but it is in today's Committee papers.

Dr W McCrea:

Welcome, gentlemen. To be quite honest, you are fumbling around for an excuse here and you are doing a very bad job.

Mr Small:

We have agreed to do it.

Dr W McCrea:

You are certainly not convincing. You tell us that it would look odd, but it would not be the first odd thing to appear on the Department's website. To claim that it might be odd or a wee bit strange is no reason to keep it off. What is being asked is the weakest possible manner of moving forward on the issue; it is the weakest request possible. Either it is the last resort or it is not.

The Chairperson:

I do not think that it was offered.

Dr W McCrea:

Either it is the last resort or it is not. I am becoming increasingly suspicious that the Department is fumbling around. I do not doubt your legal advice but listen, folks: transparency is a

wonderful thing.

Mr Small:

I agree.

Dr W McCrea:

If you look at it carefully, transparency will do the Department good, not harm.

Mr Small:

I agree with that, and I have agreed that we will publish the information on the website.

Mr Shannon:

You are browbeaten.

Dr W McCrea:

No, he is not.

Mr Molloy:

I have missed some of this, but the attitude seems to be the same as it was when I was last here. My concern is that, rather than it being the last option, this is, too often, the first option that the Department takes. There seems to be a reluctance to say that the legislation exists and a view that it would be dangerous for people to know about it. That smacks of the Department trying to cod people about its long-term intentions. The public should know what options are available to them. It is ridiculous to try to hide information to prevent someone from taking a case.

The other side of the story is how flexible the Department would be in a reverse situation, where someone else wanted communication or co-operation from Forest Service regarding adjacent land that he or she owns. Perhaps the Department would not be that flexible either. The public need to be aware of their rights, and their rights should not be denied. If human rights legislation is a problem for the Department, it is time that the Department examined that.

Mr Small:

Human rights legislation is not a problem for us at all. I have agreed that we will publish the information on the website. I have to be careful to consider all the legal implications of giving

that commitment, but I am satisfied —

The Chairperson:

It shows that there has not been anything cooked up between us, David. There is no reason for suspicion.

Mr Small:

Absolutely. I fully support the benefits of transparency; there is no question about that. We must meet the full obligations of the 1998 Act and the European Convention on Human Rights, and I have no difficulty with that.

Question, That the Committee is content with the clause, subject to the Department's proposed amendment, put and agreed to.

Clause 5, subject to the Department's proposed amendment, agreed to.

The Chairperson:

The matter is closed at this point, but there will be an opportunity for us to debate all the points that have been raised on the Floor of the House and for that to be recorded in the Hansard report. That will also provide the Minister with a platform to reiterate that this approach will be used only as a last resort, as you indicated that she was keen to do.

New Clause (Control (with permission of occupier) of animals on land adjacent to a forest)

The Chairperson:

At the meeting yesterday, the Department indicated that clause 8 will be followed by the new clause. The new clause reflects a totally consensual approach that requests the occupier of adjoining land to take effective steps to prevent damage to adjoining woodland. Failing that, the Department may request permission to control the animals, but it has no power to enter without that permission. The Committee has been asked to note that the new clause contains no power to impose any costs on an owner of adjoining land even if, by agreement, the Department controls animals on his or her land. Is that a fair summary of your proposal, David?

Mr Small:

Yes. It is based completely on permission from a landowner.

Question, That the Committee is content with the clause, put and agreed to.

New clause agreed to.

The Chairperson:

That concludes the Committee Stage; is that right?

The Committee Clerk:

No; that concludes the Committee's scrutiny of the Bill.

The Chairperson:

Yes; that concludes the Committee's scrutiny of the Bill. I was wondering there, because I did not think we had got that far.

I want to reiterate my appreciation for the work that you have done and, indeed, for the way in which we have tried to get this Bill over the line as effectively as possible. The Hard work has resulted in some beneficial changes.

Mr Small:

I thank the Committee for its input and contribution. It has been a positive process, and it has been hard work. Hopefully, it will result in a Forestry Bill that we are all happy and comfortable with and that sets a statutory framework for the work that we will take forward in future.