



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Forestry (Felling of Trees) Regulations (Northern Ireland) 2013 /
Forestry (Felling of Trees) (Calculation of the Area of Land)
Regulations (Northern Ireland) 2013 / Forestry (2010 Act)
(Commencement No. 3) Order (Northern Ireland) 2013:
DARD Briefing

9 April 2013

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture and Rural Development

Forestry (Felling of Trees) Regulations (Northern Ireland) 2013 / Forestry (Felling of Trees) (Calculation of the Area of Land) Regulations (Northern Ireland) 2013 / Forestry (2010 Act) (Commencement No. 3) Order (Northern Ireland) 2013: DARD Briefing

9 April 2013

Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Thomas Buchanan
Mrs Jo-Anne Dobson
Mr Chris Hazzard
Mr William Irwin
Mr Declan McAleer
Mr Oliver McMullan

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 Committee Malcolm Beatty, grade 5 chief executive of Forest Service; John Joe O'Boyle, grade 6 director of forestry; and Michael McCann, a deputy principal in Forest Service. You are very welcome. Thank you very much for your attendance. I am sure, Malcolm, that you have a presentation for us before we begin. Without further ado, do you want to lead off, and we will then go straight to questions?

Mr Malcolm Beatty (Department of Agriculture and Rural Development): OK. It will be very brief and is really just to say that this is the third commencement order that we are bringing forward to implement that part of the Forestry Act (Northern Ireland) 2010 that deals with felling controls. These controls are important in helping the Department to satisfy its duty to make sure that forests are managed in a sustainable way by introducing a control on the felling, so that it takes place in a way that makes sure that forests are properly replanted afterwards. The rest of it is the detail, so we are happy to take questions.

The Chairperson: OK. Happy enough, members? I will go straight into questions. The detail is there, but in regard to the requirement to have a felling licence for windblown trees, what is the rationale behind that? It could lead to a lot of unnecessary burden on foresters and landowners.

Mr Beatty: There are two important circumstances. One is where the tree that has blown over is now a danger — hanging over a path or something. There is absolutely no requirement to have a felling

licence for that; it is a matter of safety, and the primary Act makes that an exception. The other case, which is one that we are fairly familiar with in our own estate, is that you can have a large storm and a large number of trees blow down. The industry will deal with that in a normal way. The trees will go into the mills and be dealt with normally. However, the important thing, and why it really needs to be controlled, is about the restocking of that. Does the replanting make best use of the land and make trees less likely to blow down in the future? Change the species, do something about the ground preparation — that sort of thing. I think that was the intention in the Act when it came inside the regulation. We have not brought any other things within the scope of the Act, which stays as it was, and the Act assumed that windthrow would be part of the Act.

The Chairperson: I am led to believe that this is different from Scotland. Is that right? Is a felling licence not needed in Scotland for a blown-down tree?

Mr Beatty: Nobody would need a licence for a single tree because that would come within the five cubic metres. It is when there is a whole plantation down. I do not know enough about the Scottish legislation. I suspect that it goes back to the Forestry Act 1967, which is much earlier legislation. So I do not know the answer to that, but those are discussions about the parent Act and not about this order.

The Chairperson: OK. To be 100% clear: how many trees would need to be blown over before a licence is required?

Mr Beatty: Point two of a hectare — half an acre, in other words.

The Chairperson: So, 0.2 of a hectare of trees would have to be blown down before you would step in or ask for and require information.

Mr Beatty: Yes. The normal regulation is that if there is more than 0.2 of a hectare, which in round terms is, say, half an acre, the regulations apply and we ask you to seek permission for that. Would I refuse that? I cannot say that I would. I would be looking for a reasonable plan that said, "This is how we are going to tidy it up". We will work with the owner to try to get that into the mill as quickly as possible.

The Chairperson: You talk about the "plan". Is that the forest plan that landowners must put in place?

Mr Beatty: The felling management plan and the restocking plan.

The Chairperson: Yes, and it is left to the landowner to produce that plan?

Mr Beatty: They have to produce that plan, yes.

The Chairperson: To you?

Mr Beatty: Yes.

The Chairperson: Do they send that plan to you at the start of forestation? When does it come in?

Mr Beatty: At the point that they seek our approval for felling.

The Chairperson: OK, and then they have to adhere to that plan?

Mr Beatty: They can seek an amendment to it.

The Chairperson: Right.

Mr Beatty: If it is a minor amendment, it could be very simple. If it is a major thing, like you want to change all the species, that would be a different consideration — but it can be amended.

The Chairperson: How confident are you that Forest Service will be able to regulate this robustly and speedily? Are there concerns out there that the regulation of this and the time that it could take to issue a licence could be cumbersome?

Mr Beatty: We talked to the industry, and there are not that many cases that we believe would occur each year where someone would want to sell a plantation and take it through to sale into a sawmill. I think that it was in the tens every year, so that is not a huge amount of work. The other side of that is whether we would be aware of every case. Where felling took place and we were not aware of it, they should have asked for a licence. I presume that part of the intention of the legislators in bringing in that power was that it should be brought under control. That is something that would rely on a whistle-blower and on our intelligence. In the countryside, we will have to suck that and see, to be honest.

The Chairperson: OK.

Mr Byrne: I welcome the presentation. In relation to sustainable forestry development and tree felling licences, if you take the Forest Service forests on their own, is there any — let us say that there is a 1,000-acre forest. On average, how much felling would be allowed there in a year? Is there a sort of rotationally managed felling and replanting process?

Mr Beatty: That comes under the forestry standard, which is a document agreed throughout the UK. It will say, in relation to different types of land, whether there should be a small or a large amount of felling. If it was 1,000 acres of ancient woodland, there would be very little each year. If it was a normal Sitka spruce plantation, which is the most common that you will find, you would say that the trees grow for 50 years so you would expect around a fiftieth of that 1,000 acres to be felled every year.

Mr Byrne: So there is a rotational felling approach.

Mr Beatty: That is what we encourage.

Mr Byrne: Where are we in relation to Killeter forest and the Gortin Glen forest?

Mr Beatty: Both those forests are in my control, and they are not subject to this. They are dealt with by the Department. The process does not apply to the Department; there is a separate process. We do our own felling plans, and we take those to consultation. So, we do a lot of the things that are part of this. Killeter is out for consultation this year. The trees were planted in the 1940s, 1950s, 1960s and finished off in the late 1970s, so they are slowly approaching maturity. This year, we will start to think about how to harvest them. Killeter will be a difficult case, and there are some private plantations in the Sperrins that are not quite as big, but of a similar type of scale. Once you start to harvest that, it will be very difficult to stop, because the wind will start to create damage. Therefore, you would accept larger areas of clear fells, but you would still want those to be in the right place. For example, does it make best use of the landform to give a stable edge? Does that answer your question?

Mr Byrne: Yes. I am heartened by what you have said about Killeter. What about Gortin?

Mr Beatty: The same sort of thing applies in Gortin. We have already done quite a lot of felling there. It is the same idea. The forest has been thought about. We have drawn our maps and lines and started to clear some of that, and we have replanted that. That forest is a bit older, and the regeneration is taking place. There is still some more to do, but we are not in a hurry to do it, because we want the younger trees to grow up a bit before we do the older ones.

Mrs Dobson: Thank you for your briefing. I want to pick up on the fact that one of the changes that you agreed following the consultation was to provide user-friendly step-by-step guidance for applicants. Will you expand on how you intend to provide that, and in what format?

Mr Beatty: We have not done it yet because we are trying to get through this bit. We will take the best advice we can from what exists in Great Britain. The Forestry Commission has done quite a lot. We have already had discussions with our consultees. We have drafted and tested with them, and if it helps, that is fine; if it is not, it is back to the drawing board. It was important to get the legislation right. That gives the framework, and then we will know how the guidance works.

Mrs Dobson: Do you have leaflets? What do you intend the format to be?

Mr Beatty: It will be published on the web. That is almost certainly the easiest way to do that. If somebody wants a hard copy, we will print it from the web and send it to them.

Mrs Dobson: In your consultations, the Woodland Trust, amongst others, requested that the ancient woodland sites be included in the regulations, as we know. Your response was that the Department of Agriculture and Rural Development must have regard for the desirability of maintaining the character of such woodlands when determining applications. Does that mean that those woodlands are not protected? Or are they protected?

Mr Beatty: There are two different ways of protecting. One is if they are already protected by someone else's legislation. If it is already an area of special scientific interest (ASSI), for example, or scheduled by the Department of the Environment (DOE) in some way, that protection stays in place. Even if we give a felling licence, we have to have regard to that other legislation. We cannot just give our view, willy-nilly, and ignore somebody else. We will ask DOE for its opinion on it. The other case, which I think is probably the one that the Woodland Trust would be interested in, is those woodlands that are not protected in any other way. They come within the scope of this legislation. Therefore, we will be testing that against what is good forestry practice, as outlined in the standard. So, it is protected in the sense that it is there, but I remind everybody that "have regard to" is exactly that. These are old trees, and you will want some of them, but it is also about the continuity of the woodland. It cannot stay as old trees forever. It is about regenerating that woodland with like, so that it stays as a woodland of that ancient type, but not necessarily with the oldest trees in it.

Mrs Dobson: So there is no additional protection, it is just with regard to, as laid out?

Mr Beatty: Yes, it is exactly the same. There is nothing else in it. The protection comes from the consideration that we give to it when the application comes to us, and we will have regard to the nature of that woodland.

Mr Buchanan: When harvesting an area of woodland that is in forestry ownership and then planting it again, is that replanted solely with conifer, or is there broadleaf mixed in through it?

Mr Beatty: Part of our commitment is that at least 5% of all planting will have a broadleaf component. It may not be scattered through it. For example, if one edge is a riverside, it would make a lot of sense to concentrate the hardwoods in that riverside area. There is at least 5%, and quite often it is more than that. In our own estate, there are 50,000 hectares of conifer and another 6,000 or 7,000 hectares of broadleaf, so we have that anyway. We also notice that, when we clear woodland and replant with Sitka spruce, we get a lot of native broadleaf trees self-seeding into that. We do not take those out. We leave them there, and you can see as you drive through the country that there are willow and ash trees growing up through those plantations.

Mr Buchanan: Maybe slightly varying from the context of what we are at in Committee is where there is woodland harvested and the land is leased, and the farmer decides that he is going to turn it back to arable land again rather than releasing it for replanting. How much of a problem is that causing in regard to having sufficient land replanted with woodland, or have you other land that is coming on stream?

Mr Beatty: The first thing in the agenda is that that is exactly subject to the control of this legislation. We might not actually permit that, because that would be somebody asking for permission to cut the trees down without replacing them. We might refuse, unless they can give us a very convincing reason why the land should go to another use. At that point, it would then be subject to an environmental impact assessment as well, so that kind of control is there. The second bit of that is whether there is going to be a net reduction of forestry if that happened, and the answer to that would be a concern to us. One or two acres, no, because that would take place at that scale anyway with development, but if lots of people are doing that, it would be a worry. The legislation is there to help to prevent that. It happens in an ordered way.

Mr Buchanan: There is quite an area in one part of west Tyrone that has been cut and turned back into arable land again.

Mr Beatty: I think I am familiar with that area, but that is where we are.

Mr McMullan: Preservation orders.

Mr Beatty: Tree preservation orders (TPOs)?

Mr McMullan: Yes. That is through the DOE. There are very few of them.

Mr Beatty: There are quite a lot of those.

Mr McMullan: Well, there are very few in my area.

Mr Beatty: Ah, OK.

Mr McMullan: I know that it was a bone of contention some time ago, but I feel that it is a good way of preserving woodland and helping to maintain it. Is there any way that we can encourage local authorities or whatever, which are sometimes the custodians of those woodlands, to get a preservation order? Some people think that a preservation order is something that we have lost once we put one on, but it can actually work the other way, to preserve and maintain. I am thinking of one very close to my own place.

Mr Beatty: I do not know whether it is appropriate for me to speak on another Department's legislation. I am willing to try.

The Chairperson: If you would, because my next question was about how this works in conjunction with a TPO.

Mr Beatty: OK. This is not authoritative; it is my view on life. As I understand it, TPOs are there to preserve what is there. It comes to a point at which a tree will go through its natural life and die. That has always been a problem with the TPO. What do you do next? This legislation is different, and deals with those bigger areas of half an acre or more, which the TPO really is not the right tool for. We are not a consultee of DOE, so it does not ask us about those things. I am quite glad about that because of the work. We certainly like to see important trees preserved, and, if we are asked, we will certainly give an opinion on that, but DOE has its own experts. It does not need that. There are lots of experts on how important that tree is in that landscape.

My view is that, on a bigger scale, this is quite good legislation in that it allows continuity. Where trees have been planted for a crop or whatever, and they have got big enough, you get a return, but you get woodland back again, of a good quality.

Mr McMullan: Do you think that you should be a consultee?

Mr Beatty: I have lots of work to do.

Mr McMullan: That is from your own point of view. *[Laughter.]* From a Forest Service point of view, and given the expertise that you have — not you personally, because I do sympathise with you there, but from that point of view —

Mr Beatty: I do not think that we would add very much to the knowledge that is already there.

Mr McMullan: You would not? OK, that is fair enough. Thank you.

The Chairperson: I want to interrogate that a little more. I have had a lot of experience of TPOs, and, I must say, not a positive one. A lot of the landowners who love their trees see a TPO as something of a restriction or as a regulation. They have to run to the Planning Service every time they go to manage their woodlands. In a lot of cases, it is woodland that they have inherited, so they want to look after it. Maybe a loved one passed it on. It is very stifling and draconian for them. Can you explain, in simple terms, the difference between the felling regulations and these sets of regulations so that we can instil confidence among landowners that they are not an additional layer of bureaucracy?

Mr Beatty: First, of course, it is a bit of legislation that was never there before, so there will be an increase in bureaucracy somewhere. The question is whether it is onerous or not. If the legislators decide that it is necessary, it is not my job to question that. However, I can say that we have made it as simple as we possibly can.

The licence, for example, lasts for five years. If there is a trivial change that you want to make in the course of that, that might be resolved by a phone call and we will note the file. If it is a more substantial one, we will have to consider that. I cannot say that it will not happen; it depends on the circumstances. The view from this Committee is clearly that it should be as simple as possible to do that, and I think that we have achieved that. We will have to test it to see whether it works and whether it delivers what you want us to deliver. There is a commitment to review it after three years.

The Chairperson: Is three years a short enough time, if it goes wrong? There was talk of a pilot scheme. Is that still on your agenda, and if so, when would you introduce that?

Mr Beatty: We decided that there was no legal basis for a pilot scheme. We just could not do it. The right way is to make the legislation and then we will work our way through that. I think that what you might be hinting at is that, at some point, someone is going to break the legislation. What are we going to do then? Well, if it is trivial, there is no public interest in doing very much more than that. However, if it is not trivial — for example, in the case of the ancient woodland — we would step in, because someone will obviously have tried to circumvent the legislation and the Assembly's intent in doing that.

Is three years enough time? We would have to review it within three years to start with, at least. I expect people to keep coming back to us to ask whether it is still doing what we want it to do, whether we still have sustainable forestry, whether it has become too onerous or is not onerous enough.

I can tell you that, compared with forestry legislation in other countries, this is very light. Some countries will go so far as to say that you should manage your trees in this or that way by law — that you should thin them every so often. That is because they have problems with diseases, which we will see some of later in the week.

The Chairperson: I want to go back to the TPOs, because I am not a great lover of them, having heard the experiences of landowners. It might be different for a community group or a preservation society which likes the look of trees as you drive into a village. Would and should these regulations make a TPO redundant?

Mr Beatty: No, because they do not deal with anything less than 0.2 hectares. That is the realm of a TPO, which is about the single tree or a small group of trees. Where you have a really important woodland in which you want the old trees to stay as old trees, that is clearly a role for a TPO. If you are content that it stays as a natural woodland, that is a role for this legislation.

The Chairperson: OK. We talked about how long it will take for a felling licence to be granted. I apologise if you have given me this answer, but how long a timescale are we talking, from when you first apply for a felling licence until you receive one?

Mr Beatty: It should be done within three months. It cannot be realistically much less than that, because of the need to consult other people. We have taken away the duty on the applicant to do the consultation. We have brought that to ourselves. So, we will have to talk to the Northern Ireland Environment Agency, for example. If the map comes in, and we look at our database and see that, hold on, it is an ASSI, we are duty-bound to talk to other people. I would expect to get very simple cases done quicker than that, but I would expect most of them to get done within three months.

The Chairperson: So, you could be doing them quicker?

Mr Beatty: Yes.

The Chairperson: Is there anything within the Department that would jeopardise that? If that is the ideal, let us say, for instance, that there was another emergency regarding disease, God forbid, and there might have to be a moving around of resource. Is there anything, at this time, that could jeopardise that process?

Mr Beatty: The current disease emergency is a good example. At the start of the present one, I negotiated with the then permanent secretary to say, look, what are the priorities here? In my view, number one is to keep timber rolling to industry. We have kept our own resource in place to do that. This is the same sort of thing. It is about getting the private timber to industry. It would only be when the disease had an impact on that industry that we would start to change those priorities. In my view, this would stay — *[Inaudible.]* We are not talking about a huge volume of labour, by the way.

The Chairperson: I understand. The woodland people out there are probably as downtrodden as the farming community at present, with everything that is going on and the crisis involved in their theatre of work. Is this more bad news coming at the wrong time for them? Are they prepared for this? Do you see, hear and speak to them so that they are prepared for this? Has it been a managed transition? Will it be a managed transition?

Mr Beatty: I think they have been expecting it for many years. They probably recognise it as an inevitable thing that is going to happen. It has now happened. They knew that it was in the parent legislation, and we have been talking to them on the way through its development, so there are no surprises there. I dare say that they would prefer it was not here. It is another bit of legislation impacting on how they deal with their own property, but that was the will of the Assembly, I think.

The Chairperson: Have you a commencement date, given the hurdles it will have to go through?

Mr Beatty: I would like this to be in place by the beginning of July. There are hurdles to go through, but that seems a reasonable time.

Mr McMullan: Are there any exemptions? Are any individuals or bodies exempt?

Mr Beatty: Not by virtue of being an individual or a body. There are lots of exemptions in the parent Act, such as district councils, for example. Somebody who is running a public park in which there are trees does not require a felling licence. If it is somebody who is thinning a woodland, and less than five cubic metres is coming out of it, that does not require a licence either. There are lots of exemptions at the small scale, but there are very few exemptions at a big scale, unless it is something that is in the 2010 Act itself.

The Chairperson: Any other questions, members? Are members content enough?

Mr Beatty: May I make one correction to the papers? It is a minor typo, but nevertheless I would like to be accurate. At annexe G, you will see a subheading on risk assessment, under the paragraph heading on purpose and intended effect. A subparagraph of that is the background, and under that there is a risk assessment. There is a number there: 20,724 separate blocks of trees. That should be 29,512. I can write to the Committee Clerk with the clarification, if you would prefer.

The Chairperson: Sorry, I have lost it. If you could write to us, Malcolm, that would clarify things.

Mr Beatty: Yes. I do not want to mislead you. It is a trivial thing, but I would like to be accurate.

The Chairperson: That is fine. We have picked it up and recorded it. It would be great, though, if you could give it to us in writing for the record and for clarity. Thank you very much for your time, your answers and your presentation. Thank you.