

# IRISH FORESTRY

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## EDITORIAL

### THE FORESTRY ACT, 1946

The Forestry Act, 1946, has now become law and will come into force on a date to be fixed by the Minister for Lands. Its provisions deserve the attention of all interested in the growth of Irish forestry and especially of all landowners and foresters. The study of our Forest Law is made easier in so far as this Act repeals the Acts of 1919 and 1928 *in toto* thus embodying the entire legislation in a single Act of the Oireachtas.

The new Act is not spectacular and it has not become a subject of popular controversy. In fact, it passed through all its stages in both Dail and Seanad without alteration, save in minor detail.

How does it affect State and private forestry? What innovations does it contain? It must be made clear, first of all, that most of its provisions are in the nature of a re-enactment of those of the 1919 Act (which established State forestry on a sound basis) and of those of the 1928 Act (which was mainly concerned with the imposition of controls on the felling of trees). In addition there are some amendments of the re-enacted sections and some entirely new sections added. In these, naturally, most interest centres.

Part II sets out the general powers of the responsible Minister. In addition to the power to acquire and manage land, buildings and "works" for forestry purposes, to make advances by way of loan or grant for private planting, to give advice and assistance in management to the private forester, the Minister is given power to take over the management of private forest land on an agency basis. The Minister may also establish a Consultative Committee to give him advice on forestry matters. The composition of this Committee is of interest. It must include (a) a representative of the Minister for Agriculture, (b) a person having practical experience of forestry matters, (c) a person with knowledge and experience of the home-grown timber trade, (d) a person with knowledge or experience of labour matters, (e) a person with knowledge or experience of the work of County Councils, (f) a member of any society existing for the promotion of afforestation, and (g) an owner of woodland. The provision for a representative of the home-grown timber trade is a new departure and our Society would undoubtedly have claims for representation under (f)—if and when the Committee is appointed.

Part III deals with the extinguishment of Easements, creation of rights of way and compulsory acquisition of land. This Part of the Act breaks new ground in legislation affecting the compulsory acquisition of land for State purposes in departing almost entirely

from the machinery of acquisition which has been in general use under the Lands Clauses Acts for a century past; its provisions are necessarily highly technical and difficult for the layman to follow.

Section 19 provides for the extinguishment of easements or rights affecting land held by the Minister which would hinder its use for forestry. It will also enable the Minister to acquire land over which several individuals have rights, say, of grazing, and which all save one of the interested parties are willing to sell. The Minister may buy out those prepared to sell and then apply for the extinguishment of the right of the remaining party. This will obviate the necessity in such a case of using the more cumbersome machinery of compulsory acquisition.

Section 20 makes provision for the granting of temporary rights of way for timber extraction over land adjoining either a State forest property or privately owned woodland. The right of way which may be granted is limited to a maximum period of twelve months.

Section 21 is an important new addition to the law. It provides machinery for the creation of permanent rights of way serving State forest lands. Its provisions do not apply to private woodlands.

Sections 22-34 govern the compulsory acquisition of land by the Minister for forestry purposes and are, necessarily, of a complex character. Certain points are worthy of notice. Compensation will be fixed by the Land Commission instead of being settled under the Lands Clauses Acts as previously. Further, compensation can be fixed in advance and the Minister, knowing the cost to him of the land, can then decide whether to proceed or not with acquisition. Under the previous law the Minister could be committed to pay a price for land which would not permit of its economic development as forest land.

The provisions differ from the previous Acts in two other important respects. Under the old law the compulsory acquisition of land which formed part of any park, demesne, garden or pleasure-ground or formed part of the home farm attached to and usually occupied with a mansion house, or the acquisition of any land required for the relief of congestion, was prohibited. But unless the land fell into one of these or certain other defined categories, the Land Commission had no option but to grant an acquisition order sought by the Minister. The prohibitions named above are now removed and the Land Commission have now full power to grant, refuse or vary an order sought by the Minister on its merits. Under the 1946 Act the prohibition of the making of an order applies only to land which is required for the amenity or convenience of a dwellinghouse, is the property of a local authority, has been acquired by a Company or Corporation for the purposes of a public undertaking, or is the site of a National Monument owned by the Commissioners of Public Works.

Part IV deals with restrictions on the felling of trees on lands in private ownership and replaces the corresponding provisions of the 1928 Act, with some alterations and some tightening-up, but retaining in general the old scheme of control which proved satisfactory and easy to work.

Under the 1928 Act there was no time limit set to felling notices, or felling licences; both felling notices and "limited felling licences" will now be effective for two years only. Felling Notices given under the 1928 Act are similarly limited in their effectiveness to two years and licences under the old Act will expire two years after the new Act comes into force.

A felling notice must be lodged in the case of any tree over ten years old intended to be cut down. Exceptions include (a) a tree in a county or other borough or an urban district or (b) a tree within 100 feet of a building, (c) a tree cut by a local authority in connection with road construction or because of danger to road traffic, (d) a tree which is a danger or obstruction to telephone wires.

In the case of certain "exempted" trees a felling notice must be lodged and the Minister may make a prohibition order but he cannot subsequently refuse a licence and cannot attach replanting or preservation conditions to a licence. The lodging of the felling notice and issue of prohibition order in these cases allows the Minister an opportunity to have an inspection made to verify that the trees are actually "exempted." "Exempted" trees include (a) trees which in the opinion of the Minister are not necessary for the ornament or protection of the holding and (1) are stated to be intended for constructional or maintenance work on structures, fences and farm implements on lands belonging to the owner or his immediate neighbours, or (2) which are stated to be intended for use as fuel on the holding; (b) trees which in the opinion of the Minister are dead, decayed or irremediably damaged and useless for commercial purposes.

The replanting conditions which may be attached to a licence have been stated more precisely. The licensee must plant the trees specified "in accordance with the general practice of good forestry"—this presumably would entail such preliminary work as drainage, where necessary. The replanting conditions will include a "protection" condition requiring the licensee to preserve the planted trees for ten years from planting date "in accordance with the general practice of good forestry." There may be a condition requiring him to erect and maintain effective fences.

The Minister may, instead of attaching replanting conditions to a licence, impose preservation conditions designed to protect natural regeneration present or expected on part of the holding and may require the area to be fenced off.

In lieu of the above-mentioned conditions the Minister may impose a contributing condition under which the licensee shall be required to pay a sum towards the costs of State forestry work before felling commences. This is designed to fit cases where replanting or preservation conditions would cause hardship as for instance, where the licensee does not possess land suitable for forestry purposes.

The protection, preservation and contributing conditions are novel features which were not present in the 1928 Act. Replanting and preservation conditions are imposed on the owner of the holding *and on his successors in title* and provision is made for the

registration of replanting and preservation conditions as a burden affecting land registered under the Registration of Title Act, 1891.

The general permits issued under the 1928 Act to permit of the conduct of normal felling operations in wooded estates are to be replaced by general felling licences. The relevant provisions of the new Act are generally similar to those embodied in the 1928 Act; there will be a specific requirement by way of afforestation conditions that woods clear-felled under a general felling licence be replaced.

Part V deals mainly with vermin, hares and the burning of vegetation. A provision in the 1919 Act relating to rabbits and vermin other than hares is re-enacted in substance by Section 58. It enables the Minister to authorize entry on infested lands adjoining a plantation (either State or private) for the purpose of destruction of vermin where the owner of the infested land is unwilling or unable to carry out the destruction or take other steps to prevent damage. This section covers damage by deer. Section 59 gives the Minister power to destroy hares by any means on State forest land—a power which had been interfered with by the Game Preservation Act, 1930.

Powers for the destruction of hares in privately-owned plantations or on land adjoining plantations (either State or private) are given under Section 60.

A new provision (Section 62) enables the Minister to authorise entry on uncultivated land for the purpose of destroying vegetation growing within 150 feet of a wood, which represents a potential fire-danger to the wood, and which the owner of the uncultivated land fails to remove on receipt of notice in writing from the Minister.