

A Review of Legislation that Impacts on Irish Forestry

Barbara Maguire

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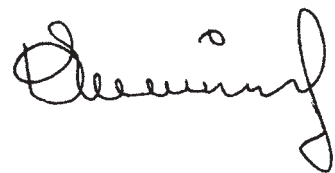
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FOREWORD

The body of national legislation and EC Directives that impact on forestry has greatly increased in latter years. Growers and foresters are faced with an ever increasing 'rule book' of do's and don'ts when they are establishing a forest or simply carrying out forest operations such as thinning and harvesting. At times the sheer volume of legislation and regulation can seem daunting, especially to those who are new to the forestry scene.

This COFORD publication is the first comprehensive treatment of legislation and regulations that pertains to forestry in Ireland. The work was carried out at the Department of Crop Science, Horticulture and Forestry, in conjunction with the development of the National Forest Standard. It sets out in a logical manner the many pieces of legislation and associated regulations that now impact on forestry in Ireland. Starting from land acquisition for forestry it deals with all of the important issues from R&D, advisory and training, flora and fauna through to felling licences and planning. Each area of legislation is thoroughly discussed and new directions in the legislative corpus are also suggested.

I have no doubt that this publication will be of use to a wide spectrum of interests, not alone to foresters but to policy makers, planners and others who are involved with forestry in Ireland.



David Nevins
Chairman

November 2001

1. INTRODUCTION

Since the formation of the State, forestry and ancillary matters have been directly regulated at different times by the Forestry Acts, 1919, 1928, 1946, 1956 and 1988. The Forestry Act, 1919, established a Forestry Commission in Great Britain, at that time operating in the United Kingdom of Great Britain and Ireland, and set out the powers and duties of the Commissioners.

The Commissioners were entrusted with the promotion of afforestation and empowered to:

- acquire land by agreement or compulsorily;
- utilise and manage land for purposes connected with forestry;
- make advances by way of grant or loan in respect of afforestation of land not their property;
- establish or aid in the establishment of woodland industries;
- authorise entry on land adjoining forest land for the purposes of controlling pests or vermin; and
- provide for the compulsory provision of facilities for the haulage of timber from or to any road.

With the establishment of Saorstát Éireann, these functions were vested in the Minister for Agriculture and Technical Instruction.

1.1 The Forestry Act, 1928

The Forestry Act, 1928, extended the powers of the Minister for Agriculture, who was at that time charged with the administration of the forestry service, by empowering him/her to require sawmillers and timber exporters to furnish information to him/her in relation to the timber handled by them. It also amended provisions of the Forestry Act, 1919, in relation to the compulsory acquisition of land, principally with a view to bringing these provisions into alignment with the Land Purchase Code. The Act of 1928 also empowered the Minister to control, by prohibition and licence, the felling of trees and the planting of other trees in lieu. The provisions for forest protection were expanded to include safeguards against damage by fire arising on adjoining areas.

1.2 The Forestry Act, 1946

The Forestry Act, 1946, replaced the two earlier Acts which it repealed. It did not, in any major sense, introduce any new principles or confer new powers. Its purposes were to provide better legislation for the compulsory acquisition of land for forestry, to rectify flaws in the 1928 Act relating to the felling of trees on private lands, to provide additional powers to the Minister (for Lands), to extinguish rights on State forestry land, to create rights of way necessary for the working of forests and to prevent damage to trees by hazards (pests, fires, etc.) originating on adjoining land.

Part 2 of the Forestry Act, 1946, is entitled Promotion of Interests of Forestry and Development of Afforestation, and Production and Supply of Timber. It sets out the general powers of the Minister under this Act, which may be briefly listed as follows:

- 1) the acquisition of land or rights over land for the purposes of forestry development;
- 2) to plant or alternatively use any land acquired by him/her under the Forestry (Redistribution of Public Services) Order, 1933, or the Forestry Acts, 1919, 1928 or 1946, or erect buildings or carry out such work on it as deemed necessary;
- 3) sell or let out any such land and pay or receive money for equality of exchange or grant rights on, or over, such land;
- 4) purchase, let or sell any buildings required by him/her for the purposes of this Act;
- 5) purchase or sell timber belonging to him/her or a private owner by agreement;
- 6) generally promote the supply, sale and utilisation and conversion of timber;
- 7) issue grants and loans for afforestation and reforestation;
- 8) undertake the planting, development, utilisation, supervision of, or give advice on, the planting or management of any woods;
- 9) establish or aid in the establishment or carrying on of woodland industries;
- 10) collect, publish and distribute statistics relating to forestry;
- 11) promote forestry education and training by establishing and aiding educational institutions;
- 12) make or aid in the making of inquiries, experiments and research, for the promotion of forestry and distribute results;
- 13) increase public interest in forestry and woodland industries;

- 14) secure an adequate supply of timber in the state and promote the sale, utilisation and conversion of timber.

1.3 The Forestry Act, 1956

The Forestry Act, 1956, was an amending Act, which clarified parts of the 1946 Act dealing with land acquisition. It provided for the payment of compensation in the case of compulsory acquisition and gave the Minister (for Lands) powers to make regulations concerning the acquisition of commonages and the provision of rights of way.

1.4 The Forestry Act, 1988

Although the Act of 1988 did contain some amendments of provisions of the Forestry Act, 1946, these related largely to penalties applicable for breach of certain provisions of the Act. The main provisions of the 1988 Act provided for the establishment of a company (Coillte Teoranta) and for the assignment to that company of certain functions heretofore exercised by the Minister for Energy. As set out in this Act the principal forestry related objects of the company were:

- to carry out the business of forestry and related activities on a commercial basis and in accordance with efficient silvicultural practices;
- to establish and carry on woodland industries; and
- to utilise and manage the resources available to it in a manner consistent with the above objectives.

In meeting these objects the company was to have power “to do anything which appears to it to facilitate, either directly or indirectly, the performance by it of its functions...and is not inconsistent with any law for the time being in force” (Section 12(3) Forestry Act, 1988). However, in meeting its objectives the company was charged with the general duty (amongst others), to provide for consultation with the Minister for Finance concerning forestry development in areas of scientific interest. Furthermore, the Minister (with responsibility for forestry) was authorised, with the consent of the Minister for Finance, to issue directions in writing to the company requiring the company to comply with policy decisions of a general kind made by the Government concerning the development of

forestry and related activities. In addition Coillte Teoranta was charged under the Act “... to conduct its business at all times in a cost effective and efficient manner...” but “with due regard to the environment and amenity consequences of its operations...” (Section 13(1) Forestry Act, 1988).

1.5 Other legislation

Since the 1988 Act no new legislation has been enacted which relates directly to forestry but a series of new policy instruments have been put in place, primarily addressing forestry related research, environmental issues and sustainable forest management. The more important of these include:

- The Irish National Forest Standard;
- The Code of Best Forest Practice – Ireland;
- Forestry and Archaeology Guidelines;
- Forestry and Water Quality Guidelines;
- Forest Harvesting and the Environment Guidelines;
- Forest Biodiversity Guidelines;
- Forestry and the Landscape Guidelines.

Other national legislation, which impinges on forestry in this State, is shown in Table 1. Much of this relates in some way to the interaction of forestry and the environment, and includes archaeological interests and road haulage.

Similarly, most of the EU legislation (Table 2) addresses both national and transboundary issues as they relate to forestry development and management.

This report sets out to interpret this legislation with a view to determining the shortfalls of forest legislation in force in this country at present and identifying key issues that will have to be addressed by legislators in the future.

TABLE 1: NATIONAL LEGISLATION IMPINGING ON FORESTRY IN THE STATE.

<i>Legislation</i>	<i>Potential Impact</i>
<i>Wildlife Acts, 1976 and 1999</i>	<i>Flora, fauna, environment and forest management</i>
<i>Local Government (Planning and Development) Acts, 1963 to 1999</i>	<i>Control of development and forest management</i>
<i>Planning and Development Act, 2000</i>	<i>Control of development and forest management</i>
<i>National Monuments Acts, 1930 to 1994</i>	<i>Forest management</i>
<i>Occupiers Liability Act, 1995</i>	<i>Forest management</i>
<i>Safety Health and Welfare at Work Act, 1989</i>	<i>Forest management both in forest and in office</i>
<i>Environmental Protection Agency Act, 1992</i>	<i>Forest management and environment</i>
<i>Local Government (Water Pollution) Acts, 1977 to 1990</i>	<i>Forest management and environment</i>
<i>Waste Management Act, 1996</i>	<i>Forest management and environment</i>
<i>Litter pollution Act, 1997</i>	<i>Forest management and environment</i>
<i>Roads Act, 1993</i>	<i>Haulage</i>
<i>Road Transport Acts, 1932 to 1999</i>	<i>Haulage</i>

TABLE 2: EU LEGISLATION IMPINGING ON FORESTRY IN THE STATE.

<i>Legislation</i>	<i>Potential Impact</i>
<i>Council Directive (92/43/EEC) and amending directives on the conservation of natural habitats of wild fauna and flora</i>	<i>Flora and fauna and forest management</i>
<i>Council Directive (79/409/EEC) and amending directives on the conservation of wild birds</i>	<i>Wild birds and forest management</i>
<i>Council Directive (2000/60/EC) establishing a framework for community action in the field of water policy</i>	<i>Forest management and the environment</i>
<i>Council Directive (2000/29/EC) on protective measures against the introduction into the Member States of harmful organisms of plants or plant products and against their spread within the Community</i>	<i>Forest protection</i>
<i>Council Directive (1999/105/EC) on the marketing of forest reproductive material</i>	<i>Tree improvement and forest protection</i>
<i>Council Directive (85/337/EEC) and amending directives on the assessment of the effects of certain public and private projects on the environment</i>	<i>Control of development</i>
<i>Council Regulation (EEC3528/86) on the protection of forests against atmospheric pollution</i>	<i>Environment</i>

2. ACQUISITION OF LAND FOR FORESTRY

2.1 Introduction

Estate forestry in the nineteenth century, although modest in scale, was of great importance in providing the beginning of a forestry culture in Ireland and in endowing the country with a few woodlands, which today are of great environmental significance. However most of these estate forests did not survive the transfer of land from landlord to tenant. The new landowners did not have the resources to practice effective forestry and it was left to the State to take the lead in restoring forestry as a land use.

2.2 Initial afforestation

There were two reasons for State intervention in the afforestation of the country. The first of these was the problem encountered by the estate commissioners in the disposal of woodlands, which became available following the break up of the estates under the Land Purchase Acts. Hence, the Land Act of 1909 placed the trust of either the Department of Agriculture and Technical Instruction (DATI) or County Councils in the ownership of woodlands beyond doubt and empowered the Department or County Councils to purchase woodlands as tenant purchasers. Under these circumstances the woodlands at Camolin, Co Wexford and at Montalt Estate, Dundrum, Co Tipperary were purchased.

The second was the reports of the Departmental Committee on Irish Forestry and of the Royal Commission on Coast Erosion in Britain. Although Lloyd George (Chancellor of the Exchequer) in his 1909 budget speech decided to ignore the forestry recommendations in the latter, he subsequently made £25,000 available to the Department for the purchase and maintenance of 10,000 acres for afforestation in counties Cork, Wicklow and Waterford (Neeson 1991). These land acquisition activities were further consolidated by the appointment of an Interim Forest Authority in Britain and the publication of the Forestry Bill by that authority in 1919.

2.3 The Forestry Acts

2.3.1 The Forestry Act, 1919

The Forestry Act, 1919, was “an Act for establishing a Forestry Commission for the United Kingdom, and promoting afforestation and the production and supply of timber therein...” (Forestry Act, 1919). Under the provisions of this Act, the Commissioners were subject to consultation with the treasury, empowered to:

- purchase, take on lease or hold any land suitable for afforestation or required for purposes in connection with afforestation or management of woods and forests and manage, plant or otherwise use any land acquired;
- erect such buildings or execute such other works on the land as they thought necessary;
- sell or let land, which was unsuitable for forestry, or exchange land for more suitable land and pay or receive money for inequality in the land.

However, before acquiring, selling or otherwise disposing of any land the Commissioners were required to consult with the Department of Agriculture and Technical Instruction and, in the case of the sale or disposal of land, give the Department an opportunity of acquiring it.

Furthermore, where the Commissioners were unable to acquire land which they required for the purposes of the Act on reasonable terms they could apply to the Development Commissioners¹ for an order empowering them to acquire the land compulsorily, and the Development Commissioners, following a hearing, had the power to make the order.

Compulsory acquisition orders could not be made in respect of land which formed part of a park, demesne, garden, pleasure ground, home farm attached to an occupied mansion house or land which was otherwise required for the amenity or convenience of a dwelling house. Furthermore, land which was owned by a local authority, which was the site of a national monument or other item of archaeological interest, or land which had been acquired by a corporation or company for the purposes of a railway, dock, canal, water or other public undertakings, could not be acquired by an acquisition order.

Where insufficient facilities existed for the haulage of timber from any wood or forest, the Commissioners were empowered to make orders instructing the owner or occupier of any land to provide those facilities, subject to the payment of a reasonable rent and compensation for any damage that might be caused to the land by the haulage. The amount of compensation was to be decided, on default of agreement, by arbitration. The Commissioners could not make such an order without giving the person required to afford the facilities an opportunity of being heard. Any persons who were aggrieved by an order of this type could appeal to the Development Council, who had the power to vary or revoke the order.

2.3.2 The Forestry Act, 1928

The Forestry Act, 1928, was the first forestry Act of Saorstát Éireann. It transferred many powers from British departments to Irish ones. Most provisions in relation to the acquisition of land remained unchanged from the British Act. Applications for compulsory acquisition orders now were made to the Irish Land Commission instead of the Development Council, as were appeals made to the Judicial Commissioner. The main provisions included in this Act that were additional to those of the Act of 1919 facilitated the extinguishment of all grazing, turbary and other rights to land acquired by the Minister. Owners of extinguished easements were entitled to compensation from the Minister (Minister for Agriculture).

2.3.3 The Forestry Act, 1946

The Forestry Act, 1946, repealed the earlier Acts of 1919 and 1928. Part III of the Act dealt exclusively with compulsory acquisition of land, creation of rights of way and the extinguishment of easements. For the purposes of this Act, the Minister with responsibility for forestry had the power to:

- “Purchase or take on lease or otherwise acquire any land suitable for forestry or required for purposes in connection with afforestation or with the management of any woods or forests or any right (so acquired) over land;
- sell or let any land vested in the Minister by virtue of the Forestry (Re-distribution of Public services) Order, 1933 (S. R. & O., No. 158 of 1933), or acquired under the Forestry Acts, 1919 and 1928, or under this Act, or exchange

any such land for any other land and (where requisite on any such exchange) pay or receive money for equality of exchange or grant rights on or over such land” (Section 9(1) Forestry Act, 1946).

The provisions in relation to compulsory acquisition of land remained more or less unchanged from those in the earlier acts. Under the 1946 Act, applications for acquisition orders could be made to the Lay Commissioners (the members of the Irish Land Commission excluding those of the Appeal tribunal) and appeals could be made to the Appeal Tribunal. The Minister could also appeal to the Tribunal if orders were not made as per application. In contrast with the preceding Acts, acquisition orders made under this Act only remained in force for periods of two years. Such orders could provide for the continuance of easements or the creation of new easements in lieu of ones lost. Before applying for an acquisition order, the Minister could serve a notice on anyone requesting the particulars of their interest in any land. Persons failing to comply with such a notice were guilty of an offence which carried a maximum penalty of £20 on summary conviction and £5 for every day thereafter that a person failed to furnish the Minister with the requested information.

The 1946 Act also introduced the concept of vested land. “Where an acquisition order in respect of any land is in force, the Minister may, if in his/her absolute discretion he/she so thinks fit, make ... an order ... vesting the land in him/her on a specified date not earlier than one month after the making thereof” (Section 26(1) Forestry Act, 1946). It was an offence under the 1946 Act to interfere with the Minister in taking possession of vested land. The Minister was liable to pay compensation to any person who had an interest in any land vested, the amount of which could be determined by the Lay Commissioners on default of agreement.

The Minister could also apply to the Lay Commissioners for an order to extinguish easements on land held by him/her for the purposes of the Forestry Acts. Persons affected by such orders had the right to appeal to the Appeal Tribunal and any person who suffered due to the making of such an order was entitled to compensation from the Minister.

Provisions to facilitate the creation of rights of way over land for the purposes of access to stands

¹References in this Act to the Development Commissioners became references to the Irish Land Commissioners with the passing of the Saorstát Éireann Forestry Commissioners Order, 1927.

are also included in this enactment. Where the Minister required a right of way over land, she could apply to the Lay Commissioners for an order. Following a public hearing the Lay Commissioners could make the order as per application, change the route of the right of way from that which was applied for, or refuse the application. If the Minister was unhappy with the outcome of the application, he/she could appeal to the Appeal Tribunal, as could the owner or occupier of the land. Where such an order was made the Minister was liable to pay compensation to the occupier or owner of the land, the sum of which could be fixed on default of agreement by the Lay Commissioners. If either party was dissatisfied by the amount fixed, they could appeal to the Tribunal. The same provisions applied where an ordinary person required a right of way over land. However, unlike orders obtained by the Minister these orders only remained in force for a twelve-month period and the person to whom they were granted had to remove all traces of the right of way from the land within one month of the expiration of the order.

All provisions of Part III of the Forestry Act, 1946, have been repealed by the Wildlife (Amendment) Act, 2000. Thus even though the Minister still has the power to acquire land compulsorily the legal provisions that were established by the Act of 1946 to facilitate this no longer exist.

2.3.4 The Forestry Act, 1956

The Forestry Act, 1956, was enacted "to facilitate the acquisition of land for the purposes of the Forestry Act, 1946" (Forestry Act, 1956). The Act provides for the acquisition of commonage and the payment of compensation following the making of a vesting order. This Act, in its entirety, has also been repealed by the Wildlife (Amendment) Act, 2000.

2.3.5 The Forestry Act, 1988

The Forestry Act, 1988, was enacted to establish a company (Coillte Teoranta) that would be responsible for the development of forestry in the State. The Act provides for the assignment to the company, functions previously exercised by the Minister with responsibility for forestry. However, nothing in this Act diminishes the former power of the Minister as provided for in the Act of 1946.

Although acquisition and disposal of land for the purposes of forestry are not mentioned specifically in the objectives of the company, the Act states that "the company shall have the power to do anything which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in this Act or in its memorandum of association and is not inconsistent with any law for the time being in force" (Section 11 (3) Forestry Act, 1988). Furthermore, Section 14 of the Act requires the company to submit a programme for the sale and acquisition of land and the sale of timber, for the approval of the Minister on a yearly basis.

2.4 Other legislation

2.4.1 The Wildlife Act, 1976

At the time of the enactment of the Wildlife Act, 1976, the Minister who had responsibility for wildlife also had responsibility for forestry, consequently there is considerable overlap between the provisions in this Act which related to the acquisition of land and those which related to the acquisition of land in the Forestry Act, 1946.

The Wildlife Act, 1976, provided for the making of purchase orders where the Minister required land for the purposes of that Act or the Act of 1946, and the ownership of the land was registered under the Registration of Title Act, 1964. Where purchase orders were made, compensation could be fixed on default of agreement by the Lay Commissioners in accordance with the provisions of the 1946 Forestry Act. This Act also provided that any land acquired by the Minister under the 1919, 1928, 1946 or 1956 Forestry Acts or by virtue of the Forestry (Redistribution of Public Services) Order, 1933 could be managed for the conservation of wildlife, management and exploitation of hunting and fishing resources or other purposes ancillary to the promotion of scientific knowledge, amenity or recreational or educational purposes, unless there was a direction in force stating otherwise. Provisions for the creation of rights of way and the extinguishment of easements were also included in the Wildlife Act, 1976. However, these provisions were more or less the same as those included in the Forestry Act of 1946.

2.4.2 The Wildlife (Amendment) Act, 2000

Since the Wildlife Act of 1976, wildlife is no longer the responsibility for the Minister for Lands and now lies with the Minister for Arts, Heritage, Gaeltacht and the Islands. Similarly, forestry is now the responsibility of the Minister for the Marine and Natural Resources. Thus, the new wildlife legislation allows for the Minister for Arts, Heritage, Gaeltacht and the Islands to act independently of forestry legislation. However, the Act also provides for the repeal of all of the Forestry Act, 1956, and Part III of the Forestry Act, 1946, which is the part concerning the extinguishment of easements, creation of rights of way and acquisition of land, previously dealt with in this chapter.

The new Wildlife Act, 2000, repeals the provisions of the Wildlife Act, 1976, that related to acquisition of land, creation of rights of way and extinguishment of easements and where appropriate replaces them with new ones. Currently where the Minister with responsibility for wildlife wishes to create a right of way over any land he/she must first notify the owner or occupier of the land and the arbitrator who has been assigned to hear the case. In this notice, he/she must specify whether he/she wishes the public generally to pass through the land or just a particular class of the public. Any person with an interest in the land may object to the order. The arbitrator, on hearing the case may, or may not, permit the Minister to make the order as proposed or otherwise. Persons who have an interest in or over land over which such an order is made, shall be entitled to compensation from the Minister in respect of "any diminution in the value of his or her interest in or over the land consequent upon the making of the order" (Section 12(5) Wildlife (Amendment) Act, 2000). The Minister may also make an order to extinguish any easement on land held by him/her for the purposes of the Wildlife Acts. The provisions that apply in relation to the making of orders creating rights of way over land also apply to extinguishment orders.

2.4.3 National Monuments Acts, 1930 to 1994

By virtue of these Acts, where a national monument exists on any land Dúchas² may acquire compulsorily national monuments and "any land that is in the vicinity of such a

monument and is intended to be used by them for the provision of facilities deemed appropriate by the Minister for persons having access to the monument under the National Monuments Acts, 1930 to 1994," (Section 11(1) National Monuments Act, 1994). Where Dúchas propose to acquire any land compulsorily under the Acts they must publish a notice of their intention in a newspaper circulating in that district and serve a notice on the owner and occupier of the land. Where the owner or occupier of the land is opposed to the acquisition, they may send a written objection to Dúchas or the Minister (for Arts, Heritage, Gaeltacht and the Islands) within two months of receiving the notice. The Minister may then on consideration of any objections either grant or refuse permission for Dúchas to compulsorily acquire the land by means of a "vesting order". Where a vesting order is made Dúchas shall pay compensation to any person who has any estate, right, easement, title or interest of any kind in, over or in respect of the land, the amount of which shall be determined under and in accordance with the Land Clauses Acts.

2.4.4 The Roads Act, 1993

Where a road authority (National Road Authority or a public authority) requires land for a motorway, busway or protected road scheme and are unable to acquire the land by expeditious agreement they may acquire the land by means of a compulsory purchase order. Any person who has suffered damage in consequence thereof shall be entitled to compensation from the road authority, the sum of which will be determined by arbitration under the Acquisition of land (Assessment of Compensation) Act, 1919.

This Act does not seem to include any provisions to facilitate objections from owners or occupiers of land in relation to compulsory acquisition.

²Although Dúchas is now responsible for National Monuments at the time of the passing of the National Monuments Acts the Commissioners for Public Works were the agency with responsibility for National Monuments.

3. FOREST RESEARCH, DEVELOPMENT, ADVISORY, TRAINING AND EDUCATION

3.1 Introduction

For over a century, the promotion of forestry and research on afforestation appears to have been recognised as a prerequisite for the development of the industry in Ireland. Dr William Schlich in his report to Gladstone in 1885 recommended caution as regards the species of exotic trees to be grown "... until experience had proved that the species were suited to the climate of Ireland" (Neeson 1991). Thus the Knockboy plantings in 1893 and 1894 employed thirty or forty species of trees and were viewed largely as a species experiment. [No doubt partly as a result of the failure of all species at Knockboy, development grants introduced in 1909 were considered subject to the following constraint: Expansion of forestry must be founded on effective research]. The intention was to turn it into a forest experimental station on the lines of a continental forest garden (Neeson 1991). Similarly, following the acquisition of Avondale Estate by the State in 1904 much of the area was planted in forest plots which were intended to demonstrate growth and development into timber of all the more important species of trees under silvicultural as distinct from arboricultural conditions.

3.2 The Forestry Act, 1919

This need for research and development was clearly acknowledged in the Forestry Act, 1919, whereby the Forestry Commissioners were empowered to:

- a) "Undertake the collection, preparation, publication and distribution of statistics relating to forestry, and promote and develop instruction and training in forestry by establishing or aiding schools or other educational institutions or in such other manner as they think fit;
- b) Make or aid in making such inquiries, experiments and research, and collect or aid in collecting such information, as they may think important for the purpose of promoting forestry and the teaching of forestry and publish or otherwise take steps to make known the results of such inquiries, experiments or research and disseminate such information;
- c) Make or aid in making such inquiries as they

think necessary for the purpose of securing an adequate supply of timber in the United Kingdom and promoting the production of timber in His Majesty's dominions" (Section 3(3) Forestry Act, 1919).

3.3 The Forestry Act, 1928

The Forestry Act, 1928, was introduced in order to make better provision for promoting afforestation and for that purpose to amend the Forestry Act, 1919, to restrict the felling of trees, and to make other provisions connected with the felling of trees. No specific mention is made of research and development in this Act but it is clear from the 'schedule' of enactments repealed that there was no intention to amend or interfere with the power of the Minister with responsibility for forestry to initiate and undertake research and development relevant to forestry. It is clear that from this time onwards a certain amount of research and development work was carried out by forestry staff attached to government departments such as the Department of Agriculture or the Department of Lands. Thus, the report issued by the Minister for Lands for the periods 1938-1943 contains a heading "Experimental Work", under which details are given concerning nursery experiments, the production of rare tree species, the 'crossing' of larches to produce hybrids and the direct sowing of acorns and beech mast (Anon 1944).

3.4 The Forestry Act, 1946

The Forestry Act, 1946, was officially described as "an Act to make further and better provision in relation to Forestry" (Forestry Act, 1946). In addition to introducing several new powers of the Minister, the schedule of enactments repealed the whole of the Acts of 1919 and 1928. However, it reaffirmed the power of the Minister to:

- a) "undertake the collection, preparation, publication and distribution of statistics relating to forestry and promote and develop instruction and training in forestry by establishing or aiding schools or other educational establishments or in such other manner as he/she thinks fit;
- b) make or aid in the making of such inquiries, experiments and research, and collect or aid in collecting such information, as he/she thinks important for the purpose of promoting forestry and the teaching of forestry, and publish or otherwise take steps to make known

the results of such inquiries, experiments or research and to disseminate such information" (Section 9(1) Forestry Act, 1946).

Subsequent to the Forestry Act, 1946 forest research programmes were initiated in both Northern Ireland and the Republic. A research section was established in the Forestry Division, Department of Lands in 1957. Its main tasks at this time included the evaluation of the performance of exotic tree species under Irish conditions, tree establishment on marginal sites, spacing, thinning, and pruning experimentation, tree nutrition and the development of growth and yield models. The results of this research were published in international journals or as internal reports. From this period onwards the Forest Service (under various headings) also published periodic research reports.

3.5 The Forestry Act, 1988

The main provisions of the Forestry Act, 1988, were to provide for the establishment of a company (Coillte Teoranta), which would be responsible for the development of forestry and for the assignment to that company, functions heretofore exercised by the Minister responsible for forestry. The principal objectives of the company were to be:

- a) "to carry on the business of forestry and related activities on a commercial basis and in accordance with efficient silvicultural practices;
- b) to establish and carry on woodland industries;
- c) to participate with others in forestry and related activities consistent with its objects, designed to enhance the effective and profitable operation of the company; and
- d) to utilise and manage the resources available to it in a manner consistent with the above objects" (Section 12(1) Forestry Act, 1988).

Furthermore, the Act specified that "the company shall have the power to do anything which appears to it to facilitate, either directly or indirectly, the performance by it of its functions as specified in this Act or in its memorandum of association and is not inconsistent with any law for the time being in force" (Section 12(3) Forestry Act, 1988).

Thus while there is no direct reference to research in the Act it is clear from the above that Coillte Teoranta is empowered to carry out whatever research it sees fit provided such research is

deemed requisite, advantageous or incidental to the performance of its functions. Thus, following the establishment of Coillte Teoranta in 1989, whether for this or other reasons many of the staff of the Forest Service Research Branch transferred to Coillte Teoranta. At the same time it is worthy of note that the power of the Minister with responsibility for forestry to carry out research and extension activities, was in no way diminished or repealed by the passing of the Forestry Act, 1988.

3.6 Other legislation

Legislation governing research in the agricultural sector extends to the Agricultural (An Foras Talúntais) Act of 1958. This Act provided for the establishment of an Institute for Agricultural Research to be known as An Foras Talúntais. The functions of the Institute were to facilitate, promote and undertake agricultural research. However, the term 'agriculture' as used in the Act was defined as follows:

"agriculture includes horticulture, forestry and bee-keeping, and also includes facilities, activities and sciences which relate to or tend to promote or improve agriculture, and cognate words shall be construed accordingly;" (Section 2 Agriculture (An Foras Talúntais) Act, 1958).

The Agricultural (An Foras Talúntais) Act of 1958 was subsequently amended according to the provisions of the National Agricultural Advisory, Education and Research Authority Act, 1977, the Agriculture (An Comhairle Oilúna Talmhaíochta) Act, 1979 and the Agriculture (Research, Training and Advice) Act, 1988. However, these Acts were mainly concerned with the structure of the organisations and did not in any major manner amend the power of these organisations to carry out agricultural (including forestry) research, education and advisory services. Neither did these items of legislation amend or dilute in any way the power of the Minister with responsibility for forestry to commission and carry out research in forestry.

Similarly the Industrial Research and Standards Act, 1946 empowered the institute of that name (now Enterprise Ireland):

- a) "to undertake, encourage and foster scientific research and investigation with the object of –
- promoting the utilisation of the natural resources of the State;
 - improving the technical process and methods

- used in the industries of the State;
- discovering technical processes and methods, which may promote or facilitate the expansion of existing or the development of new industries and the utilisation of waste products of industry” (Section 5(1) Industrial Research and Standards Act, 1946).

Thus, the Institute was empowered to carry out industrial research, development and standardisation involving wood, wood products and industrial waste products of wood. In the period since its establishment in 1946 the Institute for Industrial Research and Standards has been structurally changed by a whole series of legislative enactments such as, the Science and Technology Act, 1987, the Industrial Development Acts, 1986 to 1995 and the Industrial Development (Enterprise Ireland) Act, 1998. This latter Act established Enterprise Ireland as the agency of Forfás to perform the functions assigned to it. The Agency was assigned a wide range of functions under this Act. These generally related to the development of the Industry, the development of goods, the marketing of goods, the development of research capacity, the strengthening of the skills base and the administration of grant schemes.

It is worthy of note that undertaking research is not specifically mentioned in the list of functions, although it is apparent that the Agency could justify carrying out research under virtually any of the functions listed. However, this omission from the list of functions may significantly weaken its legal position in relation to carrying out the research and standards functions initially assigned to the Agency by the 1946 Act. It does not appear, however, that the legal authority of the Agency to carry out research, which stems from the Industrial Research and Standards Act, 1946 has been repealed.

In 1992 legislation (Environmental Protection Agency Act, 1992) was enacted by the Minister for the Environment which provided for the establishment of an agency, to be known as the Environmental Protection Agency (EPA). The main objective was to be the protection of the environment. In connection with this the Agency was assigned a number of functions by the Act including:

- “the promotion and co-ordination of environmental research, the provision of assistance and advice in relation to research and the carrying out, causing to be carried out,

or arranging for, such research,” (Section 52(1) Environmental Protection Agency Act, 1992).

From this, it is clear that the Environmental Protection Agency has the power to carry out forest research where forestry may have an impact on the environment. Subsequently, the EPA have been involved in many research programmes in conjunction with many other organisations with forestry connected mandates.

Furthermore, the National Health and Safety Authority are empowered under the aegis of the Safety, Health and Welfare at Work Act, 1989 “... to make such arrangements as it considers appropriate for providing information and advice on matters related to safety, health and welfare at work,” (Section 16 (1) Safety, Health and Welfare at Work Act, 1989). Similarly, the Minister with responsibility for wildlife is empowered by the Wildlife Act, 1976 to “...carry out or cause to be carried out research which he/she considers desirable for the performance of his functions under this Act” (Section 11(3) Wildlife Act, 1976). The Water Pollution Act, 1977 provides that a local authority may contribute to the funds of any person engaged in, or proposing to engage in research, surveys or investigations in relation to water pollution. Thus, a local authority could fund any research that investigates the effects of forestry on water pollution.

4. FLORA AND FAUNA

4.1 Introduction

From medieval times, forest law has incorporated provisions prohibiting the poaching of game from royal forests in this country. Indeed during the time of Dermot Mac Murrugh the penalty for breaching such laws could be as severe as death (Neeson 1991). Since this period many laws have been introduced that included measures for the conservation of wildlife other than game and provisions have also been established for the protection of forest crops from damage by wildlife.

4.2 The Forestry Acts

Under section 4 of the Forestry Act, 1919 the Commissioners were empowered to control rabbits, hares and vermin and to require any occupier of land to destroy rabbits, hares or vermin, where they were causing damage to trees. Provisions were included to enforce this requirement and to recover any costs incurred. The word ‘vermin’ although not clearly defined in the Act did clearly include rabbits, hares and squirrels. It is also worthy of note that the powers and duties of the DATI in relation to the Destructive Insects and Pests Acts, 1877 to 1907, in so far as these powers related to insects or pests destructive to forest trees and timber, were transferred to the Commissioners. The Forestry Act, 1928 contained no new provisions in relation to flora or fauna in forests.

The Act of 1946 repealed the Acts of 1919 and 1928. However, the provisions relating to the control of vermin on forested land remained largely unchanged, notwithstanding anything contained in the Game Preservation Act, 1930. The term vermin was defined in this Act to include deer and other wild animals likely to damage trees and plants. However, new provisions were included for the control of vegetation by burning within one mile of a wood, and for the destruction of vegetation on cultivated land in the vicinity of woods. Similarly, the Forestry Act of 1956 contained few provisions of any consequence in relation to wildlife in Irish forests. The Forestry Act, 1988, contained no new provisions in relation to forest flora or fauna and did not in any way alter the powers of the Minister with responsibility for forestry in dealing with flora and fauna in

plantations. However, the 1988 Act did specify that Coillte Teoranta would have the power to do anything which appeared to it to facilitate, either directly or indirectly, the performance of its functions as specified in the Act and which is not inconsistent with any law in force. Clearly, this implies that the company has the power to control vermin and to deal with vegetation, which may threaten the well being of its plantations. However, it should be borne in mind that the Company has a general duty under the 1988 Act to have due regard to the environmental and amenity consequences of its operations.

4.3 Other legislation

4.3.1 The Game Preservation Act, 1930

This was the first legislation enacted by the Oireachtas of Saorstát Éireann, which sought to make provision for the preservation of game, for the control of game dealers and for other matters incidental or conducive to the preservation of game. The expression ‘game birds’ in the Act included pheasant, partridge, grouse, quail, landrail, plover, snipe, mallard, teal, widgeon, brent goose, barnacle goose and other species of wild duck and goose. However, this Act made little provision for the regulation of Forestry except to prohibit the burning of vegetation on uncultivated land in the game breeding season (1st day of April to the 14th day of July). This Act also made provision for a Consultative Council for the purpose of giving advice and assistance to the Minister (for Justice) in connection with any matter relating to or affecting the propagation and preservation of game.

4.3.2 The Wildlife Act, 1976

It is worthy of note that at the time of the passing of this Act, the Minister with responsibility for wildlife (the Minister for Lands) was also the Minister with responsibility for forestry. In addition, the term “wildlife” was expanded, perhaps for the first time, to include flora and fauna. However, the main purpose of the Act was to advance the protection and conservation of wildlife. This was to be achieved by the protection of habitats of flora and fauna or ecosystems of scientific interest. Thus the Act made provision for the designation of such reserves and ecosystems in a manner which “...

will not impair wildlife or its conservation ...” (Section 18(1) Wildlife Act, 1976). In practice all designated areas established under the Act to protect wildlife were purchased and subsequently managed by the Office of Public Works, or other State Departments and therefore such designations did not significantly impinge on forest management at that time (Mahon pers. communication, 2001). In addition the Minister could declare any species of flora (specified in the Act to include trees) or fauna a protected species. Although it was an offence under the Act to injure or disturb a protected species, it was not an offence while engaged in forestry to unintentionally do so. Many species were protected under the Act of 1976 (Table 3), although the Minister had the power to declare any additional species protected by regulation. All bird species with the exception of the following were also protected under the Act; Bullfinch, Carrion Crow, Greater Black-backed Gull, Herring Gull, Hooded (Grey) Crow, House Sparrow, Jackdaw, Jay, Lesser Black-backed Gull, Magpie, Pigeons, including Wood Pigeon (not including Carrier Pigeons, Racing Homing Pigeons or Doves), Rook and Starling.

TABLE 3: SPECIES PROTECTED UNDER THE WILDLIFE ACT, 1976.

<i>Land Mammals</i>	<i>Marine Mammals</i>	<i>Amphibians</i>
<i>Badger</i>	<i>Dolphin species</i>	<i>Natterjack Toad</i>
<i>Bat species</i>	<i>Porpoise Species</i>	
<i>Deer species</i>	<i>Seal species</i>	
<i>Hare species</i>	<i>Whale species</i>	
<i>Hedgehog</i>		
<i>Otter</i>		
<i>Pine Marten</i>		
<i>Red Squirrel</i>		

(Source: Wildlife Act, 1976)

Under the Act of 1976, where a protected wild bird or animal was causing damage to a forest crop the Minister with responsibility for wildlife could cause an authorised person to enter land and take such steps as necessary to stop the damage. Alternatively, occupiers of infested lands could apply to the Minister for Wildlife for permission, permitting them to capture or kill the protected fauna that was causing the damage. Such permissions were normally granted subject to conditions. These powers were in addition and not in substitution to the powers conferred on the Minister for Lands (who had responsibility for forestry) in relation to the destruction of hares on infested forest lands by the Forestry Act, 1946.

The Wildlife Act 1976, also contained provisions to repeal the section contained in the Forestry Act on burning of vegetation and replaced it with new provisions which remained more or less unchanged from those provided for in the Forestry Act. However, the Wildlife Act, 1976 also contained provisions prohibiting the destruction of vegetation on uncultivated land between the 15th of April and the 31st of August every year. This period was amended by the Wildlife (Amendment) Act, 2000 to extend from 1st March to the 31st of August. This prohibition did not extend to the destruction of vegetation (in the ordinary course of forestry) that was growing in a hedge or ditch nor the destruction of vegetation in pursuance to a notice made by the Minister for Forestry under the Forestry Act, 1946. Neither did this apply to burning carried out by a Minister for the Government or a body established or regulated under statute for reasons of public health or safety. Thus, it would appear that the burning of vegetation by a private forest owner on uncultivated land for firebreaks is prohibited within this period but similar activities if carried out by the Forest Service or Coillte are permissible.

4.3.3 European Communities (Natural Habitats) Regulations, 1997

These regulations were legislated to give effect to EC directive 92/43/EEC on the conservation of natural habitats of wild flora and fauna. Following the passing of this directive the Minister for Arts, Heritage, Gaeltacht and the Islands drew up a list of candidate European sites for submission to the Council for approval. European Sites include areas that contain a special habitat or ecosystem such as fens or salt marshes. The Minister then had to notify any person whose land was included in a candidate European site. Owners or occupiers of the land had the right to object. The Council

could then decide to adopt these sites as Special Areas of Conservation (SAC). Subsequent to the adoption of such sites by the Council, the Minister notified the owner or occupier of the land of the designation. Outlined in such notices were a list of operations, which could have a significant impact on the area (such operations could include regular forest operations such as drainage, cultivation, fertiliser application, thinning etc). Before carrying out such operations, the owner or occupier had to apply to the Minister for permission to do so. Where the Minister refused to give permission the applicant had the right to appeal. Appeals were decided by arbitration. Where permission and appeals were denied the applicant was entitled to compensation. Where operations were carried out in contravention with notices designating SACs the Minister could direct the person who carried out the work to restore the site to its former condition within a specified period. Where a person failed to carry out the restoration within this period the Minister could cause authorised persons to carry out the work and recover the cost from that person as a simple contract debt in a court of competent jurisdiction. Owners or occupiers of land included in a SAC could enter into a management agreement concerning the SAC with the Minister under the Wildlife Act, 1976. This would ensure that the management of the land would be "... conducted in a manner (to be specified in the agreement) which will not impair wildlife or its conservation" (Section 18(1) Wildlife Act, 1976). Such arrangements could provide for the payment of money by the Minister with responsibility for wildlife to a person having an interest in or over the land to which the agreement related.

4.3.4 European Communities (Conservation of Wild Birds) Regulations, 1985 to 1999

These regulations were enacted to give effect to Council Directive 79/409/EEC on the conservation of wild birds. The regulations are legally binding and designate certain areas in the State as being Special Protection Areas (SPAs). The main objective of these areas is to protect wild birds and their habitats. The regulations prohibited the leaving of any matter in a SPA, which might disturb the birds or pollute their habitat. Thus, it is prohibited to leave any co-extruded bags, fertiliser, or spilt oil from machinery in a SPA.

4.3.5 European Communities (Forest Reproductive Material) Regulations, 1973 and 1982

These regulations were established to give effect to Council Directives 66/404/EEC and 71/161/EEC and amending Directives. These directives have recently been replaced by Council Directive 1999/105/EC on the marketing of forest reproductive material which, must be implemented by the Forest Service in Ireland by January 1st 2003. The regulations provided for the establishment of a National Catalogue of approved forest basic material. This material has to be either tested or selected. Under these regulations no reproductive material (seeds, parts of plants, young plants) may be marketed in the state unless derived from such basic material, nor may reproductive material be imported unless in accordance with the directives. Furthermore, prior to delivery to the final consumer, all material and for so long as it is collected, processed, stored, transported or raised, must be kept in lots separated and identified in accordance with the criteria set out in the directives. These criteria include things such as, level of harmful organisms present on seeds and presence of anomalies of form such as forking on seedlings. The aim of the new directive (1999/105/EC) is to ensure traceability of forest reproductive material within the Community. In this manner the consumer can be confident that they will get what they have asked for (Cahalane pers. communication, 2001).

4.3.6 European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations, 1980 to 1998

These regulations were put in place by the Government to give effect to Council Directive 77/93/EEC and amending directives on protection against the introduction into the Community of organisms harmful to plants or plant products. These directives were consolidated in May of last year by Council Directive 2000/29/EC.

The regulations provide for protective measures against the introduction of harmful diseases and pests into the country. For example, all timber that is imported into the country must be free from bark to protect against the introduction of foreign bark beetles. For the purpose of plant health Ireland has 'island status'. Effectively this means that the regulations that govern plant health in Northern Ireland are the same as those that govern plant health in the Republic, not in Britain.

4.3.7 The Wildlife (Amendment) Act, 2000

The Wildlife (Amendment) Bill, 1999 was passed on the 7th of December 2000. The Act contained a number of amendments to the Wildlife Act, 1976. The most influential provisions of the Act, from a forestry point of view, are undoubtedly those providing statutory protection for Natural Heritage Areas (NHAs). The designation NHA is used to conserve areas containing special habitats or ecosystems of scientific interest or lands, which contain features of geological, geomorphologic or other natural interests and includes SPAs and SACs as outlined in the birds and habitats directives. Under the Act, where the Minister for Arts, Heritage, Gaeltacht and the Islands is of the opinion that any land forms part of an NHA he/she must notify the general public and any other persons he/she deems appropriate, including the owner or occupier of the land, of his/her intention to make the area an NHA. Such notices should outline the reason why the Minister proposes to make the area an NHA and also identify any work the Minister considers would interfere with the NHA as well as any protective measures the Minister wishes to include in the order. Thus it appears that should a forest area or part of a forest area be included in an NHA, this could preclude or prevent normal forest operations such as timber harvesting (thinning), roading and timber extraction. Persons with an interest in the land can object to the making of such orders. However, the decision of the Minister is final. Where a person wishes to carry out a work identified in a notice proposing the making of an NHA, they must obtain permission from the Minister. Where the Minister refuses there is a right to appeal. Appeals are determined by arbitration. If permission is denied on appeal, any person claiming to have an interest in the land is entitled by way of compensation to "... an amount equal to the loss suffered by the owner, occupier, or user by the depreciation of an interest in the land to which he/she is entitled." (Section 22(1) Wildlife (Amendment) Act, 2000). Where prohibited works are carried out the Minister may direct the responsible party to restore the area to its former status within a specified period. If the restoration is not completed in that time frame the Minister may instruct authorised personnel to carry out the work, the cost of which he/she may recoup from the person who failed to do the work in a court of competent jurisdiction. The Minister may also apply to a court for an order to prohibit any works if he/she deems it necessary.

Other provisions contained in the Act which impinge on forestry include those relating to the CITES regulations. These have been established subsequent to the passing of Council Regulation EC/338/97 on the regulation of international trade of wild flora and fauna. These regulations render it illegal to be in the possession of a specimen of a species listed in the regulations without the required valid permits and certificates. Tree species could be added by regulation to this list of species. Furthermore, under the new wildlife legislation a person may not grow any exotic species of flora, or the flowers, roots, seeds or spores of exotic flora otherwise than under and in accordance with a licence granted by the Minister for Arts, Heritage, Gaeltacht and the Islands.

5. FELLING LICENCES

5.1 Introduction

The Land Act, 1881 had created difficulties for planting by landlords, by creating tenant rights to grazing and because of the degree of insecurity which it and subsequent acts introduced. The widespread felling of private woodlands, which followed, has been well documented (Neeson 1991). These developments aroused the interest of the State in forestry matters as early as 1896, when W.F. Baily, a legal assistant in the Land Commission, recommended the introduction of a provision which would prohibit the cutting of trees, without the permission of the Land Commission. However, nothing much appears to have happened over the next ten to fifteen years, although a Bureau to aid, improve and develop forestry land had been set up within DATI under the provisions of the Department of Agriculture and Technical Instruction Act, 1899. Concern at the extent of forest clearance was such that in 1909 DATI sought, and was given, legal control over the felling of existing woodlands on land purchased under the Land Acts and applications for permission to fell trees had to be made to the Department. However, landlords could still sell timber pending or during negotiation with the Commissioners. On other lands, the law provided no control and there was no compulsion to reforest any land. Thus while DATI was in a position to prevent felling on some land and even to purchase woodland offered under the Land Purchase Acts, the condition of the forests in the country continued to deteriorate. It is surprising, therefore, that felling controls and replanting were not included in the Forestry Act, 1919 since the productive potential of the forest estate in Ireland and Britain was well known and there was considerable debate concerning forestry at the time. Indeed A. C. Forbes (first head of the Forestry Commission of Saorstát Éireann) was well aware of the condition of the woodlands of the country when he wrote in the report on forestry for the period 1923 to 1925 "Woods still in possession of private owners comprise about 84% of the total woodland area of the country ... in which ... little planting or replanting has been carried out, while the bulk of the valuable timber has been removed from therein from time to time during the last twenty to thirty years ... a large number will undoubtedly disappear in the course of the next twenty five years and measures to prevent this are urgently required" (Neeson 1991).

5.2 The Forestry Act, 1928

The administration of Forestry in Ireland passed to Patrick Hogan, Minister for Agriculture under the Irish Free State Act, 1922 and after much procrastination he introduced on April 25th 1928, a measure "... to make further and better provision for promoting afforestation and for that purpose to amend the Forestry Act, 1919, to restrict the felling of trees, and to make other provisions connected therewith" (Forestry Act, 1928).

This Act which came into force in 1930 meant that it was no longer... "lawful for any person to cut down any tree or uproot any tree over ten years old unless, not less than twenty one days before the commencement of the cutting down or uprooting of such tree, the owner thereof or his predecessor in title or some person on behalf of such owner or predecessor shall have given to the sergeant in charge of the Garda Síochána station nearest to such tree a notice in writing (in this Act referred to as a felling notice) of intention to cut down or uproot such tree" (Section 5(1) Forestry Act, 1928).

In addition the Act specified the manner in which such felling notices should be lodged, the penalties for contravention of the provisions of the Act, the powers of the Minister to issue prohibition orders and the right of an applicant who has been served with a prohibition order to appeal to a referee. There was also a provision for the granting of a general felling licence to take account of fellings carried out "... in the ordinary course of thinning or clearing such wood either with a view to replanting or in accordance with the general practice of good forestry" (Section 12(1) Forestry Act, 1928). In section 7 of the Act the idea of 'exempted trees' was introduced and these included trees in a county borough or urban district, as well as any tree which might be deemed not necessary "... for the ornament or protection of the holding on which it stands..." (Section 7(5) Forestry Act, 1928). It is interesting that where a Minister revoked a prohibition order by subsequently issuing a felling licence, they could, "... If the Minister so thinks fit" (Section 8(2) Forestry Act, 1928), attach a replanting condition. However, in section 12 of the Act, which deals with general felling licences, there was no provision for such a condition unless it may be considered that such a replanting requirement may be covered by the phrase "... in accordance with the general practice of good forestry."

5.3 The Forestry Act, 1946

The legal position in relation to the felling of trees in the State was significantly strengthened by the Forestry Act, 1946, which also repealed the entire Acts of 1919 and 1928. The expression “exempted tree” was retained and as in the 1928 Act its definition remained much the same. Under the provisions of this Act it remained unlawful to uproot any tree over ten years old or to cut down any tree (with the exception of certain fruit growing trees) unless notice in writing had been given in accordance with the Act and a felling licence granted by the Minister. Similarly, the conditions applying to the granting of a general felling licence were retained. However, several new conditions were legislated for in regard to both kinds of felling licences. In the case of a limited felling licence, the Minister with responsibility for forestry could “... if he/she thinks fit...” attach a replanting (reforesting) condition, a condition to protect and fence off such replanting (reforesting), as well as, a condition to “... preserve in accordance with the general practice of good forestry not only newly planted trees, but also any natural regeneration which might arise as a result of the felling and fencing...” (Section 41(1) Forestry Act, 1946). However section 44(2) specifically outlined: “The Minister shall not refuse an application for a limited felling licence in respect of a tree solely for the purpose of preserving amenities unless the district planning authority for the planning district in which such tree is situate has consented to such refusal”.

Furthermore;

“Whenever the Minister refuses an application for a limited felling licence in respect of a tree (in this subsection referred to as a protected tree) solely for the purpose of preserving amenities, the owner of the piece of land... on which the tree is growing may, not later than eighty four days after such refusal, require by notice in writing, the district planning authority for the planning district in which the protected tree is situate to acquire the site of the protected tree...” (Section 44(3) Forestry Act, 1946).

In addition, under this section of the Act the district planning authority could acquire additional land if it was of the opinion that additional land was necessary to preserve the amenities. Any dispute between the owner of the land and the planning authority in relation to the extent or nature of the land or right over the land proposed to be acquired could be decided by the Minister for Local Government and Public Health (now the

Minister for Environment and Local Government). The provisions, relating to the acquisition of land by a sanitary authority, of the Public Health Acts, 1878 to 1931, as amended by section 68 of the Local Government Act, 1925 (no. 5 of 1925) and by section 8 of the Local Authorities (Miscellaneous Provisions) Act, 1936 (no. 55 of 1936), applied to the acquisition of any land or right over land by a district planning authority:

- “The Minister for Local Government and Public Health shall be deemed to have duly made, under section 203 of the Public Health (Ireland) Act, 1878 a provisional order empowering the said district planning authority to put in force, with reference to such last mentioned land or right over land, the powers of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement” (Section 44(4) Forestry Act, 1946).

Under the aegis of the Act of 1946 in the case of a general felling licence, it became compulsory to replant, “...There shall be attached to every general felling licence ...conditions that the licensee shall...plant, in accordance with the general practice of good forestry... trees on the land so cleared...” (Section 49(3) Forestry Act, 1946), to the satisfaction of the Minister, and to preserve for at least ten years in accordance with the general practice of good forestry such planting on cleared land. Furthermore, the Minister could in accordance with the provisions of this Act, attach a condition for the maintenance of all fences in order to prevent injury or destruction of such replanting by animals.

5.4 Roads Act, 1933

Under the Roads Act of 1933 where a tree situated on any land is a potential hazard to road users the road authority may serve a notice on the owner or occupier of the land to remove or carry out such works on the tree as may be necessary to minimise the hazard. A person on whom such a notice is served may appeal to the District Court on the grounds that the tree is not a hazard or that they cannot afford to carry out the works specified in the notice. On hearing, the Court may confirm, modify or annul the notice. It is an offence not to comply with such a notice. Where a person fails to comply with a notice the authority may take such action specified in the notice or such other action as they see fit and recoup the costs from the owner or occupier of the land as a simple contract debt in

any court of competent jurisdiction. Where the road authority considers a tree an immediate hazard to road users they may enter the land on which it is standing and carry out such works, as they think necessary to reduce the hazard. Such trees are excluded from the general requirement of obtaining a felling licence under the Forestry Act, 1946.

5.5 Felling Licences and Collection of Statistics

In association with this legislation controlling felling, it is interesting to note the authority bestowed on the Minister with responsibility for forestry by virtue of the Forestry Act, 1946. Under this Act the Minister may serve a notice on any person being the proprietor of a sawmill or factory in which timber is sawn or converted from the round or rough state or on any person who is an exporter of timber requiring that person to furnish him/her with information in relation to the “...source, supply, volume and variety of timber...” (Section 63(1) Forestry Act, 1946), sawn or exported by them. Replies to such notices must be received within twenty-eight days. Furthermore the Minister is empowered by the Act to “...undertake the collection, preparation, publication and distribution of statistics relating to forestry...” (Section 9(1) Forestry Act, 1946). This implies that the Minister has the right to request any person who owns or handles timber to furnish him/her with the particulars of such timber in relation to source, supply, volume and variety of timber.

6. PLANNING

6.1 Introduction

Although the Public Health (Ireland) Act, 1878 and Local Government (Ireland) Act, 1898 and their amending acts introduced some planning control on development in urban areas, the Town and Regional Planning Acts, 1934 and 1939 were the first acts to introduce the general obligation to acquire planning permission before undertaking development. These acts also introduced planning control nationwide by the establishment of regional development plans.

6.2 The Forestry Acts, 1919 to 1988

Included in the powers and duties bestowed on the Forestry Commission by virtue of the Forestry Act of 1919 was the power to “purchase or take on lease any land suitable for afforestation or required for purposes in connection with afforestation or with the management of any woods or forests, and manage, plant, and otherwise utilise any land acquired, and erect such buildings or execute such works thereon as they think necessary” (Section 3(3) Forestry Act, 1919). Although nothing in the amending Act of 1928 is included to reaffirm this power; neither can anything contained in the Act be construed as diminishing the power.

The Acts of 1919 and 1928 were repealed by the Forestry Act, 1946. This new Act transferred and extended the powers that were exercisable by the Forestry Commission in the preceding acts to the Minister for Lands, who was the Minister with responsibility for forestry at that time. The 1946 Act empowered the Minister to:

- a) “purchase or take on lease or otherwise acquire any land suitable for forestry or required for purposes in connection with afforestation or with the management of any woods or forests or any right (so required) over land;
- b) manage, plant and otherwise utilise any land vested in the Minister by virtue of the Forestry (Re-distribution of Public Services) Order, 1933, (S. R. & O., No. 158 of 1933), or acquired under the Forestry Acts, 1919 and 1928, or under this Act, and erect such buildings or execute such other works thereon as he/she thinks necessary” (Section 9(1) Forestry Act, 1928).

The Acts that succeeded the 1946 Act, the Forestry Acts, 1956 and 1988 did not contain anything that altered the powers of the Minister as defined by the principal Act. However, the Forestry Act, 1988 provided for the establishment of a company, Coillte Teoranta, which would have responsibility for the development of forestry in the State and for the assignment to that company of functions heretofore exercised by the Minister responsible for forestry.

6.3 Town and Regional Planning Acts, 1934 and 1939

The Town and Regional Planning Act, 1934 was enacted to “make provision for the orderly and progressive development of cities, towns, and other areas, whether urban or rural and to preserve and improve the amenities thereof and for other matters connected therewith” (Town and Regional Planning Act, 1934). The Act provided for the establishment, by planning authorities, of planning schemes i.e. schemes “... made in accordance with this Act for the general purpose of securing the orderly and progressive development of a particular area, whether urban or rural, in the best interests of the community and of preserving, improving and extending the amenities of such area” (Section 3 Town and Regional Planning Act, 1934). Planning schemes could be made to provide for many developments, for instance the development of new roads in an area, but they could also be made for the provision of amenities including “the preservation or protection of forests, woods, trees, shrubs, plants and flowers” (Second Schedule, Part III Town and Regional Planning Act, 1934). A planning scheme made under the Act could for the purpose of giving effect to any provision contained therein, contain provisions:

- a) “controlling, restricting, or prohibiting, either generally or in particular circumstances or cases, the exercise or acquisition of rights of way, rights of light, and other easements within the area or any particular part of the area to which the scheme relates; or
- b) controlling and limiting the purposes for and the manner in which any particular land or all land in a particular part of the area to which the scheme relates may be used, including prohibiting the use of such land for any purpose except a specified purpose or class of purposes or in any manner except a specified manner” (Section 40(3) Town and Regional Planning Act, 1934).

This implied that a local authority could declare that a particular area to which a planning scheme related could only be used for residential development and that forestry development would not be accepted therein.

When a provision in a planning scheme restricted or controlled the purpose for which any property could be used, or limited the legal rights exercisable in respect of a property and the value of the property was reduced by such curtailment every person having an interest in the property was entitled to compensation payable by the planning authority. On the other hand, where the value of any property was increased by a planning scheme every person having an interest in the property was liable to pay the planning authority, on application by that authority and in accordance with the provisions of the Act, a sum of ‘betterment’ equal to three-quarters the amount by which the value of their interest in the property was increased. This implies that where a planning authority put a road through land that was held by the Minister for Forestry for the purposes of the Forestry Acts and claimed it created better access to a site, the Minister could be liable to pay that authority betterment for constructing such a road.

Under the 1934 Act the Minister was enabled to make ‘special prohibitions orders’ which could prohibit any activities in a designated development area. All activities including forestry development could be prohibited in such areas. While the prohibition of forestry activities was not specified in the Town and Regional Planning Act of 1934, the 1939 amendment to that Act specifically restricted forestry activities. The usual rights to appeal and compensation applied here.

Perhaps, the most interesting provisions contained in the Town and Regional Planning Act, 1934 are those relating to ‘suspensory provisions’. The main thrust of these were that when a planning scheme was in effect over any land that contained provisions that were “...similar in effect or... inconsistent with any enactment contained in an Act in force in the whole or such part (as the case may be) of such area or any enactment contained in any order, bye-law, or regulation made by a local authority under any such Act and so in force...” (Section 44(1) Town and Regional Planning Act, 1994). The scheme could contain provisions which suspended that law in the area in which it had effect. Effectively this made provision for the suspension of other enactments in a planning area. For example, a local authority could declare that

the provisions prohibiting the felling of trees, unless in accordance with a licence granted under the Forestry Act, 1946, would not apply in a particular area. There is, however, no evidence that these suspensory powers were ever used to the detriment of forestry activities.

6.4 Local Government (Planning and Development) Acts, 1963 to 1999

The Local Government Planning and Development Act, 1963 (the principal Act) repealed the Town and Regional Planning Acts and replaced them with an Act:

- a) to make provision, in the interests of the common good;
- b) to provide for the proper planning and development of cities, towns and other areas, whether urban or rural;
- c) to provide for the preservation and improvement of amenities;
- d) to make certain provisions with respect to acquisition of land;
- e) to repeal the Town and Regional Planning Acts, 1934 and 1939, and certain other enactments; and
- f) to make provision for other matters connected with the matters aforesaid.

6.4.1 Permission to develop

For the purposes of this Act “...development consisting of the use of any land for the purposes of agriculture or forestry (including afforestation), and development consisting of the use for any of those purposes of any building occupied together with land so used...” (Section 4(1) Local Government (Planning and Development) Act, 1963) is exempted development. This implies that forestry development is exempted from the general obligation to obtain planning permission for the development of land or structures thereon that arises under the Act. Furthermore, buildings on forest land that are to be used for purposes connected with forestry should not require planning permission. However, planning permission must be obtained from the local planning authority for development, which is not exempted development. Examples might include pulp mills and saw mills. The application, made in the prescribed form, may be refused or granted with or without conditions. Applicants who do not receive satisfaction on receipt of an application may appeal to the Minister whose decision is final.

The usual penalty, appeal and compensation clauses (as appropriate) are included in the Act.

Where, in a case determined on an appeal, permission to develop any land has been refused, or has been granted subject to conditions, and the owner of the land claims that without permission to develop, it is no longer beneficial to keep the land, they may, within six months after the determination, serve a notice on the planning authority requiring the authority to purchase their interest in the land. The Minister for Environment and Local Government will then instruct the authority on whether they should comply with such a notice. The Minister may grant planning permission or amend or revoke the conditions attached to a planning permission in lieu of instructing the authority to purchase the land.

6.4.2 Designations under the Local Government (Planning and Development) Acts

Where it appears to a planning authority that an area should be made an area of special amenity by reason of:

- a) "its natural beauty; or
- b) its scenic or other amenities (including recreational utility, having regard to open character of the area and its position in relation to centres of population or industrial or commercial development)" (Section 42(1) Local Government (Planning and Development) Act, 1963);

the Authority may make an order prohibiting or restricting development, which is not exempted development in the area. This would include afforestation of areas greater than 70 ha and conversion of broadleaf high forest to coniferous species. As soon as such an order is made the planning authority is obliged to publish notice of the order in a newspaper circulating in the area in which the land is located. The notice must state how objections may be made within one month. The authority must then send the order and any standing objections to the Minister for Environment and Local Government. If no objections are made the Minister may refuse or grant the order, with or without modifications. However, if objections stand the Minister must hold a public inquiry before refusing or confirming the order.

Furthermore under the Act, where it appears to a planning authority that "... it is expedient in the interests of amenity ..." (Section 45(1) Local

Government (Planning and Development) Act, 1963) to preserve any tree, trees, group of trees or woodlands, they may propose an order prohibiting (subject to exemptions for which provision may be made in the order) the cutting down, topping, lopping or wilful destruction of trees except with the consent of the planning authority (Tree Preservation Order). The authority may also apply to any consent granted under the order and to applications therefore, any of the provisions of the Act relating to permission to develop land. This includes the obligation of a planning authority to acquire land in certain cases at the request of the owner where permission to develop has been refused. Perhaps the most notable application under this provision was that in which Wicklow Co Council was granted £400,000 by the Minister for Agriculture to purchase a protected mature oak wood in Coolattin, Co Wicklow in 1994 (Hickie, 1997).

Any person who suffers damage due to the making of a tree preservation order shall on application to the authority in the prescribed manner be entitled to compensation. However, compensation shall not be payable where the order declares that trees not comprised in woodlands (single trees or small copses of) are of special amenity value or special interest, or in respect of replanting conditions. It is perhaps significant that the term 'woodlands' as used in this Act is not defined. Thus, it appears that under the amenity provisions of this Act a planning authority could make an order severely restricting or prohibiting silvicultural operations such as thinning, respacing or clearfelling.

The Local Government (Planning and Development) Act, 1963 was amended many times by succeeding acts. The first of these, the Local Government (Planning and Development) Act, 1976, provided for the establishment of a board, An Bord Pleanála, to whom appeals under the principal (the Act of 1963) Act could be made. By virtue of the 1976 Act, a planning authority may designate an area of special amenity where they find a need for nature conservation in the area. The Local Government (Planning and Development) Act, 1990 provided for the payment of compensation due to loss suffered as a consequence of a tree preservation order being in place. However, where trees, not comprising woodlands, were deemed in the order as being of special amenity value or special interest no compensation shall be payable nor shall it be payable in relation to a replanting [reforesting] condition. No compensation shall be payable in

respect of a preservation condition, not being greater than 20% of the total amount of trees nor shall compensation be payable for a condition requiring phased felling or extraction of trees over a period of up to 20 years.

The Local Government (Planning and Development) Act, 1993 provides that the Minister for Environment and Local Government may by regulation declare that the Local Government (Planning and Development) Acts do not apply to development or certain classes of development carried out by a State authority (Ministers of the Government or the Commissioners of Public Works in Ireland). This implies that the Minister could by regulation declare all development being carried out by the Minister with responsibility for forestry to be exempt from the general obligation to acquire planning permission. It is interesting that even though Coillte Teoranta is not a State authority they do not need permission for the development of roads within their forests whereas private forest owners must be instructed by their local planner on whether or not they would require permission for a similar development.

6.5 Local Government (Planning and Development) Regulations, 1994 to 1996

Subsequent to the European Communities (Environmental Impact Assessment) Regulations, 1989, the Local Government (Planning and Development) Regulations declare that for the purposes of the Local Government (Planning and Development) Acts that "initial afforestation, where the area involved would be greater than 200 ha, or the replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 ha", is no longer exempted development (Article 3 Local Government (Planning and Development) Regulations, 1994). Thus an environmental impact statement must be submitted with applications for planning permission in respect of afforestation of areas greater than 200 ha and replacement of broadleaf high forest with coniferous species where the area involved exceeds 10 ha. In addition, planning authorities can request an environmental impact statement (EIS) where threshold limits are not exceeded, but where a local authority considers that the proposed development may have significant environmental effects. The Local Government (Planning and Development) Regulations, 1996 subsequently lowered the threshold from 200 ha to 70 ha. A corresponding change has been made in the European

Communities (Environmental Impact Assessment) Regulations, 1996 in relation to the threshold at which afforestation requires environmental impact statements. Developments which also require an EIA under the European Communities (Environmental Impact Assessment) Regulations, 1989 include:

- a) the conversion of broadleaf high forest to conifers;
- b) all installations for manufacture of fibre board, particle board or plywood;
- c) all installations for manufacture of pulp, paper or board;
- d) cellulose-processing and production installations, where the production capacity would exceed 10,000 tonnes per annum.

6.6 Environmental Protection Agency Act, 1992

The Environmental Protection Agency (EPA), as provided for in the Environmental Protection Agency Act, 1992, was established in July 1993. The Agency may, on its own or when requested by any Government Minister, inform, advise or make recommendations on environmental protection for any area. The Agency may advise local authorities on the environmental content of development plans. A system of integrated pollution control (IPC) licensing has also been introduced by the Agency on a phased basis. Where a development requires an IPC licence, the applicant must, among other things, submit full details of planning permissions and applications for the development to the EPA. However, the planning and IPC licensing procedures are independent of each other. Where activities need an integrated pollution control (IPC) licence from the Environmental Protection Agency, the Agency assesses the parts of the EIS concerning environmental emissions. Planning authorities and An Bord Pleanála on appeal, continue to examine the land-use planning issues, but may not deal with aspects covered by the IPC licensing process. The following are activities for which an Integrated Pollution Control licence is necessary under the provisions of the EPA Act:

- a) "the manufacturing of paper pulp, paper or board (including fibre-board, particle board and plywood) in installations with a production capacity equal to or exceeding 25,000 tonnes of product per year;
- b) the manufacture of bleached pulp;
- c) the treatment or protection of wood, involving the use of preservatives, with a capacity exceeding 10 tonnes per day".

6.7 Planning and Development Act, 2000

Although the Planning and Development Act 2000 has been passed by the Oireachtas and repeals almost all provisions of the Local Government (Planning and Development) Acts, 1963 to 1999 many of the provisions included in it have not yet come into force (Hession pers. communication, 2000).

6.7.1 Permission to develop

For the purposes of the Planning and Development Act, 2000 “development consisting of the thinning, felling and replanting [reforesting] of trees, forests and woodlands, the construction, maintenance and improvement of roads serving forests and woodlands and works ancillary to that development ... (bridges and culverts)... not including the replacement of broadleaf high forests by conifer species,” are classified as exempted development (Section 4(1) Planning and Development Act, 2000). Thus, no planning permission is required by either public or private forest owners in respect of any of these developments. Afforestation and the development of buildings for the purposes of forestry are no longer exempted development. However the threshold for which permission shall be required for new forestry developments has not yet been decided (Kelly pers. communication, 2000). Currently the Forest Service voluntarily informs planning authorities of all proposed grant-aided forestry developments.

On application in the prescribed form to a planning authority for planning permission the authority may refuse permission or grant permission subject to certain conditions. The usual provisions in relation to penalties, appeals and compensations are contained (as appropriate) in the Act.

The Act also contains a proviso requiring that planning permission for all proposed developments, identified by the European Communities (Environmental Impact Assessment) Regulations and amending regulations, or as specified by the Minister for the Environment and Local Government, must be accompanied by an EIS. At the request of an applicant, the Board may, having afforded the planning authority concerned an opportunity to furnish observations on the request and where the Board is satisfied that exceptional circumstances so warrant, grant, in respect of a proposed development, an exemption

for the requirement to submit an EIS with an application for planning permission.

The Act also provides that the Minister for the Environment and Local Government may by regulation provide that the provisions of this Act shall not apply to any specified class of development being carried out by or on behalf of a State authority where a State authority is defined in the Act as being either a Minister of the Government or the Commissioners of Public Works in Ireland. Hence, the Minister for the Environment and Local Government could declare that if the Minister with responsibility for forestry wished to carry out any afforestation, regardless of size, it would not require planning permission.

6.7.2 Designations under the Planning and Development Act, 2000

The Planning and Development Act, 2000 contains provisions for the establishment of Areas of Special Amenity. These may be promoted by a planning authority or by the Minister for Local Government and Environment. Orders designating such areas should specify the degree of prevention or limitation of development in the area. Contrary to provisions of previous Acts (Local Government (Planning and Development) Acts), there is no proviso that exempted development will not be restricted in Areas of Special Amenity and theoretically, thinning, felling, reforestation and construction of forest roads may now be restricted in affected areas. Notices of proposed Areas of Special Amenity must be published in at least one newspaper circulating in the locality of the area stating that objections may be made to planning authorities. Where objections are made, the Board must hold an oral hearing and then confirm the order, with or without modifications from the proposal or refuse to confirm the order.

Another type of designation that may be made by a planning authority is that of a Landscape Conservation Area, in order to preserve the landscape. The Minister for Environment and Local Government may prescribe that exempted development as defined by this Act or by regulations made under the Act shall not be exempted development for the purposes of these areas. Before making an order of this variety the planning authority shall publish a notice in at least one newspaper circulating in the locality stating that observations may be submitted to them within six weeks. After this period and on consideration

of the observations, the planning authority may make the order, with or without modifications or decline to make the order. Before making such orders the planning authority are obliged by the Act to consult with any state authority where it considers that an order relates to their functions. This implies that if forestry development is restricted by such an order the Minister with responsibility for forestry should be consulted. However, the Act does not state what power the Minister with responsibility for forestry has if he/she is opposed to the making of such an order.

Where it appears to a planning authority that it is expedient in the interests of amenity or the environment, to make provision for the preservation of any tree, group of trees or woodlands, they may make an order preserving the trees (Tree Preservation Order). Such an order may prohibit (subject to any conditions or exemptions) the cutting down, lopping or wilful destruction of the trees and require the owner or occupier of the land affected to enter into an agreement to ensure the proper management of the trees, subject to the planning authority providing assistance, including financial assistance, towards the management. Where a planning authority proposes to make, amend or revoke a tree preservation order (TPO) they must first serve a notice on the owner and occupier of the land and publish a notice of the proposed TPO in at least one newspaper circulating in the functional area of the authority. Such notices should indicate that objections should be made within six weeks. Although the planning authority must consider any objections made, the right to appeal their decision on a TPO no longer exists. Even though financial assistance may be obtained from a planning authority for the management of protected trees, no compensation is awardable in respect of diminution of interest under the new Act.

7. MISCELLANEOUS

Some other legislation that impinges on different aspects of forestry but that has not been addressed in the foregoing chapters is described below.

7.1 Local Government (Water Pollution) Acts, 1977 and 1990

Under the Local Government (Water Pollution) Acts, a person may not intentionally permit any polluting matter to enter waters. "Waters" are defined in the Act as including:

- a) "any (or any part of any) river, stream, lake, canal, reservoir, aquifer, pond, watercourse or other inland waters, whether natural or artificial;
- b) any tidal waters; and
- c) where the context permits, any beach, river bank and salt marsh or other area which is contiguous to anything mentioned in paragraph (a) or (b), and the channel or bed of anything mentioned in paragraph (a) which is for the time being dry, but does not include a sewer" (Section 1 Local Government (Water Pollution) Act, 1977).

"Polluting matter" is defined in the Act of 1977 as being "any poisonous or noxious matter, and any substance, the entry or discharge of which, into any waters is liable to render those or any other waters poisonous or injurious to fish, spawning ground or the food of any fish, or to injure fish in their value as human food, or to impair the usefulness of the bed and soil of any waters as spawning grounds or their capacity to produce the food of fish or to render such waters harmful or detrimental to public health or to domestic, commercial, industrial, agricultural or recreational uses" (Section 1, Local Government (Water Pollution) Act, 1977). This implies that polluting matter could include silt, organic matter, fertilisers, herbicides, pesticides and oil. Prosecutions for offences of this nature may be taken by anyone. As well as incurring the usual penalties for committing an offence of this nature in the past offenders have also had to incur the costs of restocking rivers subsequent to being charged with polluting them. Furthermore, under the Act of 1977 where a person accidentally causes polluting matter to enter waters and does not immediately report the accident to their local authority they may be guilty of an offence.

7.2 Safety, Health and Welfare at Work Act, 1989

The Safety, Health and Welfare at Work Act, 1989, was enacted on the 19th of April 1989 to make further provisions for securing the health and safety of persons at work and for protecting others against risks to safety and health in connection with the activities of persons at work. It also provides for the establishment of a national authority for occupational safety and health (Health and Safety Authority).

Under Section 6 of the Act, it is the duty of all employers to ensure the safety health and welfare of their employees at work in so far as is reasonably possible. This duty in particular includes:

- the design, provision and maintenance of the workplace in a manner that is safe and without risk to health;
- the design, provision and maintenance of safe means of access to and from the workplace;
- the design, provision and maintenance of the plant and the machinery in it, in a manner that is safe and without risk to health;
- the provision of systems of work that are planned and maintained so as to be safe and without risk to health;
- the provision of such information, instruction, training and supervision as is necessary to ensure the safety and health of the employees at work;
- the provision and maintenance of such protective clothing and equipment as may be necessary to ensure the safety and health of the employees at work;
- the preparation and revision of plans to be followed in the eventuality of an emergency; and
- the obtaining, where necessary, of the services of a competent person for the purpose of ensuring the health and safety of the employees at work.

Furthermore, every employer must prepare or cause to be prepared a safety statement, specifying the manner in which the safety, health and welfare of their employees shall be secured while at work. Areas that should be addressed by such statements include, the arrangements made and the resources provided to ensure the health, safety and welfare of the employees, the co-operation required from the employees to ensure their health, safety and welfare, and details of the personnel who have been assigned tasks by the statement.

An inspector from the Health and Safety Authority may revise these statements. Self-employed persons (for example private contractors) must also prepare a safety statement. All employers must bring the safety statement to the attention of their employees and other persons at the place of work.

The Act also imposes a duty on every employer and self-employed person to carry out their undertakings in a manner that does not put the health and safety of the public (persons other than their employees) at risk. It is also their duty to provide the public with information about such aspects of the way they conduct their undertakings as might affect their health and safety, in the prescribed manner in certain prescribed circumstances. This would imply that foresters should alert the public towards such practices as harvesting operations and the use of chemicals in the forest.

Furthermore, where someone has control over a non-domestic premises, means of access to the premises, or articles or substances present on the premises, they are obliged under the Safety, Health and Welfare at Work Act to ensure, in so far as possible, that nothing in their control is a risk to the health and safety of other persons (including self-employed persons) working on the premises who are not under their employment. This obligation would extend to private contractors working in a forest.

On the other hand, the Act imposes a duty on employees towards their employers to:

- take reasonable care of themselves and their work-mates;
- co-operate with their employers;
- make proper use of any protective appliances, clothing and equipment supplied; and
- report without delay, any defects noticed in plant, equipment, place of work or system of work that might endanger the health and safety of others.

Where an Inspector from the Health and Safety Authority is of the opinion that activities are being carried out in such a manner that they pose a risk to health and safety, they may instruct a person in charge of the activities to submit to them an improvement plan, specifying the remedial actions they propose to take to minimise the risk, within a specified time. Where a person is contravening any of the relevant statutory provisions or has failed to comply with a direction associated with an improvement plan an Inspector may serve a

written notice on them instructing them to rectify the alleged contravention within a specified period. Furthermore, if an Inspector suspects that activities being carried out are a serious threat to the health and safety of others he/she may serve a notice (prohibition notice) on the person in charge, identifying the activity and instructing the person to cease the activities until the problem is rectified. This implies that if an Inspector is of the opinion that a forest operation such as a thinning operation is not being carried out in a safe manner he/she could prohibit the forest manager from carrying out that activity until the Inspector is satisfied that the problem impinging on the safety of the operation is rectified. Furthermore, if the Inspector considers the threat to safety so serious, he/she may apply to the District Court for an order restricting or prohibiting access to the place of work until such a time as the threat is eliminated.

It would be in the best interest of every forest owner to prepare a safety statement and to ensure that individuals working in their forests have been trained in the job which they are performing. Thus persons using chainsaws should be the holders of National Proficiency Tests Council Chain Saw Certificates. In this manner, in the eventuality of an accident occurring in the forest, the owner can show that he/she was conscious of his or her obligations under the Safety, Health and Welfare at Work Act.

Furthermore, forest owners should ensure that any contractors that they employ are insured against accidents in the forest and that Pay Related Social Insurance is paid for any persons directly under their employment. Forest owners should also carry Public Liability Insurance to cover themselves against any claims that may arise due to accidents involving trespassers, recreational users or visitors to the forest.

7.3 Occupiers Liability Act, 1995

The following provisions were enacted on the 17th of June 1995 to amend the law relating to the liability of occupiers of premises (including land) in respect of dangers existing on such premises for injury or damage to persons or property while on such premises and to provide for connected matters.

For the purposes of this Act;

- "Damage" includes loss of property and injury to an animal;

- “Danger”, in relation to any premises, means danger due to the state of the premises;
- “Entrant”, in relation to a danger existing on premises, means a person who enters on the premises and is not the sole occupier;
- “Injury” includes loss of life, any disease and any impairment of physical or mental condition;
- “Occupier”, in relation to any premises, means a person exercising such control over the state of the premises that it is reasonable to impose on that person a duty towards an entrant in respect of a particular danger on the premises. Where there is more than one occupier, the extent of the duty of each occupier towards the entrant depends on the degree of control each of them has over the state of the premises and in particular the danger on it and whether, as respects of each of them, the entrant concerned is a visitor, a recreational user or a trespasser;
- “Premises” includes land, water and any fixed and moveable structures thereon and also includes vessels, vehicles and other means of transport;
- “Recreational user” means an entrant who is present on the premises without charge (other than a parking fee) with or without the occupiers consent, but not including an entrant who is present and is-
 - a) a member of the occupiers family who normally resides on the premises;
 - b) an entrant who is there on the invitation of the occupier or their family;
 - c) an entrant who is present with the permission of the occupier or their family for social reasons connected with the person who invited them.
- “Trespasser” means an entrant other than a recreational user or visitor;
- “Visitor” means –
 - a) an entrant, other than a recreational user, who is present on the premises at the invitation, or with the permission of the occupier or any other entrant specified in (a), (b) or (c), above;
 - b) an entrant other than a recreation user, who is present on the premises by virtue of an expressed or implied term in a contract;
 - c) an entrant as of right; or
 - d) an entrant whose presence on the premises has become unlawful after their entry and who is taking reasonable steps to leave.

Occupiers are obliged by this Act to extend “... the duty of common care...” (Section 3(1) Occupiers Liability Act, 1995) to visitors on their premises. In other words, occupiers must take all reasonable steps to ensure that a visitor to their premises does not suffer injury or damage by reason of any danger existing on the premises.

A forest owner may by express agreement or notice restrict, modify or exclude this duty towards visitors. This implies that occupiers of forest land should inform the public of any operations such as harvesting or the use of chemicals that are occurring in the forest that might jeopardise the safety of a visitor to the forest such as harvesting or spraying of chemicals. Any such notices must be readily visible to visitors and should be placed at the normal entrances to the property. Such agreements or notices do not allow an occupier to injure or damage the property of a visitor intentionally or to act with reckless regard for the visitor. In the eventuality of damage or injury being caused to a visitor or their property, by a danger of which the visitor has been warned, the warning is not to be treated as absolving the occupier from liability unless, in all circumstances, it was sufficient to enable the visitor to avoid the injury or damage that was caused. This latter may only be decided by a court of law.

In the case of recreational users or trespassers on a premises, under the Act the occupier of the premises owes them a duty, not to injure the person or damage their property intentionally, and not to act with “reckless disregard” for the person and the property of the person (Section 4(1) Occupiers Liability Act, 1995). An example of reckless disregard might be where “... the danger was one against which, in all circumstances, the occupier might reasonably be expected to provide protection for the person and the property of the person...” (Section 4(2) Occupiers Liability Act, 1995). An example of such a danger might be something such as an unguarded silt trap. However, where a person comes on to a forest property for the purpose of committing an offence, the occupier may not be liable for a breach of the duty imposed on them under this Act unless a court determines otherwise.

Furthermore, occupiers may not be liable, under the Act, for injury or damage suffered by entrants by reason of a danger existing on the forest property due to the negligence of an independent contractor employed by the occupier if they have

taken all reasonable care in the circumstances (including checking on the competency of the contractors). However, this provision does not apply where the occupier has or should have knowledge of the fact that the work was not properly done.

7.4 Roads Act, 1993

The Roads Act, 1993 only relates to public roads and therefore the provisions contained in the Act do not apply to private forest roads.

Under the Roads Act, 1993 a road authority, that is the National Road Authority or a local authority, is empowered to make an order designating any road, over which a public right of way exists, a public road. This implies that if a public right of way exists on a private forest road, a road authority could designate the road as a public road.

Where a road authority is of the opinion that a tree, shrub or hedge is a hazard to users of a public road, they may serve a notice on the owner or occupier of the land on which the tree, shrub or hedge is standing instructing them to fell or lop the tree, shrub or hedge. If the authority considers the situation as being an immediate danger to users of the public road or where an occupier fails to comply with such a notice they may enter the land and carry out whatever works they deem necessary to prevent the danger. It is not necessary to obtain a felling licence to fell a tree when complying with such a notice.

Road Authorities are empowered under the Roads Act to drain any land for the purposes of keeping water off a public road. They may also use any land for the temporary storage of any material required for the maintenance or construction of a public road.

Where water, soil or other material is coming from any land onto a public road, a Road Authority may serve a notice on the occupier of the land instructing them to carry out mitigatory works. Furthermore, it is an offence under the Roads Act to scour, deepen, widen or fill in an existing drain, or excavate a new drain, or interfere with a bridge, culvert, retaining wall or other structure providing support to a public road within 15 m from a public road without prior consent from the appropriate Road Authority.

7.5 Legislation regulating haulage

Under the conditions of the Road Transport Acts 1932 to 1999, every person who carries or hauls goods as a business must hold a road freight transport licence. Thus, anyone who wishes to haul timber within the state must be the holder of a road freight transport licence. There are two types of haulage licences national and international. These are both issued by the Road Haulage Division of the Department of Public Enterprise. If a haulier only intends to carry on a haulage business within the State, he/she requires a national road freight transport licence. However, if a haulier intends to carry on business within and between member states of the European Union (this includes Northern Ireland) he/she will need an international road freight licence. It is a prerequisite for both types of licence that businesses require a transport manager (Certificate of Professional Competence (CPC) holder). A national CPC will suffice for a national freight transport licence but for an international licence, the transport manager must hold an international CPC. To satisfy the requirements for obtaining a carrier’s licence the applicant must:

- a) be of good repute;
- b) satisfy professional competence (hold a CPC);
- c) be of appropriate financial standing (must have, at least, €9,000 for the first vehicle with a maximum authorised weight in excess of 3.5 tonnes and €5,000 for each additional vehicle to be authorised for use under the licence).

Licences are issued with a transport disc for each vehicle authorised for use under the licence. Transport discs must always be clearly visible on the vehicle and may only be used for the vehicle for which they are issued. International licences are issued with a certified copy of Community Authorisation for each vehicle. Copies of Community Authorisation and licences should be carried for inspection by the haulier at all times. Failure to carry the required documents could result in a fine, or impounding of the vehicle or both.

7.5.1 European Community (Vehicle Testing) Regulations, 1991.

Under these regulations all heavy goods vehicles must undergo the Department of Environment (DOE) test every year to ensure that they are road worthy. It is illegal to use vehicles which have not passed the DOE test in timber haulage operations.

7.5.2 Road Traffic (Construction, Equipment and use of Vehicles) Regulations, 1963 to 2000

These regulations specify the maximum weights and dimensions for heavy goods vehicles. They also specify the measure by which a load of timber may overhang a vehicle (the distance that the timber may exceed the vehicle in length).

Currently there are no restrictions on the height of a load of timber, which is interesting from the point of safety of road users.

7.6 Non-binding policy and guidelines

Under the Forestry Act, 1946 the Minister with responsibility for forestry is empowered to grant aid forestry developments by private individuals (including local authorities) "...upon such terms and subject to such conditions as he/she thinks fit". Currently the Forest Service provides grant aid to many forestry developments including afforestation, forest road developments, urban woodland schemes and woodland improvement schemes. Grant aid is given subject to the adherence of the applicant to a suite of five environmental guidelines and the Code of Best Forest Practice. None of these are legally binding. A revamp in Irish forest policy has also occurred in the form of our first National Standard for Sustainable Forest Management. This standard aspires towards the sustainable management of Irish forests and is supported, from a practical point of view, by the guidelines and the Code of Best Forest Practice.

7.6.1 Irish National Forest Standard

The principle of sustainable forest management (SFM) was adopted by Ireland following the Ministerial Conference on the Protection of Forests in Europe in Helsinki in 1993. A set of agreed criteria in support of SFM was adopted at the follow up to the Ministerial Conference in Lisbon in 1998. Their adoption formally recognised the need to enhance the ecological, productive and social functions of forests and to rectify trends away from the maximisation of these values. The Irish National Forest Standard outlines criteria and indicators relating to the implementation of SFM on a national level. The standard also identifies qualitative and quantitative measures by which progress towards SFM may be monitored under Irish forest conditions.

7.6.2 Code of Best Forest Practice – Ireland

The Irish Code of Best Forest Practice is the first of its kind to be produced in Europe. The aim of the code is to complement, on an operational level, that of Growing for the Future – A Strategic Plan for the Development of the Forestry Sector in Ireland. This aim is "To develop forestry to a scale and in a manner which maximises its contribution to national economic and social well-being on a sustainable basis and which is compatible with the protection of the environment". The code describes all forest operations and the appropriate manner in which they should be carried out to ensure the implementation of SFM.

7.6.3 Forestry and Environment Guidelines

The objectives of this suite of five environmental guidelines are to improve the environmental compliance of forest operations. The suite contains guidelines on forestry and water quality, archaeology, landscape, biodiversity and harvesting. These guidelines identify how forest operations can have adverse effects on the environment and how such effects can be avoided and mitigated. The guidelines are the mechanisms by which the Forest Service ensures that the environmental aspects of SFM are being implemented. Adherence to the guidelines is a condition of grant aid and felling licence approval.

7.6.4 Safety in Forestry Operations

The National Health and Safety Authority have also produced a set of guidelines in relation to safety in forestry operations. The guidelines were produced to help both employers and employees to meet their general duties under the Safety, Health and Welfare at Work Act, 1989. The guidelines cover many aspects of forestry from chainsaw operation to use of pesticides. These guidelines are not legally binding.

8. DISCUSSION

8.1 Introduction

At the foundation of the State, the area of land under Forestry in Ireland was quite small and the laws impinging upon forest land and forestry practice were few in number. However, over the past eighty years as the extent of forestry has grown, the laws regulating the practice of forestry have also become more complex and numerous. This trend has accelerated with the introduction of European legislation particularly in relation to flora, fauna and the environment. In the course of the preparation of this report over fifty pieces of legislation (Appendix 1) were consulted and many people involved in forestry were consulted in relation to forestry and the law in Ireland (Appendix 2). It is clear that the topic has become much more complex than heretofore, that there may be several areas of overlap and confusion and that there may be several areas of activity within forestry in general where new legal provisions should be considered. In this section of the report, an attempt is made to highlight some changes which have occurred and to focus attention where new provisions should be considered.

8.2 Acquisition of land

Although the Minister is apparently still empowered by the Forestry Act, 1946 to acquire land by agreement or compulsorily for the purposes of forestry, the legal provisions that were put in place by the Forestry Acts of 1946 and 1956 to facilitate the compulsory purchase of land have since been repealed by the Wildlife (Amendment) Act, 2000. Included in these repeals were the provisions for the creation of rights of way to access stands by both the Minister and other persons and those relating to the extinguishment of easements on land held by the Minister. It is interesting that provisions relating to compulsory purchase of land included in the United Kingdoms Forestry Act, 1967, as amended by the Forestry Act 1981, which are very similar to those included in our Forestry Acts of 1946, still remain in force today.

Today, compulsory purchase of land for forestry development seems to be somewhat dated. Over the last few decades the various Ministers with responsibility for forestry have disposed of all the land that was held by them for the purposes of the

Forestry Acts (Donovan pers. communication, 2001). Thus, it is unlikely that a Minister with responsibility for forestry would want to enforce their powers of compulsory purchase again. Currently, most afforestation is being carried out by Coillte Teoranta and by private management companies on behalf of private individuals. Such arrangements do not require any legal framework for acquisition of land as no change in land ownership occurs. Furthermore, although national planting targets outlined in current forest policy (Department of Agriculture, Food and Forestry 1996) are quite ambitious, an accelerated level of private planting is very likely due to the recent change in Rural Environmental Protection Scheme (REPS) policy. Until last year, farmers were not permitted to plant land that was to be included in the land designated for their REPS schemes. This discouraged farm forestry. Now farmers who are participating in REPS may also receive forestry grants and premiums (although they may not receive both types of payments in respect of the same land).

Forest owners will always need a way of getting timber from the forest to a road, waterway, railway or other transportation route. This was recognised by the Minister for Forestry in 1946 by the addition of provisions for creating rights of way over land in the Forestry Act of that year. In some cases, right of way is not an issue as most forests either border a public road or have land with road frontage, which is in the same ownership as the forest. However, where this is not the case a right of way must be sought to facilitate access to stands of timber. Thus, it may still be necessary to have provisions with statutory backing (including provisions relating to compensation as haulage can cause damage to roads or land not designed for such purposes) to facilitate the creation of rights of way for the extraction of timber from forest to roadside. In this manner where a situation arises concerning the creation of a right of way over land for timber extraction there is a clear legal procedure that may be implemented. Perhaps similar provisions to those included in the Wildlife (Amendment) Act, 2000 could be amended and adopted for the purpose of creation of right of ways for forestry. Furthermore, it is interesting that provisions included in the United Kingdoms Forestry Act of 1967 to facilitate the haulage of timber from forest to road, waterway or railways are still in force today.

Also repealed by the Wildlife (Amendment) Act, 2000 were those provisions contained in the

Forestry Act, 1946 in relation to the extinguishment of easements on land held by the Minister. As the Minister no longer holds any land for the purposes of the Forestry Acts there is no longer a need for a legal framework to facilitate the extinguishment of easements on such land.

Various Ministers for State or public authorities (County Council, Urban Council, National Road Authority etc.) are empowered under different enactments to acquire land compulsorily, if the need so arises, for the performance of their functions under those enactments. This would include the compulsory acquisition of land by Dúchas for the provision of facilities for visitors to national monuments and the compulsory acquisition of land by the National Roads Authority for the construction of motorways under the Roads Act, 1993. Where the case may arise that a public authority wishes to purchase forest land belonging to either Coillte Teoranta or a private land owner and the land owner does not want to sell, more often or not, there is little the land owner can do to prevent the acquisition. Under the National Monuments Acts, Dúchas may compulsorily acquire any land in the vicinity of a national monument, which they intend to use for the provision of facilities in connection with such a monument. Although the landowner may object to the Minister for Arts, Culture, Gaeltacht and the Islands against the acquisition, it is the Minister and not the landowner that decides whether or not the land is acquired by Dúchas. Although landowners are entitled to compensation, which may be fixed on default of agreement by arbitration, a monetary value can not always be placed on land. Furthermore, where compensation is fixed by arbitration, the arbitrator's decision is final. Similarly, under the Roads Act, 1993, where a road authority (National Road Authority or a public authority) requires land in connection with its functions under the Roads Act and are unable to acquire that land by expeditious agreement it may apply to the Minister for the Environment and Local Government for a compulsory purchase order. Although the Act contains provisions for the administration of compensation to persons who suffer due to the making of compulsory purchase orders it does not include any provisions to facilitate objections from land owners in relation to compulsory acquisition. Thus, Dúchas and the National Roads Authority can compulsorily acquire forest land and pay fixed compensation to forest owners.

Similarly, under the Wildlife (Amendment) Act,

2000 the Minister with responsibility for wildlife is empowered to make orders creating rights of way over any land for the purposes of the Wildlife Acts. However, before making an order the Minister must first appoint an arbitrator to hear the case. This arbitrator must be a barrister or solicitor of at least seven years standing. In the eventuality of any person objecting to the proposed right of way, the arbitrator will first hold a public hearing before confirming or refusing the proposed order. However, where an arbitrator makes the order, the landowner will be responsible under the Occupiers Liability Act, 1995 for every person who uses the right of way. In many cases the compensation payable for such a right of way may be minuscule in comparison to the potential liability of the owner in the event of an accident to a member of the public using the right of way. In this situation a landowner might prefer if the land was acquired fully in order to provide access.

Where a national monument, NHA or other item of public interest exists on forested land, but no right of way exists over the land providing access to the site, the landowner must permit access to the land by any persons authorised under current legislation to have access to the site. For example, Dúchas employees are authorised persons for the purposes of the National Monuments Acts. Whether the general public or anybody other than persons authorised by the law have access to the land is completely at the discretion of the landowner (Shorthall, pers. communication, 2001). In the case of forested land being included in a National Park, the situation is totally different. Nowadays, the National Parks and Wildlife Service do not have any powers of compulsory acquisition. Any land which they do acquire for National Parks must be acquired by agreement. Where forested land is acquired for inclusion in a National Park, whether from Coillte Teoranta or from a private landowner, such agreements often include provision for the landowner to retain timber rights to the land (at least rights to the current rotation). However, such agreements may not contain provisions that permit the former landowner to restrict public access to the forest, as this would be inconsistent with the concept of National Parks (Cunnigham, pers. communication, 2001).

8.2.1 The present situation

The provisions that existed to facilitate the compulsory acquisition of land by the Minister

with responsibility for forestry have been repealed by the Wildlife (Amendment) Act, 2000 and are now redundant. As it is hard to envisage a situation where the Minister with responsibility for forestry would have to enforce his powers of compulsory purchase in the future, a new Forestry Act could omit provisions relating to compulsory purchase. The Wildlife (Amendment) Act, 2000 has also repealed the provisions of the Forestry Act, 1946 that facilitated the extinguishment of easements on land held by the Minister with responsibility for forestry. As the Minister with responsibility for forestry no longer holds any land these repeals seem to be appropriate and a new Forestry Act should reflect this. The provisions included in the Forestry Act, 1946 to facilitate the creation of rights of way to provide access to forest stands have also been repealed. This seems to be undesirable and a new Forestry Act could include provisions for the creation of rights of way to access stands of timber.

8.3 Forest research, development, advisory, training and education

It is clear that under existing legislation at least three government departments and one State company are empowered to commission, initiate and carry out forest research. One of these, the Forest Service, Department of the Marine and Natural Resources established the National Council for Forest Research and Development (COFORD) in 1993 under the STRIDE Forestry Sub-Programme, a European Union initiative. The STRIDE sub-programme provided initial funding for the co-ordination of forest research in Ireland and the development of a research programme for the forest industry. Subsequently the mission of COFORD was set out as follows:

- “Establish and strengthen links between research and industry. Determine forest research needs to maintain international competitiveness, provide sustainable employment, encourage innovation and maintain environmental harmony. Evaluate research progress and transfer technology to ensure maximum benefit” (COFORD 1994).

Thus, at present COFORD is attached to the Department of the Marine and Natural Resources and the Minister with responsibility for forestry is empowered under the Forestry Act, 1946 to commission, initiate or carry out forest research and to publish the results. This mandate is

implemented through COFORD and its research programme (COFORD 1994).

Nothing in the other Acts appears to interfere with this legal right of the Forest Service, Department of Marine and Natural Resources to carry out research and development work related to forestry and ancillary activities. Similarly, a range of other agencies including Forfás, Teagasc, Coillte and the EPA have a legal right to carry out forestry related research. Furthermore, nothing in any of the Acts discussed in this chapter appears to prohibit the Forest Service from becoming actively engaged in the promotion of forestry, the promotion of forest education, forestry advisory activities, or the publication of forestry related statistics. The involvement of the Minister and the Forest Service in these activities is clearly mandated in the Forestry Act, 1946 “...undertake the collection, preparation, publication and distribution of statistics relating to forestry and promote and develop instruction and training in forestry...” (Section 9(1) Forestry Act, 1946).

In addition to carrying out research, some agencies also promote education and training. Coillte Teoranta organises training courses to promote proper and safe use of harvesting equipment such as forwarders and chainsaws and they also provide courses on safe use of chemicals in the forest. Attendance at these courses is not confined to Coillte personnel but may also include anyone who intends to work in the forest industry. Furthermore, the National Health and Safety Authority have published a set of guidelines promoting safety in forestry operations.

In addition to its research and advisory functions, the Environmental Protection Agency (EPA) is responsible for implementing Council Directive 90/220/EEC which regulates research involving Genetically Modified Organisms within the Community. The submission of a risk assessment to the EPA is the only prerequisite of carrying out research involving genetically modified trees in a controlled environment such as a glasshouse or plastic tunnel. However, to carry out field trials involving genetically modified trees requires a licence from the EPA. As of yet no research has been carried out on genetically modified trees in this country (McLoughlin, pers. communication, 2001). Genetically modified organisms are defined as being any entity, either cellular or non-cellular, capable of replication or of transferring genetic material in which the genetic material has been altered in a way that does not occur naturally by mating and/or by natural recombination

(Article 3(1) Genetically Modified Organisms Regulations, 1994). Research involving vegetative propagation methods such as cloning or research involving cross-pollination between species does not require a licence from the EPA.

8.3.1 *The present situation*

The involvement of the Minister with responsibility for forestry and subsequently the Forest Service, Department of the Marine and Natural Resources in relation to forest research, development, advisory, training and education is clearly mandated by the Forestry Act, 1946. Although many other Government Agencies are empowered under different Acts of the Oireachtas to carry out forest research, development, advisory, training and education, nothing contained in any of these Acts seems to diminish the powers of the Minister with responsibility for forestry in relation to these activities. The current provisions of the Forestry Act, 1946 which relate to such activities therefore seem quite adequate to meet current and future needs, although a statutory basis for COFORD similar to that of the EPA and the Marine Institute would be advantageous.

8.4 Flora and fauna

8.4.1 *Fauna*

In reality, the wildlife legislation in position until the passing of the Wildlife (Amendment) Act, 2000 did not significantly impact on forestry in this country. However, the stronger statutory backing of NHAs that came into force with the Wildlife (Amendment) Act, 2001 and the increasing area of forest land that is being designated into NHAs could have substantial implications for forest management in the country. Management for wood production may continue in some areas designated for conservation (NHAs, Nature Reserves), but this may be subject to constraints or special practices. Species selection may be restricted to native or otherwise approved species, and operations such as harvesting and chemical usage may be restricted or prohibited (Forest Service 2000).

On establishment of an NHA, the Minister with responsibility for wildlife may list a number of “works” that may be prohibited in the area. This list may include any activity such as drainage, soil

cultivation, felling, fertiliser usage or use of pesticides. The Wildlife (Amendment) Act, 2000 also specifies that works, which are classified as exempted development under the Planning and Development Act may also be restricted within these areas. That is to say, works or developments which do not require either planning permission or environmental impact assessment, such as reforestation, thinning of stands and forest road construction and maintenance. According to the new legislation, it is an offence to carry out any works that are prohibited in an NHA and persons responsible for carrying out prohibited works can also be instructed to restore land to its former status at their own cost. Where thinning or felling is prohibited in an NHA this may have implications on the granting of general felling licences. Although the Forest Service makes recommendations on felling in NHAs to applicants when granting felling licences, where a stand situated in an NHA is thinned under the authority of a general felling licence and thinning is prohibited by the Minister with responsibility for wildlife in that area, the person responsible for thinning the stand is committing an offence under the Wildlife (Amendment) Act, 2000. In this instance, it is also possible that the Forest Service could be an accessory in the offence. However, where restrictions are placed on the use of normal cultural practices associated with the working of land within an NHA, landowners may be entitled to compensation because of the restrictions imposed.

Although current forestry legislation includes provisions to facilitate the prevention of damage to forest crops by wild animals, these are no longer adequate to serve the purpose for which they were intended. Firstly, forestry legislation does not incorporate any provisions in relation to control of damage caused by wild birds. Wild birds such as starlings can be a major problem in many young forest plantations. Furthermore, deer and red squirrel, which were classified as vermin under the Forestry Act, 1946 are now protected species under the Wildlife Acts. It is an offence under the Wildlife Act 1976 to intentionally kill, hunt or injure a protected animal unless under and in accordance with regulations made by the Minister with responsibility for wildlife. Currently in accordance with the provisions laid down in the Wildlife Acts, where a protected wild bird or animal is causing damage to a forest crop the owner or occupier of the infested land may apply to the Minister with responsibility for wildlife for a permission to trap or kill the birds or animals.

These provisions are not reflected in any way in the Forestry Acts. Although the principal Act predated the Wildlife Act of 1976, the Forestry Act, 1988, could have incorporated provisions to facilitate the prevention of damage by protected animals and birds.

Under the Forestry Act, 1946 where hares, which could be protected under the Game Preservation Act, 1930, were causing damage to trees or plants the owner of the infested land could apply to the Minister with responsibility for forestry for a Hares (Suspension of Restriction on Destruction) Order permitting them to deal with the problem. This provision has since been repealed by the Wildlife (Amendment) Act, 2000. Effectively this means that it is now illegal to trap or kill hares even if they are causing serious damage to trees. Perhaps a similar provision could be contained in new legislation to deal with damage to forest crops caused by protected animals and birds. Whether applications of this nature should be made to the Minister with responsibility for forestry or the Minister with responsibility for wildlife is debatable as the concerns of wildlife and forestry may be somewhat conflicting in this situation.

Current wildlife legislation imposes many restrictions on the means and methods by which animals (protected or otherwise) may be trapped and killed. None of these restrictions are reflected in the provisions concerning prevention of damage by vermin in current forestry legislation. In the 1946 Act it specifies that a Hares (Suspension of Restriction on Destruction) Order rendered it lawful, “...notwithstanding anything contained in the Game Preservation Act, 1930...” (Section 59(1) Forestry Act, 1946), for authorised persons to take and destroy hares on infested land. If it proves too cumbersome to outline and incorporate all the restrictions contained in the wildlife legislation on trapping and killing vermin that are damaging trees and plants into revised forestry legislation perhaps a statement of a similar nature to that contained in the Forestry Act, 1946 could be adopted i.e. “... Notwithstanding anything contained in the Wildlife Acts 1976 and 2000 it shall be lawful to take and destroy vermin on infested land...”.

Trespass by domestic stock frequently causes major difficulties in forest plantations. Both sheep and cattle often break into land containing young crops and cause damage by browsing on and trampling the plants. Currently there are no measures in force to instruct people how to deal

with this problem. In reality, this is a civil matter. Where animals break onto land and damage crops, the Gardai appear to be powerless unless they are acting on a Court order, and may only impound animals straying in public places such as a public park or public road (McCarthy, pers. communication, 2001). Although it is not a criminal offence to permit animals to trespass onto a neighbour's land, landowners can recoup costs of any damage caused by trespassing animals under the Civil Liability Act, 1961 (Crean, pers. communication, 2001).

8.4.2 *Flora*

Currently, under the Wildlife (Amendment) Act, 2000 it is an offence to plant or otherwise cause to grow any exotic species of flora, or the flowers, roots, seeds or spores of exotic flora otherwise than in accordance with a licence granted by the Minister with responsibility for wildlife. As the Minister with responsibility for forestry is responsible for implementing the Forest Reproductive Material Directives (1999/105/EC) it seems reasonable to suggest that he/she should also be responsible for the granting of licences in relation to exotic forest species. Regardless of which Minister should have responsibility for the granting of these licences, the fact that they are necessary should at the very least be highlighted in forestry legislation. Obligations which must be observed (such as the prohibition to import any bark unless it has been sterilised) under both the Forest Reproductive Material Directives (66/404/EEC and 71/161/EEC) and Plant Health Directive (77/93/EEC) should also be addressed in forestry legislation.

Under the 1946 Forestry Act the powers that were held by the Minister with responsibility for forestry in relation to the Destructive Insects and Pests Acts, 1877 to 1929 were transferred to the Minister for Agriculture. Similarly, the Minister for Agriculture is responsible for enforcing the Plant Health Directive (2000/29/EC) in so far as it relates to forest species, although in practice this is enforced by the Forest Service. In the wake of the foot and mouth crisis it is questionable whether the Minister for Agriculture would have the power to ban all movement of timber in and out of the country or within the country in the event of a serious pest or disease outbreak. This appears to be feasible under current plant health legislation. It is interesting that when faced with a serious outbreak of European Spruce Bark Beetle

(*Ips typographus* L.) a few years ago, the Forestry Commission in Great Britain passed emergency legislation to control the felling and movement of timber within the affected areas of the State (Gregory, pers. communication, 2001). Although the Minister for Agriculture would almost certainly consult with the forestry authorities before making any such decisions, it would appear that the responsibility in relation to forest species should lie with the forest authorities in the first place.

The current legislation, which regulates plant health in this country, appears to be adequate to cater for foreseeable contingencies. However, the main threat to forest protection in the community at the moment is not from imported sawn timber or roundwood but from timber packaging on imported goods. Emergency legislation is currently in preparation by the European Commission in Brussels and it is expected to be in force in this country by late 2001 (Cahalane, pers. communication, 2001).

Under current wildlife legislation, persons are not permitted to burn vegetation growing on uncultivated land within one mile of a wood unless the wood belongs to them. If the wood is not their property, they must notify both the owner of the wood and the Gardaí before they may burn vegetation. However, it is generally forbidden to burn vegetation on any uncultivated land between 31st of March and 31st of August in any year. Where a Minister of the Government or, a company set up under statute (which would include Coillte Teoranta) needs to burn vegetation on uncultivated land during the closed season for reasons of public health or safety, they may apply to the Minister with responsibility for wildlife for a consent to do so. This would apply to the burning of vegetation by a company such as Coillte Teoranta on uncultivated land for firebreaks. However, private owners such as farmers do not seem to have this privilege. Furthermore, the legislation only prohibits the burning of vegetation which, is growing on uncultivated land, therefore it appears permissible under the legislation to burn lop and top between 31st of March and 31st of August (Hayes, pers. communication, 2001).

8.4.3 The present situation

The provisions that were established by the Forestry Act, 1946 to control damage by wild animals on forested land are no longer adequate.

Provisions to control damage by both wild birds and animals including protected wild birds and animals should be included in a new Forestry Act. Currently the legislation, which was put in place to deal with trespassing domestic stock, is insufficient to control the problem. No reference is made in the 1946 Forestry Act in relation to such trespassing. Provisions to facilitate this problem should also be included in a new Forestry Act. Under the Wildlife (Amendment) Act, 2000 it is unlawful to import an exotic species of flora unless under and in accordance with a licence granted by the Minister with responsibility for wildlife. This obligation should be reflected in forest legislation. Furthermore, the provisions that deal with the burning and grubbing of vegetation on uncultivated ground that were incorporated in the Wildlife Acts, 1976 and 2000, which replaced those of the Forestry Act, 1946 seem to be adequate and should be incorporated in any amendment to the current forestry legislation.

8.5 Felling licences

Every tree owner must apply to the Forest Service for a felling licence if they wish to fell any tree over ten years of age that is not specified in the Forestry Act, 1946 to be exempt from requiring a felling licence. Such trees would include trees standing in an urban district, trees which are being felled under Section 70 of the Roads Act, 1993 or Section 98 of the Electricity Supply Act, 1927 or trees standing within 100 feet of a building. Limited felling licences may incorporate conditions. Such conditions might impose an onus on the applicant to replant trees. Although some trees specified as “exempted trees” under the Forestry Acts require felling licences, the Minister may only grant unconditional licences (licences with no conditions attached) in respect of such trees. These trees include trees that are dead or irretrievably damaged and trees which are being felled with the intention of using the timber for fuel, fencing or construction on the same holding as that on which the tree stands. This implies that if a farmer wished to fell trees on his farm for fencing or firewood he/she would not have to replant other trees in their place. However, this does not mean to say that farmers may exploit this situation by harvesting the entire plantation for his/her own use after receiving grants and premiums. The farmer needs to lodge a felling notice for exempted trees including an explanation for felling. In addition, prohibition orders can still be lodged against exempted trees.

The Forest Service grants some private owners with large forest estates general felling licences. General felling licences confer a right on the licensee to fell trees on their estate in accordance with the practice of good forestry. Applications for general felling licences must include a harvesting programme specifying the work that should be carried out under the onus of the licence (Donovan, pers. communication, 2001). The licence is then only valid for that work and so must be renewed periodically. Replanting conditions are attached to all general felling licences and such replanting must be carried out on the land which has been cleared. Where forestry has proven unprofitable on any land, for example on a blanket peat site, it would be unwise to include such land in an application for a general felling licence as the land would have to be replanted after clearfelling. In this case, the sensible thing to do would be to apply for a limited felling licence in respect of the land, as the Minister with responsibility for forestry has the discretion to grant limited felling licences without replanting conditions.

It should be noted that under the Wildlife (Amendment) Act, 2000 the Minister with responsibility for wildlife is empowered to prohibit any activity in a Natural Heritage Area (NHA) that, in his/her opinion, might compromise the integrity of that area. Such activities can include everyday forest operations such as thinning, roading and extraction of timber. It is an offence under the Act to carry out a prohibited activity without the permission of the Minister with responsibility for wildlife. This implies that even though a person may be felling trees under the onus of a licence granted under the Forestry Act, 1946 they may still be committing an offence under the Wildlife (Amendment) Act, 2000. Furthermore, in theory the Forest Service could also be implicated in the offence (Donovan, pers. communication, 2001). Thus, it appears that the Wildlife (Amendment) Act, 2000 takes precedence over the Forestry Act, 1946 in relation to felling trees in a Natural Heritage Area.

At present, under current forest legislation, for every general felling licence granted there is a condition attached requiring the licensee to reforest the clear land to the satisfaction of the Minister with responsibility for forestry. In some instances, land which is unsuitable for forestry has been replanted. Where a first rotation has proven unprofitable on a piece of land or unsightly from a landscape point of view, surely it would not be in the public interest to attach a replanting condition

to the felling licence. Perhaps in such cases the licensee should be allowed to replace the trees that have been felled on a more suitable piece of land. This is an issue that could be addressed in any review of the current legislation.

In relation to forest harvesting it is worthy of note that under the Forestry Act, 1946, the Minister with responsibility for forestry is empowered to “undertake the collection, preparation, publication and distribution of statistics relating to forestry...” (Section 9(1) Forestry Act, 1946). If the Minister exercised this power in declaring harvesting returns (including information such as volume removed, average dbh, species and yield class) a prerequisite to felling licences this would permit harvest statistics to be recorded and collated on a national basis. This data would be very useful as the annual harvested yield could then be compared with production estimates. This suggestion was one of the recommendations of Gallagher and O’Carroll (2001).

8.5.1 The present situation

Any review of the current legislation in relation to the felling of trees should abolish the unconditional attachment of replanting conditions to general felling licences and impose an onus on recipients of felling licences to furnish the Minister with responsibility for forestry with harvesting returns to facilitate collation of harvest statistics.

8.6 Planning

At present the parts of the Planning and Development Act, 2000 that relate to forest development have not come into force. These include:

- the new provisions establishing an obligation to obtain planning permission for afforestation developments less than 70 ha in size;
- the new provisions establishing Areas of Special Amenity;
- the new provisions establishing Landscape Conservation Areas;
- the new provisions regarding Tree Preservation Orders.

The relevant provisions of the Local Government (Planning and Development) Acts, 1963 to 1999 still apply to forestry development in the State. Although initial afforestation under 70 ha will no longer be exempted development under the new

Act, the exact level of afforestation for which planning permission will be required is still under consideration (Kelly, pers. communication, 2000).

The current legislation states that “development consisting of the use of any land for the purpose of agriculture or forestry and development consisting of the use for any of those purposes of any building occupied together with land so used” does not require planning permission (Section 4(1) Local Government (Planning and Development Act, 1963). However, the extent to which buildings used in connection with forest land, are exempt from the requirement of planning permission is unclear. The provision of toilets definitely requires planning permission as they incorporate septic tanks and it is likely that landfills, radio masts and other such developments all require planning permission. However it appears, in some areas, that sheds intended for the storage of equipment may not require planning permission. Whether or not such developments require planning permission is usually at the discretion of the local planning authority (Ring, pers. communication, 2001).

Under the existing legislation, afforestation projects under 70 ha do not require planning permission. Afforestation projects of areas over 70 ha require both planning permission and an environmental impact statement. As the preparation of an environmental impact statement is a very costly process, the Forest Service rarely receive grant applications for projects over 70 ha (Mahony, pers. communication, 2000). The new provisions relating to exempted development under the Planning and Development Act, 2000 are expected to come into force later this year. This could restrict afforestation in many parts of the country, especially in areas, which are sensitive to forestry. Furthermore, it is likely that the threshold for which afforestation developments require an environmental impact statement will be lowered in the future. This would restrict the size of proposed developments as due to the great expense associated with environmental impact assessment landowners would be deterred from planting areas above the threshold level.

Under the Local Government (Planning and Development) Acts, development classified as exempted development can not be restricted by a planning authority in an Area of Special Amenity. Thus, afforestation of areas not exceeding 70 ha, thinning, felling, reforestation and replacement of

broadleaf high forest with coniferous species where the area does not exceed 10 ha may not be restricted or prohibited within these areas. However, when the provisions relating to Areas of Special Amenity in the Planning and Development Act, 2000 come into force this will no longer be the case and any type of development specified in an order designating an Area of Special Amenity may be restricted or prohibited within that area. This could have implications for the granting of felling licences by the Forest Service. Although it is very doubtful that the Forest Service would grant a limited felling licence for a stand of trees that is contained within an Area of Special Amenity, there is a danger that a forest owner who had been granted a general felling licence before an Area of Special Amenity had been designated on their land might slip through the system and fell trees within the designation. In this eventuality, although the person would be felling the trees under the aegis of a licence granted under the Forestry Act, 1946 he/she would be committing an offence under the Planning and Development Act, 2000. Furthermore, in theory the Forest Service could be implicated in the offence.

Similarly, when the relevant provisions of the new Act come into force, any manner of development may be restricted or prohibited in a Landscape Conservation Area. As the landscape is especially sensitive to harvesting, it is very likely that harvesting will be restricted within Landscape Conservation Areas, especially in the case of clearfelling. The size and shape of felling coups are likely to be severely controlled within these designations. As with Areas of Special Amenity, if felling is restricted in a Landscape Conservation Area and a person fells trees within the area in accordance with a felling licence, they will be committing an offence under the Planning and Development Act, 2000. It is interesting to note that no provisions exist in the Planning and Development Act, 2000 in relation to right to compensation where development is prohibited or restricted within Areas of Special Amenity or a Landscape Conservation Area. Where a forest owner wished to be compensated in relation to such restrictions, they would have to bring a civil case against the planning authority.

Under the existing legislation, the entitlement to compensation in respect of Tree Preservation Orders (TPOs) is well provided for. Currently, where an application for permission to fell trees which are protected by a TPO is refused by a planning authority the owner of the trees may

request that the planning authority purchase the land on which the trees are standing in lieu of granting permission to fell. In this manner, the planning authority can ensure that the trees are preserved. As previously mentioned Wicklow Co Council were forced, under current legislation to purchase a protected oak wood on Coolattin Estate in 1994. However, when the provisions contained in the Planning and Development Act, 2000 that relate to TPOs come into force the legal framework that exists under current legislation to protect the interests of the owner of trees subject to a TPO will be repealed. Firstly, under the new legislation the right to appeal an order designating a TPO will be abolished. Secondly, although the new legislation provides for management agreements, which can incorporate financial assistance, regarding TPOs, the Act contains no provisions to facilitate the payment of compensation by a planning authority to the owner of trees affected by preservation orders. The provisions relating to the purchasing of land by a planning authority in lieu of granting permission to fell preserved trees will also be repealed. In future where an owner desires compensation subsequent to the making of a TPO he/she will be obliged to bring a civil case against the planning authority. Furthermore, there is no reference to TPOs in the current forestry legislation and perhaps there should be, considering that there is no restriction in the planning legislation on the amount of trees or the area of land involved that can be preserved by a TPO. It is interesting that the British Forestry Acts contain provisions to facilitate the granting of felling licences in respect of trees that are subject to preservation orders.

8.6.1 The present situation

The existing forest legislation does not address any of the planning issues that impact on forestry in this country. Even though it might be impractical to include provisions relating to planning permission, Areas of Special Amenity or Landscape Conservation Areas in forestry legislation provisions relating to the management of preserved trees and woodlands could be included in any review of the current Forestry Acts.

8.7 Grants and premiums

The Minister with responsibility for forestry is empowered under current legislation to grant aid forestry developments “...upon such terms and subject to such conditions as he/she thinks fit,” (Section 9(1) Forestry Act, 1946). This implies that the Minister is perfectly entitled to grant aid afforestation developments subject to compliance with the Code of Best Forest Practice and the suite of Forest Service Environmental Guidelines or any other guidelines which he/she deems necessary, without needing additional legislation to do so.

9. CONCLUSIONS AND RECOMMENDATIONS

9.1 Provisions which appear adequate for the regulation of forestry activities

It is recommended that the following provisions should be retained in any review of the current legislation:

- the provisions of the Forestry Act, 1946 defining the general powers of the Minister with responsibility for forestry;
- the provisions of the Forestry Act, 1946 regulating the issuing of limited felling licences;
- the Provisions of the Forestry Act, 1988 regulating Coillte Teoranta.

9.2 Provisions of the Forestry Acts which appear to be redundant

It is recommended that the following provisions should be omitted from any review of the current legislation:

- the Forestry Act, 1956 in its entirety;
- the provisions of the Forestry Act, 1946 which facilitated the compulsory purchase of land by the Minister with responsibility for forestry;
- the provisions of the Forestry Act, 1946 that facilitated the extinguishment of easements on land held by the Minister with responsibility for forestry;
- the provisions of the Forestry Act, 1946 which facilitated the creation of rights of way for the extraction of timber from the forest.

9.3 Provisions of the Forestry Acts which need updating

It is recommended that the following provisions should be updated in any review of current forestry legislation to reflect changes that have occurred within forestry since the time of the Forestry Act, 1946:

- the provisions of the Forestry Act, 1946 which facilitate the control of damage to forest crops by wild animals;
- the provisions of the Forestry Act, 1946 which relate to the destruction and burning of vegetation on uncultivated land;

- the provisions of the Forestry Act, 1946 which enforce the unconditional attachment of replanting conditions to general felling licences;
- all of the penalties under the Forestry Acts need to be updated; and

9.4 Suggestions for items which might be included in a new Forestry Act

- provisions to facilitate the control of damage to forest crops by wild birds;
- provisions to facilitate the control of damage to forest crops by wild birds and animals protected under the Wildlife Acts;
- provisions to facilitate the control of damage to forest crops by trespassing domestic stock;
- provisions to highlight the obligation to acquire a licence from the Minister with responsibility for wildlife before importing exotic species of flora;
- provisions to facilitate the creation of rights of way to improve access to stands of timber;
- provisions to highlight the obligation to obtain consent from the EPA before embarking on field trials involving genetically modified trees;
- provisions to establish a system whereby the Forest Service are issued with harvesting returns;
- provisions to facilitate the management of trees to which a Tree Preservation Order relates.
- Provisions to establish the statutory basis of COFORD and its role as co-ordinator of forest research and development.

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APPENDIX I - LEGISLATION CONSULTED

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Agriculture (Research, Training and Advice) Act, 1988.
Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment.
Council Directive 1999/105/EC on the marketing of forest reproductive material.
Council Directive 2000/29/EC on protective measures against the introduction into the Member States of harmful organisms of plants or plant products and against their spread within the Community.
Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material.
Council Directive 77/93/EC of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products and against their spread within the Community.
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Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats in wild flora and fauna.
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