



IFA SUBMISSION ON THE DRAFT FOREST BILL 2013

20th November 2013

INTRODUCTION

IFA supports the need to update the Forestry Act 1946 to reflect the scale of private sector involvement in the sector and support the development of a modern sector, which reflects the multi-functional demands on today's forests. IFA supports that good forest practice should be central to the development of the sector.

IFA is disappointed at the lack of public consultation on the draft Forestry Bill 2013 prior to the publication. Forestry works on confidence and it is IFA's opinion that the sections of the draft legislation if passed would be extremely detrimental to the expansion of the sector. They have the potential to greatly reduce farmer involvement in the afforestation programme, deter the mobilisation of timber and discourage future investment in the sector.

The property and contract rights of farmers must be respected in the Bill. Forest management should be seen as part of the property rights and the management of the forests in accordance with good forest practice should be responsibility of the forest owners. IFA cannot support a Bill that weakens forest owner's rights and permits the Minister to change the terms of contract terms, attach unspecified conditions to a grant, licences etc. and attach burdens to forestry land. Such broad mandatory functions would act as a major disincentive to forestry as a land use option for farmers.

PART 1: PRELIMINARY AND GENERAL

The definition of "forest" is too stringent and needs to be amended to ensure that land, which is not currently being managed according to good farming practice would not be included as "forest" incorrectly. In 2010 the Food and Agricultural Organisation (FAO) of the United Nations defined forest as "*land spanning more than 0.5 hectares with trees higher than 5 meters and a canopy cover of more than 10%, or trees able to reach these thresholds in situ. It does not include land that is predominantly under agricultural or urban use*". **IFA propose that a similar definition be used in the Forestry Bill.**

PART 2: ADMINISTRATION OF FORESTRY SECTOR

- 5 ***IFA propose that a specific function "to promote timber production" should be included in the section 5 as this is the primary objective for most private forest owners entering forestry.***
- 5 (m) ***IFA would proposed that the text be amended as follows "to promote and monitor the protection of the environment, biodiversity and the mitigation of, or adaption to, climate change" to be consistent with the non-specific format of the other functions conferred on the Minister. This would also facilitate the removal of 5 (o).***
- 6 (b) IFA strongly opposes the function conferred on the Minister to attach unspecified conditions to Forest Management Plans (FMP). Private forest owners must have the right to manage their forest according to their own management objectives, as long the management of the forest is consistent with the principles of sustainable forest management and current legislation. The powers being sought by the Minister in relation to the management of the private forest estate is of great concern to private forest owners. The need to enshrine these powers in legislation rather than through the schemes administered by the Forest Service implies that the conditions to be attached could be beyond legislative requirements. ***IFA propose that Forest Management Plans (FMP) are not be enshrined in legislation but are requested as part of the terms and conditions of schemes, licences etc. That any conditions attached the FMP but done in***

consultation with forest owners and be consistent with good forest practice. If conditions are attached beyond legislative requirements then compensation is paid to the forest owner for any financial loss incurred.

- 6 (e) This meaning of section is not clear and required IFA to get written confirmation from the Attorney General's office that this function does not give the Minister the power to compulsory purchase land and *only relates to the right to purchase land that is for sale, land swap or lease for afforestation or for any other forestry-related activities.* **IFA propose that the text be amended to make the function being conferred on the Minister more defined and clear up any possible confusion regarding compulsory purchase of land.**
- 6 (i) IFA opposes the introduction of fees for licences and other unspecified services as it may act as a disincentive to farmers to convert land to forestry and a barrier to mobilise of the increasingly valuable timber resource. The Department of Agriculture, Food and Marine does not charge fees to administer or manage other schemes. **IFA propose that 6 (i) be removed as the introduction of charges for a forest owner to manage their forest is counterproductive to the expansion and development of the sector.**
- 7 (i) IFA is strongly opposed to the powers being conferred on the Minister to make an entry in a register on land. This would be a major deterrent for private landowners considering forestry as a land use option. **IFA propose that the 7 (i) be removed as it is counterproductive to the expansion and development of the sector.** The entitlement of the Minister to attach unspecified conditions to licences, grant approval etc. is a serious concern for forest owners. The need to enshrine these powers in legislation implies that the conditions to be attached could be beyond legislative requirements. **IFA propose that any condition being attached to licence be in accordance with good forest practice.**
- 7 (2) The fact that the Minister can vary the terms and conditions of contracts, suspend or revoke a felling licence or approval etc. introduces a lot of uncertainty for private forest owners in relation to the management of their investment. **IFA propose that the owner must be compensated for any loss of value or financial return if the forest owners incurs an economic loss due to the attachment of conditions and/or suspending or revoking of the licence, grants etc.**
- 9 IFA agrees that information obtained at committee meetings etc. should be treated as confidential unless duly authorised. However it believes that it is unnecessary for this to be enshrined within legislation and should be enforced via introducing a code of conduct or confidentiality agreement for members of committees. The draft Bill proposes a significant sanction for someone that may be serving on a committee in a voluntary capacity and may discourage people for participating. The fact that these powers do not relate to ad-hoc Committees is not clear from the text. **IFA propose that subsection 9 (1) is removed or at a minimum be redrafted to clearly state what committees the legislation refers too and that a consequence of contravening subsection 9 (1) would be dismissal from the committee.**
- 10 IFA is supportive of the need to ensure that forestry operations are being carried out in accordance with good forest practice. A Forest Management Plan is an excellent management tool to monitor management practices. The requirement for a FMP should be administered through schemes, licences etc. and should not be enshrined within legislation. **IFA propose the requirement for a FMP is best managed through the schemes administered by the Forest Service and should be removed from the Bill.**

PART 3: PROTECTION OF ENVIRONMENT

- 13 (a) IFA have concerns that the increased requirements for information gathering under the Bill would lead to increased management costs for the forest owner. In addition some information required particularly relating to sale of timber may be commercially sensitive and a forest owner should not be forced to disclose this information. Disclosure of pricing information may prejudice the outcome of price or other negotiations. **IFA propose that 13 (a) be removed and the collection of information for statistical purposes be undertaken by the Forest Service on a voluntarily capacity as per other agricultural commodities.**
- 14 IFA have concerns in relation to the practicalities of the Minister issuing notice on landowners of commonage or designated areas as well as the cost implications for a landowners in inaccessible areas.

PART 4: FELLING OF TREES

- 17 **IFA propose the following amendments to section 17:**
- i. That a timeline is introduced for granting of felling licences similar to the Planning Act 2010. IFA would propose that a licence approval would issue in default of decision by the Minister in 12 weeks from date of receipt of application. The default approval could be waived in cases where Environmental Impact Assessment or Appropriate Assessment is required.**
 - ii. That the Minister would pay compensation to the forest owner if a licence was refused based on the value of trees at the date of claim.**
- 17(3)(b) IFA welcomes the amendment that allows the Minister to extend the licence for one or more periods, not exceeding a total of 5 years.
- 17(4) IFA have concerns that the Minister can attach or vary conditions to any licences granted, particularly the power to dictate the specie to be replanted. The section provides no opportunity for the forest owner to consult nor does it make reference that replanting requirements would be in line with the management objectives of the forest owner. **IFA propose that only conditions that are in accordance with good forest practice can be attached to a licence. If the conditions attached significantly alter financial return to the forest owner, then compensated be paid for any loss incurred.**

IFA welcomes the relaxation of the replanting requirement as this has been cited in several reports/studies and a deterrent to farmers considering forestry as a land use option. The annual planting programme is the lowest in 25 years, if afforestation levels are to improve and the sector is to develop to sustainable levels the replanting obligation needs to be addressed as part of the ongoing Forest Policy Review process. **IFA propose that the replanting requirement be addressed as part of the ongoing Forest Policy Review process and the removal of the replanting requirement in certain circumstances be incorporated in the new policy.**

17 (6) IFA recognises the need to safeguard the national forest estate from illegal felling. However the legislation must recognise that some landowners are not aware of the legal requirement to obtain a licence to fell a tree. **IFA would propose that the section 17 (6) be amended as follows, “A person who in contravention of a condition of a licence, may be guilty of an offence and be liable to:**

- (i) **Fixed payment notice (see section 23)**
- (ii) **.....**

18 **IFA propose that a forest owner be permitted to remove up to 15m³ for his or her forest in any 12 month period for use on the farm similar to what is proposed outside the forest.**

18 (h) **IFA propose that the exemption be increased to 10 years of age that came about through natural regeneration to allow for agricultural land to maintained in accordance with good farming practice.**

20 IFA have serious reservations in relation to the proposal that the Minister may register a replanting order as a burden on land or register the licence or replanting order as a deed within the meaning of Part 3 of the Act 2006, with the Property Registration Authority following the granting of a licence. The necessity to place a burden on land in relation to replanting is limited particularly when you consider the negatives (i) additional administration for Forest Service and PRA, (ii) barrier to the mobilisation of timber and (iii) the afforestation programme. **IFA propose that the registering of a replanting order as a burden on land or register the licence or replanting order as a deed within the meaning of Part 3 of the Act 2006, with the Property Registration Authority be removed from the draft Bill.**

PART 5: ENFORCEMENT

22 The scope of the powers that are to be conferred on authorised officers is a serious concern to forest owners. The powers are disproportionate to the possible offences and a serious intrusion on property and human rights of landowners. The scope of the powers given to authorised officers would make it very difficult to promote forestry as a land use option to farmers. **IFA propose that Section 22 be redrafted to ensure the property and human rights of forest owners are respected, while still enabling effective enforcement.**

24 IFA is opposed to the introduction of fees, as it is counterproductive to the expansion and development of the sector. **IFA propose that section 24 be removed from the Bill.**

PART 7: OFFENCES AND PENALTIES

26 (2) Private forest owners typically employ the services of a professional forester or contractor to manage operation within their forest. **IFA proposes that “A person who contravenes.....” is replaces with “A person under whose direction the activities are being conducted....” to ensure that that the right person is held accountable.**

PART 10: AMENDMENT OF AGRICULTURE APPEALS ACT 2001

34 (b) The need for an independent appeals officers to listen to forestry appeals has been raised by IFA as private forest owners are dissatisfied that their appeals are being head by the Forest Service. ***IFA propose that the text be amended as follows; “by substituting for section, be referred to an independent appeals officer”.***