



Number 15 of 2020

Forestry (Miscellaneous Provisions) Act 2020



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[No. 15.]

*Forestry (Miscellaneous
Provisions) Act 2020.*

[2020.]

ACTS REFERRED TO

Agriculture Appeals Act 2001 (No. 29)

Forestry Act 2014 (No. 31)

Forestry Acts 1988 to 2014



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FORESTRY (MISCELLANEOUS PROVISIONS) ACT 2020

An Act to provide for matters relating to forestry including, in relation to the Forestry Appeals Committee, reporting on the activities of the Committee, enabling the Committee to sit in divisions to determine appeals, procedures and arrangements for conduct of appeals by the Committee and the payment of fees to the Committee in respect of appeals; and for those purposes to amend the Agriculture Appeals Act 2001; to provide for the publication of information relating to applications for licences for felling, afforestation, forest road works or aerial fertilisation of forests; for those purposes to amend the Forestry Act 2014; and to provide for related matters.

[2nd October, 2020]

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 2001” means the Agriculture Appeals Act 2001;

“Act of 2014” means the Forestry Act 2014.

Amendment of section 14 of Act of 2001

2. Section 14 of the Act of 2001 is amended by the insertion of the following subsections after subsection (3):

“(4) As soon as may be after the end of each year, but not later than 6 months thereafter, the chairperson of the Forestry Appeals Committee shall make a report to the Minister of his or her activities, and of the activities of the Committee, under this Act during that year and the Minister shall cause copies of that report to be laid before each House of the Oireachtas. A copy of the report will at the same time be made available to the public on the Government of Ireland website and the Government Publications Office.

(5) A report made under subsection (4) shall be in such form and shall include information in regard to such matters (if any) other than those referred to in that subsection as the Minister may direct.

- (6) The chairperson of the Forestry Appeals Committee shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as the Minister may specify concerning the chairperson's activities, or the activities of the Committee, under this Act.”.

Amendment of section 14A of Act of 2001**3.** Section 14A of the Act of 2001 is amended—

- (a) by the insertion of the following subsections after subsection (1):

“(1A) The Minister shall appoint the chairperson and such number of members as he or she considers appropriate to the Forestry Appeals Committee.

(1B) The Minister may designate one or more than one member of the Forestry Appeals Committee to perform the functions of a deputy chairperson (in this Act referred to as a ‘deputy chairperson’).”.

- (b) by the insertion of the following subsections after subsection (2):

“(2A) The Forestry Appeals Committee may sit in divisions.

(2B) A deputy chairperson may chair a division of the Forestry Appeals Committee.

(2C) A division of the Forestry Appeals Committee shall comprise at least 2 persons, being—

(a) the chairperson or a deputy chairperson, and

(b) one other member of the Committee.

(2D) Where a division of the Forestry Appeals Committee includes the chairperson and one or more than one deputy chairperson, a deputy chairperson shall, for the purposes of subsection (2C)(b), be considered to be a member of the Committee.

(2E) Where a division of the Forestry Appeals Committee is composed of 2 persons, and the Committee cannot reach a unanimous determination of an appeal specified in subsection (4), the appeal shall be reconsidered by a division composed of 3 other persons.

(2F) The Forestry Appeals Committee shall be independent in the performance of its functions.”.

- (c) in subsection (3), by the deletion of “but, in a case where a majority (or all) of the members of the Committee are such officers, a majority of such officers shall be of a grade senior to the grade of the officer who made the decision, the subject of the appeal to the Committee”.

- (d) by the substitution of the following subsection for subsection (4):

“(4) (a) Where a person is dissatisfied by a decision made by the Minister under an enactment or statutory instrument specified in Schedule (2) (referred to in this section and sections 14B and 14D as a ‘decision’) he or she may, within a period of 28 days beginning on the date of the decision, appeal to the Forestry Appeals Committee against the decision.

(b) The Minister may, having regard to the public interest in the efficient conduct and determination of appeals, prescribe a period which shall be not longer than 28 days and not shorter than 14 days to be the period, of less than the period of 28 days referred to in paragraph (a), within which an appeal may be brought under that paragraph (a).”

(e) by the deletion in subsection (5) of “, subject to subsection (6),” and

(f) by the deletion of subsection (6).

Sections 14B to 14F of Act of 2001

4. The Act of 2001 is amended by the insertion of the following sections after section 14A:

“Conduct of appeal

14B. (1) A person (in this section referred to as an ‘appellant’) shall, when making an appeal under section 14A(4) (in this section, and sections 14C, 14D, 14E and 14F referred to as an ‘appeal’) and during the conduct of the appeal, comply with the requirements of this section, any regulations made under sections 7(2), 14E, 14F and 15, any rules made under subsection (2) and section 14C(2), and any direction issued under subsection (3), and where a person does not so comply, the appeal shall be invalid and shall not be considered by the Forestry Appeals Committee.

(2) The Forestry Appeals Committee may make such rules in relation to the conduct of appeals as it considers appropriate and shall publish those rules on a website maintained by or on behalf of the Committee.

(3) The Forestry Appeals Committee may, for the purpose of ensuring the efficient, fair and timely determination of an appeal, issue a direction in respect of the conduct of the appeal.

(4) An appellant shall, when making an appeal, state all of the grounds upon which the appeal is made and provide to the Forestry Appeals Committee all of the documents and evidence upon which he or she intends to rely to support those grounds.

(5) A party to an appeal other than the appellant shall, when responding to an appeal, state all of the grounds upon which he or she responds to the appeal and provide to the Forestry Appeals Committee all of the

documents and evidence upon which he or she intends to rely to support those grounds.

- (6) Subject to subsection (7), a party to an appeal shall not be entitled, during the course of an appeal, to make submissions to the Forestry Appeals Committee other than submissions related to the grounds stated, or documents and evidence provided under subsection (4) or (5).
- (7) The Forestry Appeals Committee may, where it considers it necessary or expedient for the fair and proper determination of an appeal, require or permit a party to an appeal to—
 - (a) make submissions to the Committee other than submissions related to the grounds stated or documents and evidence provided under subsection (4) or (5), or
 - (b) provide documents or evidence to the Committee other than documents or evidence provided under subsection (4) or (5).
- (8) The Forestry Appeals Committee may refuse to consider submissions, documents or evidence where—
 - (a) the submissions, documents or evidence are not relevant to the appeal, or
 - (b) it is considered appropriate so as to avoid undue repetition of submissions.
- (9) The Forestry Appeals Committee may require any person to provide any information which it may reasonably require for the purposes of considering the appeal.
- (10) (a) The Forestry Appeals Committee may, where it considers it necessary or expedient in determining an appeal, carry out a screening for an environmental impact assessment, an environmental impact assessment, a screening for an appropriate assessment, or an appropriate assessment.
 - (b) In this subsection—

‘screening for an environmental impact assessment’ means a determination—

 - (i) as to whether the proposed activity to which the decision being appealed refers would be likely to have significant effects on the environment, and
 - (ii) if the proposed activity would be likely to have such effects, that an environmental impact assessment is required;

‘environmental impact assessment’ has the meaning given to it by the Forestry Act 2014;

‘screening for an appropriate assessment’ means an assessment under Part 5 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011);

‘appropriate assessment’ has the meaning given to it by the European Communities (Birds and Natural Habitats) Regulations 2011.

- (11) The Forestry Appeals Committee may dismiss an appeal which is vexatious.
- (12) In considering an appeal, the Forestry Appeals Committee—
 - (a) shall have regard to the record of the decision the subject of the appeal, and
 - (b) may, where it considers it necessary or expedient for the fair and proper determination of the appeal, have regard to such submissions, documents or evidence not contained in the record of the decision as the Committee considers appropriate.
- (13) Following consideration of an appeal, the Forestry Appeals Committee may—
 - (a) affirm the decision,
 - (b) where it is satisfied that a serious or significant error or a series of errors was made in making the decision the subject of the appeal or that the decision was made without complying with fair procedure—
 - (i) vary the decision,
 - (ii) allow the appeal and set aside the decision,
 - (iii) set aside the decision and remit it, for stated reasons, to the Minister, or
 - (iv) where the Committee considers it appropriate to do so, by reference to submissions, documents or evidence before it which were not considered by the Minister or for other good reason, substitute its decision for the decision of the Minister.
- (14) The Forestry Appeals Committee shall give notice of its determination under subsection (13) to the Minister, the appellant and such other parties as the Committee may determine, as soon as practicable after it is made.

Oral hearing

- 14C.** (1) The Forestry Appeals Committee shall determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, it considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

- (2) The Forestry Appeals Committee may make such rules in relation to the conduct of oral hearings as it considers appropriate and shall publish those rules on a website maintained by or on behalf of the Committee.
- (3) The chairperson or a deputy chairperson of the Forestry Appeals Committee shall have discretion as to the conduct of an oral hearing under this section and shall conduct the hearing expeditiously and without undue formality.
- (4) The Forestry Appeals Committee may, by notice in writing, require a person to attend an oral hearing, at such time and place as is specified in the notice, to give evidence in respect of any matter in issue in an appeal or to produce any relevant documents within his or her possession or control, or within his or her procurement.
- (5) The Forestry Appeals Committee may, for the purposes of an oral hearing, take evidence on oath or on affirmation and may for that purpose cause a person to swear an oath or make an affirmation.
- (6) A person required to attend under subsection (4) may be examined and cross-examined at the oral hearing.
- (7) The Forestry Appeals Committee may consider and determine an appeal notwithstanding the failure of a person to attend an oral hearing to give evidence or be examined in relation to the appeal.
- (8) The chairperson or a deputy chairperson of the Forestry Appeals Committee may limit the time within which each party to an appeal may make submissions at an oral hearing.

General directive as to policy

- 14D.** (1) The Minister may, having regard to the matter specified in subsection (2), issue a general directive as to policy (in this section referred to as a ‘directive’) in relation to the ordering of appeals or requiring that appeals against a particular class of decision made by the Minister be heard and determined by the Forestry Appeals Committee in priority to appeals against other classes of decision, and the Committee shall, in performing its functions, have regard to such a directive.
- (2) When making a directive under this section, the Minister shall have regard to the need to support economically and environmentally sustainable forest goods and services in the State.
 - (3) The Minister may amend or revoke a directive issued under subsection (1).
 - (4) Nothing in this section shall be construed as enabling the Minister to exercise any power or control in relation to a particular appeal before the Forestry Appeals Committee.

- (5) The Minister shall, as soon as practicable after issuing a directive under subsection (1), or making an amendment or revocation under subsection (3), cause a copy of the directive, amendment or revocation to be laid before each House of the Oireachtas and sent to the chairperson of the Forestry Appeals Committee.
- (6) A directive issued under subsection (1) or an amendment or revocation made under subsection (3) shall, as soon as practicable after it is issued or made, be published in *Iris Oifigiúil*.

Regulations

- 14E.** (1) Without prejudice to the generality of sections 7(2) and 15, for the purpose of the conduct of appeals, and having regard to the need for efficiency in the system of appeals, the Minister may make regulations to provide for all or any of the following:
- (a) the procedures for, and conditions of and qualifications for, appointment of members of the Forestry Appeals Committee under section 14A(1A);
 - (b) the term of office of the chairperson, a deputy chairperson and other members of the Forestry Appeals Committee;
 - (c) the constitution of divisions of the Forestry Appeals Committee and the assignment of appeals to those divisions;
 - (d) the form and manner of provision of a statement of grounds to be provided to the Forestry Appeals Committee under subsections (4) and (5) of section 14B;
 - (e) the form and manner of provision of documents and evidence to be provided to the Forestry Appeals Committee under subsections (4) and (5) of section 14B;
 - (f) time limits to apply to the making and conduct of appeals;
 - (g) the attendance of witnesses at an oral hearing under section 14C and the consequences of non-attendance;
 - (h) the form and manner of making of requests by the Forestry Appeals Committee for information from a party to an appeal, or a person other than a party;
 - (i) the provision by the Forestry Appeals Committee to a party to an appeal, or a person other than a party, of all information received by the Committee;
 - (j) procedures for the consolidation and hearing of two or more than two appeals together;
 - (k) procedures for the separation of appeals;

- (l) the publication on a website maintained by or on behalf of the Forestry Appeals Committee of information and documents provided, for the purposes of an appeal, by a party to an appeal or by a person other than a party to an appeal;
 - (m) the form and manner in which an appeal may be withdrawn;
 - (n) any consequential, supplementary or transitional provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the regulations.
- (2) Without prejudice to the generality of subsection (1), the Minister may, with the consent of the Minister for Public Expenditure and Reform, by regulations made under this section, provide for the payment of remuneration, allowances and expenses to the chairperson, a deputy chairperson and other members of the Forestry Appeals Committee.

Power to prescribe fees

- 14F.** (1) The Minister may, having consulted with the chairperson of the Forestry Appeals Committee, prescribe fees that may be charged for an appeal, and different fees may be prescribed for different appeals or classes of appeal.
- (2) In prescribing under subsection (1), the Minister may provide for the refund, in whole or in part, of fees in specified circumstances.”.

Amendment of Act of 2014

5. The Act of 2014 is amended—

- (a) in section 17(9), by the insertion of the following paragraph after paragraph (b):
 - “(ba) provide for the publication, on a website maintained by or on behalf of the Minister, of documents and information furnished to the Minister for the purposes of an application for a licence,”
 - (b) in section 22(9), by the insertion of the following paragraph after paragraph (c):
 - “(ca) provide for the publication, on a website maintained by or on behalf of the Minister, of documents and information furnished to the Minister for the purposes of an application for a licence,”
- and
- (c) in section 25, by the deletion of subsections (3), (4), (5) and (6).

Transitional and saving provisions

6. (1) The amendments of section 14A of the Act of 2001 effected—

- (a) by *paragraphs (a), (b) and (c) of section 3* shall apply in respect of the composition of the Forestry Appeals Committee who consider an appeal made before or after the coming into operation of those *paragraphs (a), (b) and (c)*, and
 - (b) by *paragraphs (e) and (f) of section 3* shall apply to an appeal made after the coming into operation of those *paragraphs (e) and (f)*.
- (2) The amendment of the Act of 2001 effected by *section 4*—
- (a) in so far as it relates to the insertion into the Act of 2001 of section 14B (other than subsections (4), (5) and (6) of that section), 14C and 14D shall apply to, or in relation to, an appeal made before or after the coming into operation of *section 4*, and
 - (b) in so far as it relates to the insertion into the Act of 2001 of subsections (4), (5) and (6) of section 14B shall apply to, or in relation to, an appeal made on or after the coming into operation of *section 4*.
- (3) A person appointed by the Minister to be the chairperson or a member of the Forestry Appeals Committee under section 14A of the Act of 2001 or regulations made under it before the coming into operation of this Act shall continue as such chairperson or member under and in accordance with the Act of 2001 as amended by this Act or regulations made under the Act of 2001 as so amended.
- (4) In this section “appeal” means an appeal under section 14A(4) of the Act of 2001 whether it is made before or after the coming into operation of *section 3(d)*.

Short title, collective citations and commencement

7. (1) This Act may be cited as the Forestry (Miscellaneous Provisions) Act 2020.
- (2) (a) The Act of 2001 and *sections 2, 3 and 4* may be cited together as the Agriculture Appeals Acts 2001 to 2020.
- (b) The Forestry Acts 1988 to 2014 and *section 5* may be cited together as the Forestry Acts 1988 to 2020.
- (3) This Act shall come into operation on such day or days as the Minister for Agriculture, Food and the Marine may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.