

3. The Forestry Acts and the formation of Coillte Teoranta

Forestry in Ireland has been a matter of concern to legislators since the foundation of the Irish State. The Forestry Acts from 1919 to the present were specifically framed to make it easier to obtain land for the purpose of commercially profitable forestry.

On 1 February 1956 it was admitted in the Dáil that the price paid for land acquired for forestry, often compulsorily purchased, was, until 1956, below market value. From the Seanad debate on the Forestry Bill 1955:

Mr. Meighan said: 'The Land Commission being committed to pay the market value of land which they take over, I am sure the same would apply to land taken over for forestry. Everybody will feel that it is only right that the market value should, be given. I do not know if there is anything in the suggestion that there is a certain amount of complaint in some places. At least there is grumbling about the prices offered up to the present. It is said they are too low for land acquired for forestry and I think the Minister is probably aware of this. Once we know now that the market value is being paid and once the public and the owners are assured that market value will be paid, there will be very little complaints about compulsion.' [1]

Compulsory purchase and the power to extinguish easements and rights of common were the instruments used to acquire land for forestry. These powers were increased in successive Forestry Acts. [2, Sec. 12(3)]

The land so acquired by the State was handed over to Coillte Teoranta when it was established as a private company in 1988 [2]. That a private company, which could operate in secret and would not be subject to the requirements for accountability and transparency that are imposed on a State body, would be preferable for the management of forestry in Ireland was discussed in the Dail on 1 February 1956:

Mr. Cogan stated: 'I think it is agreed by all Senators that this Bill is necessary in order to remove certain obstacles to the acquisition of land. As the Minister indicated, there are three different classifications of property with which this Bill is concerned. The first is the case where the title is not clear. I was glad to hear some of the legal members of the House ticking off the Minister in regard to defective titles and indicating that there must either be a title or not, that such a thing as "a defective title" is not a legal term. I am sure there is quite a number of cases of land being owned in regard to which the title is not clear. By adopting the procedure of compulsory acquisition this difficulty would be got over. The local authorities have, I think, very frequently adopted this procedure in regard to land for housing wherever they think there is not a proper title and it seems to get over the difficulty. I agree with the Minister that, as far as this type of land is concerned, we should not accuse him of compulsory acquisition because I assume compulsory powers are used only when the owner agrees they should be so used.'

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'With regard to commonage I do not think the Minister will deny that he is resorting to a certain extent to compulsory acquisition and personally I am not prepared to find much fault with him in regard to that. If an area of land or mountain owned jointly by ten people as a commonage is being acquired and if one person objects, it would not be right or proper that the entire scheme should be held up. Under this Bill, the Minister will have the power to acquire the property, but to allot one-tenth of the area to the person who objects to the sale.

'I do not think that could be regarded as unfair in principle. I assume the same applies to grazing rights, which technically are very much similar to commonages, so that those three points, which are the main objectives of the Bill, are generally accepted as being necessary.

'I do not agree with Senator Cox that the scope of this debate should be limited in any way to the points raised in this Bill. When a measure of this kind is introduced, the House is entitled to discuss the whole question of afforestation, the progress that has been made and the progress that it is hoped to make in the future. I think that, in the main, the task of speeding up afforestation is bound up to a very considerable extent with acquisition, and, if the difficulties in regard to acquisition are removed, I feel quite sure that the Forestry Department would be capable of tackling the increased acreage and putting it under plantation.

'We know that there is a considerable volume of opinion in the country which claims that the carrying out of the work of afforestation by a Government Department is wrong; that it is the type of work which should, instead, be operated by a State company. There is a good deal to be said in favour of that viewpoint and there may be a good deal more to be said for it in the future, when the utilisation of forest products comes under consideration to a greater extent. It would appear on the face of it that a public company, unrestricted by departmental regulations, would be more efficient in carrying out not only the work of planting the timber, but also the manufacture and sale of forestry products. This is a matter which will require very earnest and active consideration in the future.' [1]

The key concept here is 'Unrestricted by departmental regulations'.

3.1 The Formation of Coillte Teoranta

Coillte currently own 445,000ha (1.1m acres) of land, or 7% of the total land mass of Ireland. Of this land, 93,000ha (230,000 acres) consists of open space, and 352,000ha (870 acres) consists of forestry. In 2003, as discussed in Section 1, 94.8% of Coillte's forested land consisted of exotic species and just 5.2% of Coillte's forested land consisted native trees in 2003. [2]

In The Forestry Act, 1988, the Irish Government removed responsibility for the management of the public forests from the Forest Service by separating the regulators from the forest management and moving the latter into a newly established semi-state

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company, Coillte Teoranta (usually known simply as ‘Coillte’). The land under the control of the Forest Service was passed to Coillte Teoranta. The company has two shareholders, the Minister for Finance and the Minister for the Marine and Natural Resources (the Minister of State for the Forest Service is part of the latter department). At the same time, the company was given a mandate to become commercially competitive.

The Forestry Act 1988 gives Coillte a purely economic mandate, stating:

“The principal objects of the company shall be stated in its memorandum of association 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.” [3, Sec. 12(1)]

The same act also states that Coillte must only obey these objects, at the expense of other international agreements and laws:

“The company shall have power to do anything which appears to it to be requisite, advantageous or incidental to, or 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.” [3, Sec. 12(3)]

There are no requirements in legislation for Coillte, as a State body, to obey international and EU legislations and agreements.

3.2 Coillte as a Public Entity

Even though Coillte were formed as part of State legislation, they have, since their formation on the 1st January 1989, purported to be a private legal entity. They claimed EU grants under the Council Regulation (EEC) N° 2080/92. However, the European Courts, in Case C-339/00, Ireland v. Commission of the European Communities [2003] ECR I-11757, have ruled that Coillte Teoranta is not a private company, it is a State body:

“In the present case, Ireland itself has stated that Coillte Teoranta is and always has been a public undertaking wholly owned by the State. Moreover, the Court has already held in Connemara Machine Turf and Commission v. Ireland that the company was controlled by the State and no new evidence has been adduced which might show that this was no longer the case in the financial years 1997 and 1998. Neither the company's obligation to manage its affairs on a commercial basis nor the fact, alleged by Ireland, that the State does not, in practice, intervene in the company's management can prevail over the finding that the company is wholly owned and controlled by the State and that the State could therefore intervene. It follows that Coillte Teoranta is not

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private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92." [4]

Coillte, however, have operated since their formation, and continue to operate under private company law legislation and not according to State or EU 'departmental regulations'. It is not, as the Irish legislation currently stands, subject to the same considerations of accountability and transparency that apply to any other public body. For example, Coillte is not bound under the Freedom of Information Acts.

The sale of State-owned property except land 'owned' by Coillte Teoranta is subject in Irish law to various regulations providing for public consultation, public tender and public scrutiny of the transaction. There is no legislation in Irish law that requires Coillte Teoranta to consult before selling public land, to sell land it owns by public tender, or even to make it known to the local population that it has formed the intention to sell such land. [5]

Since the formation of Coillte in 1988, Coillte (purporting to be a private entity) and the State Forest Service have shared a closed relationship. This prompted the authors of the EU Report "Audit of Forestry and Afforestation Measures Co-Financed under EAGGF Regulation 1257/99" to state that:

"There is a very low level of competition among the contractors as they are very few. For example, the state-owned "Coillte" company has sole access to state owned land and has closed relations with the Forest Service (normally occupying the same premises)." [6]

3.3 Enforcement of Legislation

Under the Forestry Act, 1946, it is illegal to fell any tree without first obtaining a felling license from the Forest Service (there are a few exception where a felling license is not required). [7]

According to the Dept. of Communications, Marine & Natural Resource's (DCMNR) 2001 annual report, the Forest Service in 2001 had 47 reports of illegal felling under the Forestry Act, 1946, and yet had only a single prosecution. [8]

According to their annual report for 2002:

'Seventy three breaches of the Forestry Act, 1946 in relation to the felling of trees were logged in 2002. In all instances the breaches were investigated further. One prosecution was secured in 2002.' [9]

And 2003:

'Sixty two breaches of the Forestry Act 1946, in relation to the felling of trees, were logged and are currently being investigated. In 2003, four prosecutions were secured under the Forestry Act 1946.' [10]

On the 1st September 2005, a fine of €10,000 was issued on a man for felling 6,000 trees at Cullaun, Tulla, Co. Clare. Even though this was the biggest fine ever issued under the Forestry Act, 1946, it was still only approximately 2.5% of the maximum

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possible fine (the maximum fine is €63 per tree, the fine in this case was just €1.67 per tree). [11]

The Forestry Acts do very little to protect forestry and individual trees in Ireland, with the vast majority of felling license applications being granted by the Forest Service without site examination. But even when the Forest Service has the power to prosecute, they rarely do so, according to their own reports. The Ballyclogh Case Study is an example of where all the relevant legislations were ignored when a community tried to prevent the destruction of a native woodland.

The Forestry Acts of 1946 and 1956 are inherently flawed and outdated, as they have not been updated properly since Ireland became signatory to many international agreements such as the Helsinki, Rio, Lisbon and Aarhus Conventions.

3.4 References

1. Parliamentary Debate, 1st February 1956 (See DVD Appendices).
2. Coillte Teoranta, *“Social and Environmental Report”*, 2003 (See DVD Appendices).
3. Forestry Act 1988, (See DVD Appendices).
4. Case C-339/00, Ireland v. Commission of the European Communities (2003) ECR I-11757 (See DVD Appendices).
5. Barbara Maguire (COFORD, IFA), *“A Review of Legislation that Impacts on Irish Forestry”*, 2001 (See DVD Appendices).
6. Audit of Forestry and Afforestation Measures Co-Financed under EAGGF Regulation 1257/99 – Ireland (See DVD Appendices).
7. Forestry Act 1946, (See DVD Appendices).
8. Department of the Marine and Natural Resources, *“Annual Report”*, 2001 (See DVD Appendices).
9. Department of Communications, Marine and Natural Resources, *“Annual Report”*, 2002 (See DVD Appendices).
10. Department of Communications, Marine and Natural Resources, *“Annual Report”*, 2003 (See DVD Appendices).
11. Woodland League Press Release, *“€10,000 Forest Service Fine for Clare Man”*, 2nd September 2005, (See DVD Appendices).