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Forestry Act, 1988



Number 26 of 1988

FORESTRY ACT, 1988

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Number 26 of 1988

FORESTRY ACT, 1988

AN ACT TO MAKE PROVISION FOR THE DEVELOPMENT OF FORESTRY AND TO PROVIDE FOR THE ESTABLISHMENT OF A COMPANY FOR THAT PURPOSE AND FOR THE ASSIGNMENT TO THE COMPANY OF FUNCTIONS HERETOFORE EXERCISED BY THE MINISTER FOR ENERGY; AND TO PROVIDE FOR RELATED MATTERS. [13th July, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

Short title,
collective
citation and
construction.

1.—(1) This Act may be cited as the Forestry Act, 1988.

(2) The Forestry Acts, 1946 to 1976, and this Act may be cited as the Forestry Acts, 1946 to 1988, and shall be construed together as one Act.

Interpretation.

2.—(1) In this Act, except where the context otherwise requires—

“the company” means the company referred to in section 9 (1);

“the Companies Acts” means the Companies Act, 1963, and every enactment which is to be construed with it as one Act;

“functions” includes powers and duties;

“land” includes land covered by water;

“Minister” means the Minister for Energy;

“recognised trade unions and staff associations” means trade unions and staff associations recognised by the company for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions, of employees;

“State authority” means an authority being—

(a) a Minister of the Government,

(b) the Commissioners of Public Works in Ireland,

(c) the Irish Land Commission;

“subsidiary” has the meaning assigned to it by section 155 of the Companies Act, 1963;

“vesting day” means the day appointed under section 9 (2) to be the vesting day.

(2) A reference in this Act to a section is to a section of this Act, unless it is indicated that reference to some other enactment is intended.

(3) A reference in this Act to a subsection, paragraph or subparagraph is to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(4) A reference in this Act to any enactment shall be construed as a reference to that enactment as amended or adapted by or under any subsequent enactment.

(5) Where any function of the company is, under the memorandum of association of a subsidiary of the company, a function of the subsidiary every provision of this Act or any other enactment relating to the company shall, in respect of that function, apply to the subsidiary as it applies to the company.

Laying of orders before Houses of Oireachtas. **3.**—Every order made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next subsequent 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses. **4.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Repeals. **5.**—(1) Section 53 of the Forestry Act, 1946 , is hereby repealed from the passing of this Act.
(2) The enactments specified in the First Schedule are hereby repealed with effect from the vesting day to the extent specified in the *third column*.

Amendment of provisions of Forestry Act, 1946. **6.**—(1) Every provision of the Forestry Act, 1946 , mentioned in Part I of the Second Schedule shall have effect from the passing of this Act as amended in the *second column*.

(2) The provision of the Forestry Act, 1946 , mentioned in Part II of the Second Schedule shall have effect from the vesting day as amended in the *second column*.

(3) A person charged with an offence under any of the following provisions of the Forestry Act, 1946 , that is to say, sections 37 (3), 38 (2), 39 (4), 42 (3), 45 (2), 47 (2) and 51 (2) may be tried on indictment and, on conviction on indictment, shall be liable to a fine not exceeding £2,000 together with an amount not exceeding £50 for each tree in respect of which the offence is committed or, at the discretion of the court, to imprisonment for a term not exceeding two years, or to both the fine and the imprisonment.

(4) Section 4 of the Forestry Act, 1946 , is hereby amended by the substitution for every reference to an offence of a reference to a summary offence.

Penalties. **7.**—(1) A person guilty of an offence under section 33 or 37 shall be liable—
(a) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment, or

(b) on conviction on indictment to a fine not exceeding £10,000 or, at the discretion of the court, to imprisonment for a term not exceeding two years or to both the fine and the imprisonment.

(2) On conviction of a person on indictment for an offence to which *subsection (1)* relates the court may, in addition to any other penalty, order any apparatus, equipment or other thing used to commit the offence to be forfeited.

(3) Where an offence to which *subsection (1)* relates is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person (or any person acting on his behalf) being a director, manager, or secretary of such body, that person or the person so acting, as the case may be, shall also be guilty of that offence.

Proceedings. **8.**—(1) Summary proceedings for an offence under [section 33](#) or [37](#) may be brought and prosecuted by the Minister or the company.

(2) Notwithstanding [section 10 \(4\)](#) of the [Petty Sessions \(Ireland\) Act, 1851](#), summary proceedings for an offence to which any provision of this Act relates may be instituted within 12 months from the date of the offence.

PART II

Establishment and Administration

Formation of company. **9.**—(1) The Minister, after consultation with the Minister for Finance, shall cause a private company conforming to the conditions laid down in this Act to be formed and registered under the Companies Acts.

(2) The Minister shall by order appoint a day to be the vesting day for the company as soon as practicable after the company has been registered.

(3) Nothing in this Act shall prevent the company from availing of any provisions of the Companies Acts enabling a private company to re-register as a public limited company, but such provisions may be availed of only with the approval of the Minister and the Minister for Finance.

Name and capital formation of company. **10.**—(1) The name of the company shall be Coillte Teoranta or, in the English language, The Irish Forestry Board Limited.

(2) (a) The authorised share capital of the company shall be £1 billion or such other amount as may be approved from time to time by the Minister for Finance, after consultation with the Minister, divided into shares of one pound each.

- (b) The company may, with the consent of the Minister and the Minister for Finance, divide the shares in its share capital into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions.

Form of memorandum of association. **11.**—The memorandum of association of the company and of any subsidiary shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Finance.

Objects of the company. **12.**—(1) 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.

(2) Nothing in this section shall prevent or restrict the inclusion among the objects of the company, as stated in its memorandum of association, of all such objects and powers as are reasonably necessary or proper for or incidental or ancillary to the due attainment of the principal objects aforesaid and are not inconsistent with this Act.

(3) 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.

(4) The Minister may, for the purpose of giving full effect to the assignment of functions under this Act to the company, by order adapt any enactment with the consent of any other Minister responsible for the administration of that enactment.

General duty of the company. **13.**—(1) It shall be the general duty of the company—

- (a) to conduct its affairs so as to ensure that revenues of the company are not less than sufficient to—
 - (i) meet all charges properly chargeable to revenue account (including depreciation of assets and proper allocation to general reserve) taking one year with another,
 - (ii) generate a reasonable proportion of capital needs, and

- (iii) remunerate capital and repay borrowings,
- (b) to conduct its business at all times in a cost effective and efficient manner,
- (c) to have due regard to the environmental and amenity consequences of its operations,
and
- (d) to provide for consultation with the Minister for Finance concerning forestry development in areas of scientific interest.

(2) Nothing in section 12 or this section shall be construed as imposing on the company, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.

Acquisition and sale of land and sale of timber. **14.**—(1) The company shall submit to and agree with the Minister each year a programme for the sale and acquisition of land and the sale of timber, whether standing or felled.

(2) The company shall not exceed the limitations of the programme agreed with the Minister under *subsection (1)* without the prior approval of the Minister.

(3) The approval of the Minister referred to in *subsection (2)* may be given for a particular sale or generally, subject to such limitations and conditions as he may specify. The Minister may from time to time withdraw or vary any such limitations or conditions.

(4) The Minister may direct the company to include in its annual report such information as he may specify in respect of sales to which this section relates and the company shall comply with every such direction.

Articles of association. **15.**—(1) The articles of association of the company shall be in such form consistent with this Act as may be approved of by the Minister with the consent of the Minister for Finance.

(2) The articles of association of the company shall provide that—

- (a) the number of directors (including the chairman) shall be not more than 9;
- (b) the chairman and other directors shall be appointed and may be removed from office by the Minister with the consent of the Minister for Finance;
- (c) each director (including the chairman) shall be appointed for a period not exceeding five years and shall be eligible for reappointment;
- (d) the remuneration of the chairman and other directors shall be determined by the Minister with the consent of the Minister for Finance;
- (e) no person shall be appointed as auditor of the company without the approval of the Minister given with the consent of the Minister for Finance;

(f) the company shall, in consultation with recognised trade unions and staff associations, set up machinery for the purposes of negotiations concerned with the pay and conditions of service of its staff;

(g) the company shall not establish or acquire a subsidiary without the approval of the Minister given with the consent of the Minister for Finance;

(h) the aggregate at any one time of the company's investment in undertakings (other than subsidiaries) shall not exceed £250,000, except with the approval of the Minister given with the consent of the Minister for Finance.

Restriction on alteration of memorandum or articles of association. **16.**—Notwithstanding anything contained in the Companies Acts, no alteration in the memorandum of association or articles of association of the company or of any subsidiary of the company shall be valid or effectual unless made with the prior approval of the Minister given with the consent of the Minister for Finance.

Issue of shares to Minister for Finance in consideration of transfer of property. **17.**—(1) The company shall issue shares to the Minister for Finance to the value of the property transferred to it on the vesting day in accordance with sections 39 and 40, and each share shall carry one vote.

(2) The Minister, with the consent of the Minister for Finance and following consultation with the company, shall issue as soon as possible after the vesting day a certificate certifying the sum which in his opinion represents the value of the property transferred to the company.

(3) The company, after receipt of the certificate, shall issue to the Minister for Finance, without payment by him, fully paid-up shares of the company equal in nominal value to the sum so certified.

Issue of share to Minister. **18.**—(1) The company shall issue to the Minister one share of one pound in the share capital of the company.

(2) The Minister may exercise in respect of his share in the share capital of the company all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his attorney.

(3) The cost of such share shall be advanced to the Minister out of the Central Fund or the growing produce thereof.

Issue of shares to subscribers to the memorandum of association of company.

19.—(1) One share in the share capital of the company shall be issued to each of the subscribers to the memorandum of association of the company.

(2) The cost of such shares shall be advanced to the subscribers out of the Central Fund or the growing produce thereof.

Exercise of powers by Minister for Finance in respect of shares.

20.—The Minister for Finance may, subject to this Act, exercise in respect of the shares of the company held by him all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his attorney.

Transfer or sale by Minister for Finance of shares.

21.—(1) The Minister for Finance may, from time to time as occasion requires for the purpose of compliance with so much of the Companies Acts as requires that there shall always be a minimum number of members of the company, transfer to any person one of his shares.

(2) The Minister for Finance may hold for so long as he thinks fit any shares of the company taken up or acquired by him under this Act and, after consultation with the Minister, may, as and when he thinks fit, sell all or any of such shares.

(3) The net proceeds of a sale by the Minister for Finance of shares of the company shall be paid into or disposed of for the benefit of the Exchequer.

Obligation of certain shareholders to hold shares in trust.

22.—(1) A member of the company to whom a share in the company is issued under section 19 or transferred under section 21 (1) shall hold that share in the company in trust for the Minister for Finance and shall accordingly be bound to pay all dividends and other money which he receives in respect of the share to the said Minister for the benefit of the Exchequer and to transfer, as and when required by the said Minister, the share to that Minister or a person nominated in that behalf by that Minister.

(2) Save when required pursuant to *subsection (1)*, such member shall not transfer or alienate his share.

(3) Upon the death of a member of the company referred to in *subsection (1)*, the share held by such member shall, without the necessity for a transfer, vest in the Minister for Finance.

Payment of dividends, etc. into Exchequer.

23.—(1) All amounts representing dividends or other money received by the Minister for Finance in respect of shares in the company and all amounts representing repayment of or interest on repayable advances received or recovered by him from the company shall be paid into or disposed of for the benefit of the Exchequer in such manner as he may direct.

(2) All amounts representing dividends or other money received by the Minister in respect of his share in the company shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

Power to
borrow.

24.—(1) (a) Subject to the consent of the Minister and the Minister for Finance, the company may, by means of the issue of debentures or otherwise, borrow money (including money in a currency other than the currency of the State) for capital purposes including working capital from persons other than the Minister for Finance.

(b) The aggregate at any one time of borrowings by the company under *paragraph (a)* shall not exceed £80 million.

(c) For the purposes of this subsection moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated according to the rate of exchange at the time of the borrowing for that currency and the currency of the State.

(2) The company may borrow money (including money in a currency other than the currency of the State) temporarily but the aggregate at any one time of such borrowings shall not exceed such amount as has been approved by the Minister with the consent of the Minister for Finance.

(3) (a) Without prejudice to *section 2 (5)*, references in *subsections (1) and (2)* to the company include references to a subsidiary of the company.

(b) Where the company and a subsidiary thereof have at any one time borrowings under this section, the limit on borrowings provided for shall apply to the aggregate at any one time of borrowings by the company and the subsidiary.

Guaranteeing by
Minister for
Finance of
borrowings.

25.—(1) In relation to borrowings under *section 24*, the Minister for Finance, after consultation with the Minister, may guarantee, in such form and manner and in such money (including money in a currency other than the currency of the State) and on such terms and conditions as he thinks fit, the due repayment by the company of the principal of any money borrowed by the company or the due payment of instalments or other amounts of money owed by the company under a contract entered into by the company or the payment of interest on any money, instalment or amount or both the repayment of principal or payment of such instalments or amounts, as the case may be, and payment of the interest, and any such guarantee may include a guarantee of payment of commission and incidental expenses arising in connection with such borrowings or such contract.

(2) The Minister for Finance shall not so exercise the powers conferred on him by this section that the amount, or the aggregate amount, of money which he may at any one time be liable to pay on foot of any guarantee or guarantees under this section for the time being in force, together with the amount of money (if any) which he had previously paid on foot of any guarantee under this section and which has not been repaid by the company, exceeds £80 million.

(3) For the purpose of calculating the amount of borrowings or instalments or other money guaranteed by the Minister for Finance under this section by reference to the limit on money in *subsection (2)*, the equivalent in the currency of the State of borrowings or instalments or other money in a foreign currency shall be calculated at the exchange rate prevailing at the time of the giving of the guarantee.

(4) Where a guarantee under this section is or has been given, the company shall, if the Minister for Finance so requires, give to him such security (including, in particular, debentures) as may be specified in the requirement for the purpose of securing to the said Minister the repayment of any money which he may be liable to pay or has paid under the guarantee.

(5) The Minister for Finance shall, as soon as may be after the expiration of every financial year, lay before each House of the Oireachtas a statement setting out with respect to each guarantee under this section given during that year or given at any time before, and in force at, the commencement of that year—

(a) particulars of the guarantee,

(b) in case any payment has been made by him under the guarantee before the end of that year, the amount of the payment and the amount (if any) repaid to him on foot of the payment,

(c) the amount of money covered by the guarantee which was outstanding at the end of that year.

(6) Money paid by the Minister for Finance under a guarantee under this section shall be repaid to him (with interest thereon at such rate or rates as he appoints) by the company within such period from the date of payment by the said Minister as may be specified by that Minister after consultation with the company.

(7) Where the whole or any part of the money required by *subsection (6)* to be repaid to the Minister for Finance has not been repaid in accordance with that subsection, the amount so remaining outstanding shall be repaid to the Central Fund out of moneys provided by the Oireachtas.

(8) Notwithstanding the provision of money under *subsection (7)* to repay the amount to the Central Fund, the company shall remain liable to the Minister for Finance in respect of that amount and that amount (with interest thereon at such rate or rates as the said Minister appoints) shall be repaid to the said Minister by the company at such times and in such instalments as he appoints and, in default of repayment as aforesaid and without prejudice to any other method of recovery, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

(9) In relation to a guarantee under this section in money in a currency other than the currency of the State—

(a) each of the references to principal, each of the references to instalments or other amounts of money, each of the references to interest and the reference to commission and incidental expenses in *subsection (1)* shall be taken as referring to the equivalent in the currency of the State of the actual principal, the actual instalments or other amounts of money, the actual interest or the actual commission and incidental expenses, as may be appropriate;

(b) the reference to the amount of money in *subsection (5) (c)* shall be taken as referring to the equivalent in the currency of the State of the actual amount of money, such equivalent being calculated according to the rate of exchange for the time being for that currency and the currency of the State;

(c) each of the references to money in *subsections (6) to (8)* shall be taken as referring to the cost in the currency of the State of the actual money.

(10) (a) Without prejudice to *section 2 (5)*, references in this section to the company include references to a subsidiary of the company.

(b) Where there are in force at any one time guarantees under or by virtue of this section in respect of the company and of a subsidiary thereof, the relevant limit specified in *subsection (2)* shall apply to the aggregate of the amounts which the Minister for Finance is at any one time liable to pay under such guarantees.

Financing of
capital works.

26.—(1) (a) The Minister for Finance, after consultation with the Minister, may provide funds to the company for capital purposes by way of—

- (i) Exchequer repayable advances, or
- (ii) subscription for shares in the company, or
- (iii) both such advances and subscription.

(b) The aggregate amount of funds provided under *paragraph (a)* shall not exceed £100 million.

(2) Exchequer advances provided under *subsection (1) (a)* shall be made on such terms as to repayment, interest, and other matters as may be determined by the Minister for Finance.

(3) If the company fails to make a repayment as required under *subsection (2)*, the company shall remain liable to the Minister for Finance in respect of the unpaid amount and that amount (with interest thereon at such rate or rates as the said Minister appoints) shall be repaid to the said Minister by the company at such times and in such instalments as he appoints and, in default of payment as aforesaid and without prejudice to any other method of recovery, shall be recoverable as a simple contract debt in any court of competent jurisdiction.

Provision of working capital for company. **27.**—(1) The Minister for Finance may make available as working capital to the company an amount not exceeding £3 million.

(2) Liabilities of the Minister and the company under *section 53* may, subject to the approval of the Minister and the Minister for Finance, be discharged by due account being taken of them along with other properly reckonable amounts in the calculation of the working capital to be made available to the company under *subsection (1)*.

(3) The company shall issue to the Minister for Finance shares to the value of the working capital made available to it under *subsection (1)*.

Provision of money for payments out of Central Fund. **28.**—(1) All money from time to time required by the Minister for Finance to meet sums which may become payable by him under *section 25*, *26* or *27* shall be advanced out of the Central Fund or the growing produce thereof.

(2) The Minister for Finance may, for the purpose of providing for advances out of the Central Fund under this section, borrow on the security of the Central Fund or the growing produce thereof any sums required for the purpose and, for the purpose of such borrowing, he may create and issue securities bearing interest at such rate and subject to such conditions as to repayment, redemption or any other matter as he thinks fit, and shall pay all sums so borrowed into the Exchequer.

(3) The principal of and interest on all securities issued under this section and the expenses incurred in connection with the issue of the securities shall be charged on and payable out of the Central Fund or the growing produce thereof.

Grants for current expenditure. **29.**—(1) During the period of four years from the vesting day, the Minister for Finance, after consultation with the Minister and following application by the company, may make available to the company annual grants not exceeding in aggregate £30 million for current expenditure.

(2) Such details of the purposes for which such grants are to be expended as may be required by the Minister or the Minister for Finance shall be made available in support of applications by the company for disbursement of funds under this section.

(3) All moneys required by the Minister for Finance under this section shall be paid out of moneys provided by the Oireachtas.

Accounts and audits.

30.—(1) Without prejudice to the requirements of the Companies Acts in relation to balance sheets and accounts, the company shall keep, in such form as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of all money received by or expended by it, including a profit and loss account and a balance sheet, and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may from time to time direct.

(2) Accounts kept in pursuance of this section shall be submitted annually by the company to an auditor for audit and, immediately after the audit, a copy of the profit and loss account and of the balance sheet and of such other (if any) of the accounts as the Minister may direct and a copy of the auditor's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Annual report and furnishing of information to Minister.

31.—(1) Not later than six months after the end of each accounting year, the company shall make a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) Every annual report shall include information, in such form as the Minister may direct after consultation with the company and with the consent of the Minister for Finance, regarding the operations, cost-effectiveness and financial targets of the company.

(3) The company shall, if so required by the Minister, furnish to him such information as he may require in respect of any balance sheet, account or report of the company or in relation to the policy and operations of the company other than day-to-day operations.

Disclosure by directors of certain interests.

32.—(1) Where at a meeting of the directors of the company any of the following matters arises, namely—

(a) an arrangement to which the company is a party or a proposed such arrangement, or

(b) a contract or other agreement with the company or a proposed such contract or other agreement,

then any director of the company present at the meeting who otherwise than in his capacity as such a director is in any way, whether directly or indirectly, interested in the matter—

- (i) shall at the meeting disclose to the company the fact of such interest and the nature thereof,
- (ii) shall take no part in any deliberations of the directors relating to such matter save to such extent as the chairman of the meeting at which such deliberations take place may permit, and
- (iii) shall not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the directors of the company a question arises as to whether or not a course of conduct, if pursued by a director of the company, would be a failure by him to comply with the requirements of *subsection (1)*, the question may be determined by the chairman of the meeting whose decision shall be final and where such a question is so determined particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a director has failed to comply with a requirement of *subsection (1)* he may, if he thinks fit, and with the consent of the Minister for Finance, remove that director from office, and in case a person is removed from office pursuant to this subsection he shall thenceforth be disqualified from being a director of the company.

(5) Section 194 of the Companies Act, 1963, shall not apply to a director of the company.

Prohibition on unauthorised disclosure of information.

33.—(1) A person shall not disclose confidential information obtained by him while performing duties as a director or member of staff of, or an adviser or consultant to, the company unless he is duly authorised to do so.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence.

(3) In this section—

“confidential” means that which is expressed to be confidential either as regards particular information or as regards information of a particular class or description;

“duly authorised” means authorised by the company or by some person authorised in that behalf by the company.

Membership of either House of Oireachtas or European Parliament.

34.—(1) Where a director of the company is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or to the European Parliament,
or

(c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984
) of the European Assembly Elections Act, 1977 , as having been elected to such
Parliament to fill a vacancy,

he shall thereupon cease to be a director of the company.

(2) Where a person employed by the company is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or to the European Parliament,
or

(c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984
) of the European Assembly Elections Act, 1977 , as having been elected to such
Parliament to fill a vacancy,

he shall thereupon stand seconded from employment by the company and shall not be paid by, or be entitled to receive from, the company any remuneration or allowances in respect of the period commencing on such nomination or election, or when he is so regarded as having been elected (as the case may be) and ending when he ceases to be a member of either such House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he is so entitled or is such a member, be disqualified from becoming a director of the company or from employment in any capacity by the company.

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting the reckoning of a period therein mentioned as service with the company for the purpose of any pensions, gratuities or other allowances payable on resignation, retirement or death.

Chief Executive. **35.—**(1) There shall be a Chief Executive of the company.

(2) The first Chief Executive of the company, having been selected by means of a public competition, shall be appointed by the Minister for a period not exceeding three years and may be removed from office by the Minister during that period.

(3) The first Chief Executive may be reappointed and thereafter may be removed from office by the directors of the company.

(4) Each subsequent Chief Executive shall be appointed and may be removed from office by the directors of the company.

(5) The functions of the Chief Executive shall be to carry on, manage and control generally the administration of the company, subject to the lawful directions of the directors of the company.

(6) The Chief Executive shall hold office on and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by the Minister with the consent of the Minister for Finance.

Staff of
company.

36.—Without prejudice to the requirements of [section 43](#), the company, in determining the remuneration or allowances for expenses to be paid to its officers or servants or the terms or conditions subject to which such officers or servants hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant, or to Government policy concerning remuneration and conditions of employment which is so extant, and in addition to the foregoing, the company shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give from time to time to the company with the consent of the Minister for Finance.

Bye-laws.

37.—(1) The Minister may at the request of the company or on his own behalf make bye-laws to regulate access to or use of any land owned, managed or used by the company.

(2) Where the company submits a proposal to the Minister to make a bye-law the Minister shall, as he may think proper, refuse to approve of the proposal or approve thereof without modifications or make such modifications therein as he may think proper and make the bye-law as so modified.

(3) A document which purports to be a copy of bye-laws made under this section, and which has endorsed thereon a certificate (purporting to be signed by an officer of the Minister) stating that the document is a true copy of the bye-laws and that the bye-laws were in force on a specified date, shall, without proof of signature of such officer or that he was in fact such officer, be received as evidence in every court and in all legal proceedings of the bye-laws and of the fact that they were in force on that date.

(4) A person who contravenes a bye-law made under this section shall be guilty of an offence.

General
Ministerial
powers.

38.—(1) The Minister may, with the consent of the Minister for Finance, issue directions in writing to the company requiring the company—

- (a) to comply with policy decisions of a general kind made by the Government concerning the development of forestry and related activities of which he may advise the company from time to time, or
- (b) to provide or maintain specified services or facilities, or
- (c) to maintain or use specified land or premises in the company's possession for a particular purpose.
- (2) The company shall comply with every direction given to it under this section.
- (3) (a) A direction to the company under this section shall, if the company so requests in writing, be given by the Minister by order.
- (b) Such an order shall remain in force for a specified period of not more than twelve months unless extended or revoked by order of the Minister.
- (4) If the company satisfies the Minister that, over a period of at least twelve months or such other period as may be determined by the Minister after consultation with the company, it has sustained a loss in complying with a direction under *subsection (1) (b) or (1) (c)*, it shall be entitled to recover the loss from the Minister.
- (5) The Minister may require an audit of the books and records of the company to determine that such loss has been incurred.
- (6) Before giving a direction to the company under *subsection (1) (b) or (1) (c)*, the Minister shall obtain from the company details of the cost of complying with such direction and the company shall supply such information to the Minister on request.
- (7) The Minister may stipulate, in consultation with the company and with the consent of the Minister for Finance, financial or other targets (including payment of dividends in respect of shares in the company) to be achieved by the company.
- (8) Moneys required by the Minister to meet payments required by him under this section shall be advanced to him by the Minister for Finance out of moneys provided by the Oireachtas.

PART III

Transitional Provisions

Transfer of land. **39.—**(1) On the vesting day all land (other than land designated by the Minister) which, immediately before that day, was vested in the Minister and was used or had been acquired for the purposes of functions assigned by this Act to the company and all rights, powers and privileges relating to or connected with such land shall, without any conveyance or assignment, but subject to *subsection (2)*, stand vested in the company for all the estate or interest for which immediately before the vesting day it was vested in the Minister but subject to all trusts and equities affecting the land subsisting and capable of being performed.

(2) *Subsection (1)* shall not operate to vest in the company any minerals or any right of mining or taking minerals, or any foreshore, within the meaning of the Foreshore Act, 1933 .

(3) The Minister may on his own initiative and shall on the application of the company issue a certificate in respect of specified land certifying, as he thinks proper, that the land vested in the company under this section or did not so vest and the certificate shall be conclusive evidence of the facts so certified.

Transfer of other property. **40.**—(1) On the vesting day all property other than land, including choses-in-action, which immediately before that day was the property of the Minister and was used or had been acquired in connection with the functions assigned by this Act to the company shall stand vested in the company without any assignment.

(2) The Minister may on his own initiative and shall on the application of the company issue a certificate in respect of specified property certifying, as he thinks proper, that the property vested in the company under this section or did not so vest and the certificate shall be conclusive evidence of the facts so certified.

(3) Every chose-in-action transferred by *subsection (1)* to the company may, after the vesting day, be sued on, recovered or enforced by the company in its own name and it shall not be necessary for the company or the Minister to give notice to the person bound by the chose-in-action of the transfer effected by that subsection.

Transfer of rights and liabilities. **41.**—(1) All rights and liabilities of the Minister arising by virtue of any contract or commitment (expressed or implied) entered into by him or by the Commissioners of Public Works in Ireland on his behalf before the vesting day in relation to functions assigned to the company under this Act shall on that day stand transferred to the company.

(2) The Minister may on his own initiative and shall on the application of the company issue a certificate in respect of a specified contract or commitment certifying, as he thinks proper, that the rights and liabilities of the Minister thereunder were transferred on the vesting day to the company under this section or were not so transferred and the certificate shall be conclusive evidence of the facts so certified.

(3) Every right and liability transferred by *subsection (1)* to the company may, on and after the vesting day, be sued on, recovered or enforced by or against the company in its own name and it shall not be necessary for the company or the Minister to give notice to the person whose right or liability is transferred by this section of such transfer.

(4) The company shall comply with such obligations (excluding repayment of principal or interest payments) as may be specified by the Minister for Finance in relation to his contractual obligations under foreign loan contracts, entered into before the vesting day, relating to functions assigned to the company under this Act.

Exemption from stamp duty. **42.—** Section 12 of the Finance Act, 1895 , shall not apply to the vesting in the company of any property or rights transferred by this Act.

Provisions applicable to staff transferred to company. **43.—**(1) The company shall accept into its employment with effect from the vesting day in accordance with the terms of this Act every person who immediately before the vesting day is a member of the staff of the Department of Energy and is designated, whether before, on or after the vesting day, by the Minister for employment by the company.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a member of the staff of the Department of Energy referred to in *subsection (1)* shall not, while in the service of the company, be brought to less beneficial conditions of service or of remuneration than the conditions of service or of remuneration to which he was subject immediately before the vesting day.

(3) Until such time as the scales of pay and conditions of service of staff so transferred are varied by the company, following consultation with recognised trade unions and staff associations, the scales of pay to which they were entitled and the conditions of service, restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be exercised or imposed by the company while they are in its service.

(4) The conditions in regard to tenure of office which are granted by the company in relation to a member of the staff so transferred shall not, while he is in the service of the company, be less favourable to him than those prevailing for the time being in the civil service; any alteration in the conditions in regard to tenure of office of any such member shall not be less favourable to him than the prevailing conditions in the civil service at the time of such alteration, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned. If a dispute arises between the company and any such member as to conditions prevailing in the civil service, the matter shall be determined by the Minister for Finance after consultation with the Minister.

(5) In relation to staff transferred to the company, previous service in the civil service shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1984, the Holidays (Employees) Act, 1973 , the Minimum Notice and Terms of Employment Acts, 1973 and 1984, and the Unfair Dismissals Act, 1977 .

Superannuation. **44.—**(1) The company shall prepare and submit to the Minister a scheme or schemes for the granting of pensions, gratuities and other allowances on resignation, retirement or death to or in respect of such members of the staff of the company as it may think fit.

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or allowances are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) Subject to *subsection (4)*, every such scheme may be amended or revoked by a subsequent scheme submitted and approved of under this section.

(4) Every scheme under this section shall provide for not less favourable conditions in respect of persons who, immediately before the vesting day, were members of the staff of the Department of Energy than those to which they were entitled immediately before the vesting day.

(5) Disbursement of pensions, gratuities and other allowances which may be granted to or in respect of persons who, immediately before the vesting day, were members of the staff of the Department of Energy shall not be on less favourable conditions than would apply if the benefits referred to had continued to be paid out of moneys provided by the Oireachtas.

(6) A scheme submitted by the company under this section shall, if approved by the Minister with the concurrence of the Minister for Finance, be carried out by the company in accordance with its terms.

(7) No pension, gratuity or allowance shall be granted by the company on the resignation, retirement or death of a member of the staff of the company otherwise than in accordance with a scheme under this section.

(8) Where a superannuation allowance falls due for payment to or in respect of a person to whom *subsection (4)* applies in the period beginning on the vesting day and ending immediately before the coming into operation of a scheme submitted by the company and approved of under this section, the allowance shall be calculated and paid by the company in accordance with such superannuation scheme or such enactments in relation to superannuation, as applied to such person immediately before the vesting day and, for that purpose, his pensionable service with the company shall be aggregated with his previous pensionable service.

(9) The Minister for Finance shall make such contribution as may, with his consent, be specified in a scheme or schemes under this section towards the pensions, gratuities and other allowances related to reckonable service given before the vesting day which may be granted to or in respect of persons who, immediately before that day, were members of the staff of the Department of Energy, and such scheme or schemes shall, with the like consent, fix the manner and times of the payment of such contribution.

(10) (a) Notwithstanding anything in the Superannuation Acts, 1834 to 1963, and the Superannuation and Pensions Act, 1976, the Minister for Finance may, following consultation with the company, delegate to the company the payment of pensions, gratuities and other allowances to or in respect of such persons who were members of the staff of the Department of Energy or of other Departments and who were engaged in functions assigned to the company under this Act and who retired or died before the vesting day as he may specify.

(b) Any delegation under *paragraph (a)* shall provide for not less favourable conditions than would apply if the benefits referred to had continued to be paid out of moneys provided by the Oireachtas.

(c) The company shall make payments in accordance with any such delegation to it and shall be reimbursed by the Minister for Finance in respect thereof in such manner and at such times as may be specified in the articles of association of the company.

(11) Moneys required to be paid by the Minister for Finance under this section shall be advanced out of the Central Fund or the growing produce thereof.

Power of Commissioners of Public Works to undertake work. **45.—**(1) The Commissioners of Public Works in Ireland shall have power to undertake work at the request of the company.

(2) In exercise of the powers conferred by *subsection (1)*, the said Commissioners shall, in respect of any work undertaken by them at the request of the company on or after the vesting day, be deemed not to be a State authority for the purposes of the Local Government (Planning and Development) Acts, 1963 to 1983.

Charge of rates on property of company. **46.—**Rateable property vested in the company on the vesting day shall, from the commencement of the next following financial year, cease to be exempt from the rate chargeable by a local authority notwithstanding that the property may appear as exempt on a valuation list.

Liability for loss occurring before vesting day. **47.—**(1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the exercise before the vesting day of functions assigned to the company by this Act shall, after that day, lie against the company, whether or not any claim in respect thereof was made before that day and, subject to section 49, not against the Minister, any other State authority or the State.

(2) Where, before the vesting day in a claim to which *subsection (1)* relates, agreement in settlement of the claim has been reached between the parties and the terms of the agreement have not been implemented or judgment has been given in favour of the injured person and the judgment has not been enforced, the terms of the agreement or the judgment, as the case may be, shall, in so far as enforceable against the Minister, any other State authority or the State, be enforceable against the company and, subject to *section 49*, not against the Minister, any other State authority or the State.

(3) Any claim made or proper to be made by the Minister, any other State authority or the State in respect of any loss or injury arising from the act or default of any person before the vesting day shall, where the claim relates to functions assigned to the company by this Act, be regarded as made by or proper to be made by the company and may be pursued and sued for by the company as if the loss or injury had been suffered by the company.

(4) Where, before the vesting day, in a claim to which *subsection (3)* relates, agreement in settlement of the claim has been reached between the parties and the terms of the agreement have not been implemented or judgment has been given in favour of the Minister, any other State authority or the State and the judgment has not been enforced, the terms of the agreement or the judgment, as the case may be, shall, in so far as enforceable by the Minister, any other State authority or the State, be enforceable by the company.

(5) This section does not apply to a claim by one State authority against another.

Continuance of pending legal proceedings. **48.**—All legal proceedings in respect of functions assigned to the company by this Act and pending immediately before the vesting day to which the Minister, any other State authority or the State is a party shall be continued with the substitution for any such party of the company.

Enforcement of judgments. **49.**—(1) Where judgment is given against the company in any proceedings in pursuance of a claim to which *section 47 (1)* relates or in proceedings continued under *section 48* and the person in whose favour the judgment is given has been unable to enforce the judgment, in whole or in part, against the company, he shall be entitled to enter judgment against the Minister for Finance in any court of competent jurisdiction for any amount not recovered on foot of the judgment as a debt due to him by the said Minister.

(2) The Minister for Finance shall be entitled to recover from the company any payment made by him to a person in satisfaction of a judgment entered against him under *subsection (1)*.

(3) Moneys required by the Minister for Finance to meet payments required by him under this section shall be advanced to him out of the Central Fund or the growing produce thereof, and shall be repaid to the Central Fund out of moneys provided by the Oireachtas.

Continuance of certain notices, certificates, declarations and bonds.

50.—From the vesting day—

(a) every notice, certificate and declaration given by or to the Minister,

(b) every court order directed to any person, and

(c) every bond given by any person to the Minister,

which relates to functions assigned under this Act to the company, shall, where its operation, effect or term has not ceased or expired before the vesting day, continue in force and have effect as if the functions of the Minister were on that day performable by the company.

Continuance of licences and permissions granted by the Minister.

51.—Every licence or permission granted by the Minister in relation to land or other property vested in the company under this Act, and in force immediately before the vesting day, shall continue in force as if granted by the company.

Continuance of planning consultations.

52.—For the purpose of section 84 of the Local Government (Planning and Development) Act, 1963—

(a) any consultation which is completed before the vesting day between the Minister and a planning authority in relation to the construction or extension of a building which from that day is to be used in connection with the functions assigned by this Act to the company shall have effect as if the company were a party to that consultation;

(b) any such consultation which is commenced by the Minister but which is not completed before the vesting day in relation to the construction or extension of any building which from that day is to be used as aforesaid shall be completed by the company and not by the Minister.

Transitional financial provisions.

53.—(1) The company shall pay to or in respect of every member of the staff of the Department of Energy transferred to the service of the company any amount due to or in respect of that member in respect of service with the Department and unpaid on the vesting day and the company shall, with the concurrence of the Minister for Finance, be reimbursed by the Minister.

(2) The Minister shall, with the concurrence of the Minister for Finance, pay to the company an amount equal to advance payments received by him before the vesting day in respect of goods or services to be provided by the company on or after the vesting day.

(3) The company shall pay to the Minister an amount equal to sums collected by it on or after the vesting day in respect of goods or services provided by the Minister before the vesting day in respect of functions assigned by this Act to the company.

(4) All sums required to be paid under this section shall become due and payable on such date as the Minister, in consultation with the company and with the concurrence of the Minister for Finance, may determine.

(5) The company shall supply the Minister with such information, records and documents as the Minister may require for the purposes of this section and the Minister and his officers shall have the right to inspect and take copies of all relevant records and documents of the company.

(6) In the event of a disagreement as to any amount to be paid by the Minister to the company or by the company to the Minister under this section the decision of the Minister, given with the concurrence of the Minister for Finance, shall be final.

FIRST SCHEDULE

Repeal of Enactments

Section 5.

Number and Year	Short Title	Extent of Repeal
No. 13 of 1946	<u>Forestry Act, 1946</u>	In section 9 (1): paragraphs (b), (e) and (h). Sections 9 (6), 10 and 59.
No. 25 of 1954	<u>State Property Act, 1954</u>	In the First Schedule: paragraph 1, as amended by <u>section 64</u> of the <u>Wildlife Act, 1976</u> .

SECOND SCHEDULE

Amendment of Provisions of Forestry Act, 1946

Section 6.

PART I

Provision	Amendment
Sections 11 (3) and 63 (4)	"£100" substituted for "ten pounds".
Sections 37 (3), 38 (2), 39 (4), 42 (3), 45 (2), 47 (2) and 51 (2)	(a) "subject to <u>section 53</u> of this Act" deleted. (b) "£50" substituted for "five pounds".
Sections 41 (11), 46 (9), 48 (5), 49 (7) and 52 (5)	"£50" substituted for "five pounds" and "£100" substituted for "ten pounds".
Section 58 (2)	"£200" substituted for "twenty pounds".
Section 63 (5)	"£50" substituted for "five pounds".
Section 64	"£250" substituted for "twenty-five pounds".

PART II

Provision	Amendment
Section 9 (1) (g)	"undertake the planting, development, utilisation, management or supervision, upon such terms and subject to such conditions as may be agreed upon, or" deleted.