

# **FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Forestry and Land Management (Scotland) Bill, introduced in the Scottish Parliament on 10 May 2017.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 11–FM);
  - a Policy Memorandum (SP Bill 11–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 11—LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE BILL**

5. The Bill confers on the Scottish Ministers forestry and land management functions. It removes these functions from the Forestry Commissioners in so far as they relate to Scotland, in preparation for integration of forestry policy, support, development and regulation into the Scottish Government.
6. Specifically, the Bill:
  - Confers on the Scottish Ministers forestry functions, including a duty to promote sustainable forest management, and a duty to prepare, publish and have regard to a forestry strategy.

- Transfers to the Scottish Ministers from Forestry Commissioners tree health and silvicultural material testing functions, in so far as they apply to Scotland.
- Confers on the Scottish Ministers functions in relation to management of land, including forestry land, and provides for those functions to be delegated to community bodies where the Scottish Ministers consider it appropriate; enables the Scottish Ministers to enter into arrangements with other persons to manage land on their behalf, and/or provide advice and assistance on management of land; and provides powers for the Scottish Ministers to acquire and dispose of land, including land that is part of the National Forest Estate.
- Introduces a regulatory regime for felling trees and restocking. Unless an exemption applies, or the Scottish Ministers require felling to be carried out via a direction or a notice, felling must be carried out in accordance with permission granted by the Scottish Ministers.
- Provides powers for the Scottish Ministers to support compliance with the regulatory regime for felling and restocking including powers of entry, a step-in power (which allows the Scottish Ministers to rectify a failure to comply with the regulatory regime where they have given a person notice to rectify the failing and the person has not done so) and an ability to recover expenses associated with use of the step-in power.
- Provides general powers for the Scottish Ministers to use in carrying out their functions under the Bill, including the ability to conduct research and inquiries, provide education and training and collect and publish data and statistics relating to their forestry and land management functions; to provide financial assistance; to establish corporate bodies; and to impose charges for the purposes of carrying out functions under the Bill.

7. The Bill is part of a larger programme of work to complete devolution of forestry that includes establishing new cross-border arrangements with the UK and Welsh Governments as well as the Forestry Commissioners and Natural Resources Wales for the exercise of forestry functions currently delivered on a GB basis; and the creation – by administrative means – of new organisational structures for forestry and land management in Scotland.

8. The Bill is the principal vehicle to make the legislative changes associated with the devolution programme; however, once the Bill has completed its passage orders will be required under sections 90 and 104 of the Scotland Act 1998 to: wind up the Forestry Commissioners as a cross-border public authority; transfer relevant property and liabilities to the Scottish Ministers and in relation to the transfer of staff; and underpin the new cross-border arrangements. Powers for the Scottish Ministers to promote, develop, construct and operate renewable energy installations on land that they manage, and to delegate that function to community bodies, will also be sought via an order under section 104 of the Scotland Act 1998 due to the reservation in section D1 of Schedule 5 to that Act.

9. Explanatory Notes on the various sections of the Bill are below. A detailed explanation of the Bill's purpose can be found in the Policy Memorandum, which also sets out the policy intentions underpinning it and the relationship of the Bill to the wider programme of work to complete devolution of forestry.

## **Part 2 - Forestry functions**

### ***Sustainable forest management***

10. Section 2 confers a duty on the Scottish Ministers to promote sustainable forest management (SFM). SFM is a concept recognised internationally as the management of forests according to the principles of sustainable development and achieving a balance between the three main pillars of economic, environmental and socio-cultural objectives.

### ***Forestry strategy***

11. Sections 3, 4, 5 and 6 place duties on the Scottish Ministers associated with the preparation and publication of a forestry strategy and require them to have regard to the strategy when exercising forestry functions or related functions under the Bill.

12. Under section 3(1) to (3), the Scottish Ministers must prepare a forestry strategy that sets out their objectives, priorities and policies with respect to the promotion of SFM as well as other matters related to that. Specifically the strategy must include objectives, priorities and policies with respect to the economic development of forestry, the conservation and enhancement of the environment by means of SFM and the realisation of the social benefits of forestry. Section 3(4) places an obligation on the Scottish Ministers to keep the forestry strategy under review and enables them to revise it if they consider revision appropriate. Section 5 requires the Scottish Ministers to publish the forestry strategy and each revision of it and to lay a copy of the strategy and each revision of it before the Scottish Parliament.

13. Section 4(a) introduces consultation requirements in the preparation of the forestry strategy and each revision. Section 4(b) requires the Scottish Ministers to have regard to the land use strategy and the land rights and responsibilities statement when preparing or revising the forestry strategy. The section 4(b) obligation is without prejudice to the Scottish Ministers' other statutory responsibilities which have relevance to forestry and land management such as, for example, the Scottish Ministers' obligations under the Climate Change (Scotland) Act 2009 or, in relation to the conservation of biodiversity, under the Nature Conservation (Scotland) Act 2004, which guide all relevant policy formulation.

14. The Scottish Ministers must have regard to the forestry strategy when complying with their duty to promote SFM and in exercising certain functions under the Bill as specified in section 6. These include functions in relation to tree health and silvicultural material testing, managing forestry land, acquiring and disposing of land, delegating functions to a community body or exercising any of their general powers under Part 5 for the purpose of or in connection with those functions.

### ***Tree health and silvicultural material testing functions***

15. Sections 7 and 8 have the effect of transferring to the Scottish Ministers from Forestry Commissioners responsibility for the exercise of functions in or as regards Scotland relating to the testing of silvicultural propagating and planting material and tree health under, respectively, the Plant Varieties and Seeds Act 1964 and the Plant Health Act 1967.

### **Part 3 - Management of land by Scottish Ministers**

16. Part 3 makes provision for the Scottish Ministers to manage land for the purpose of promoting SFM (section 9) (in relation to forestry land) or furthering the achievement of sustainable development (section 13) (in relation to certain other land), and provides a framework of powers for managing land for those purposes.

#### ***Management of forestry land***

17. Section 9(1) places a duty on the Scottish Ministers to manage forestry land (as defined in section 10 as read with section 11) in a way that promotes SFM. This includes, as set out in section 9(2), the use of forestry land for economic development, the conservation and enhancement of the environment and the realisation of the social benefits of forestry (which links back to requirements included in the forestry strategy under section 3(3)).

18. Despite the section 9(1) duty, section 9(3) provides that the Scottish Ministers may use forestry land for the purpose of furthering the achievement of sustainable development provided that, in doing so, the Scottish Ministers have regard to the forestry strategy as prepared under section 3.

19. Section 9(4) qualifies the application of that section in the case where Scottish Ministers have entered into arrangements with other persons for the management of forestry land, in accordance with the power in section 14(1). Section 14(4) provides for the application of section 9 in relation to that land subject to the terms of those arrangements.

20. Section 10 defines “forestry land” for the purposes of the Bill.

21. Paragraph (a) of that definition refers to the national forest estate which is defined in section 11 as (a) land in Scotland that is at disposal of the Forestry Commissioners under the Forestry Act 1967 immediately before the date on which the section comes into force, and (b) land that is acquired by the Scottish Ministers under the powers in sections 15(1)(a) and 16(1)(a) for the purposes of promoting SFM. The definition of the national forest estate also has relevance for section 17 (power to dispose of land).

22. Paragraph (b) of the definition of forestry land refers to other land which is managed by the Scottish Ministers for the purpose of exercising their functions under section 9. This provision is intended to capture land owned by the Scottish Ministers that is not part of the national forest estate that they determine would be suitable for forestry; or land managed by them which would be suitable for forestry, for example, land which is managed by the Scottish Ministers for the purpose of section 9, in accordance with arrangements under section 14(1).

23. Section 12 requires the Scottish Ministers to publish a description of forestry land in such a manner as they consider appropriate. This includes land managed by the Scottish Ministers by arrangement under section 14(1) where the land is to be used for section 9 purposes. It is

envisaged that section 12 publication requirements could be met by means of a public-facing web-based mapping tool, for example the Forestry Commission Scotland Map Viewer<sup>1</sup>.

### ***Management of land to further sustainable development***

24. Section 13(1) requires the Scottish Ministers to manage the land specified in subsection (2) for the purpose of furthering the achievement of sustainable development. This applies to (a) land acquired by agreement under section 15(1)(b) or compulsorily under section 16(1)(b); and (b) land managed by Scottish Ministers in accordance with arrangements entered into under section 14(1) for the purpose of the duty in subsection (1).

25. Section 13(3) qualifies the application of section 13 in the case where the Scottish Ministers have entered into arrangements with other persons for the management of land in accordance with section 14(1). Section 14(4) provides for the application of section 13 in relation to that land subject to the terms of those arrangements.

### ***Power to enter into arrangements***

26. Section 14(1) and (2) respectively provide that the Scottish Ministers may, for the purposes of managing land under section 9 or 13 enter into arrangements with any person for the management of land or for the provision of advice or assistance in relation to the management of land. These arrangements can be with any person, whether a natural or legal person, including private and public bodies.

27. Arrangements allowing Scottish Ministers to manage land (reached under section 14(1)) must be for the purposes of section 9 (management of land to promote SFM) or 13 (management of land to further the achievement of sustainable development). The precise scope and terms of such arrangements will be a matter for agreement as between the Scottish Ministers and the relevant person. For example, if an arrangement relates to a piece of land which is currently forested it is anticipated that the agreement would be for the purpose of managing the land under section 9. If, in contrast, the land is currently un-forested and is considered unlikely to ever be suitable for forestry, the purpose of the agreement is likely to be for managing the land under section 13. However, it is possible that in relation to land which is used or is suitable for use for both forestry and non-forestry purposes, arrangements under section 14(1) could be made to manage the land both for the purpose of section 9 and for the purpose of section 13, and this could appropriately be reflected in the terms underpinning the management arrangements as agreed between the Scottish Ministers and the relevant person.

28. Further to paragraphs 19 and 24, although the Scottish Ministers' duties are subject to the terms of any arrangement agreed it is not possible for the terms of an arrangement to oust the duties to manage the land to promote SFM (section 9) or to further the achievement of sustainable development (section 13).

29. In accordance with section 10, land that is managed by the Scottish Ministers under a section 14(1) arrangement for the purposes of managing land under section 9 is to be treated as

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<sup>1</sup> [http://maps.forestry.gov.uk/imf/imf.jsp?site=fcscotland\\_ext&](http://maps.forestry.gov.uk/imf/imf.jsp?site=fcscotland_ext&)

forestry land for the purposes of the Bill. This has the effect of requiring that land to be managed in a way that promotes SFM.

### ***Acquisition and disposal of land***

30. Sections 15 and 16 confer powers on the Scottish Ministers to acquire land—
- (a) for the purpose of managing that land in a way that promotes SFM; or
  - (b) for that land to be managed for the purpose of furthering the achievement of sustainable development.
31. Section 15 enables the Scottish Ministers to acquire land by agreement where they consider it appropriate to do so, and provides that the power includes the power (a) to purchase, or enter into a lease for, land; (b) to accept land as a gift; and (c) to acquire any interest or right in or over land.
32. Section 16(1) provides the Scottish Ministers with powers to compulsorily acquire land. By virtue of the amendment made by paragraph 1 of schedule 1, the provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 concerning the making and confirming of compulsory purchase orders will apply to the compulsory acquisition of land under section 16(1) similar to the exercise of powers to compulsorily acquire land by the Scottish Ministers or other public bodies under other enactments.
33. However, the power of compulsory acquisition does not allow the Scottish Ministers to acquire land that they manage by virtue of an arrangement under section 14(1).
34. The power in section 16(1) does not apply to land that is subject to a forestry dedication agreement (as defined in section 67 by reference to section 5 of the Forestry Act 1967) and which is being managed in accordance with a plan of operations approved by the Scottish Ministers for the purposes of that agreement.
35. Forestry dedication agreements (FDA) were used by the Forestry Commissioners prior to 1981 as a means of promoting forestry. An FDA is a binding legal agreement between the Forestry Commissioners and a land owner which makes a charge on the land it covers to use that land for the growing of timber. It also binds the owner to good forestry practice (in practice, through a plan of operations approved in relation to the FDA). Agreements are recorded in the Register of Sasines. Despite the general repeal of the Forestry Act 1967 by section 68(2) and schedule 2 of the Bill, section 69 provides that this does not affect any forestry dedication agreement which is in force prior to the date on which that repeal has effect. Responsibility for FDAs and the approval of plans of operations will transfer from the Forestry Commissioners to the Scottish Ministers and existing plans of operations will be saved by virtue of an order under section 90 of the Scotland Act 1998 and regulations made under section 66(1) of the Bill.
36. Finally, the power in section 16(1) does not apply to land held or used by a Minister of the Crown or a department of the Government of the United Kingdom given the reservation in paragraph 1(a) and paragraph 3(3)(c) of schedule 5 of the Scotland Act 1998.

37. Section 17(1) confers a power on the Scottish Ministers to dispose of land in the national forest estate (as defined in section 11) and land they have acquired for the purposes of furthering the achievement of sustainable development. The definition of “dispose of land” in subsection (2) includes the sale, gift or lease of land or the grant of any interest or right in or over the land. Section 6(e) provides that the Scottish Ministers must have regard to the forestry strategy when exercising the power to dispose of land in the national forest estate.

### ***Delegation to community bodies***

38. Section 18 makes provision to enable the Scottish Ministers to delegate their functions under section 9 or 13 to a community body as defined in section 19. Section 19 replicates for the purposes of the Bill the definition in section 7C of the Forestry Act 1967. This provision enables community bodies to exercise the Scottish Ministers’ land management functions in respect of land that is let to them by the Scottish Ministers.

39. The Scottish Ministers have the ability to make a delegation to such extent and on such terms as they consider appropriate (subsection (1) and subsection (3)(a)) and may vary or revoke it (subsection (3)(b)). The Scottish Ministers retain the ability to carry out the function themselves in circumstances where a delegation has been granted (subsection (4)).

40. Section 20 makes provision about how a community body is required to exercise a function delegated by the Scottish Ministers under section 18. Section 20(1) requires the community body to manage the land in accordance with the Scottish Ministers’ climate change duties (as conferred by the Climate Change (Scotland) Act 2009); having regard to the forestry strategy, where the delegation is in relation to forestry land; and for the purpose of furthering the achievement of sustainable development where the delegation is in relation to land mentioned in section 13(2).

41. Section 20(2) applies to community bodies any relevant duty of the Scottish Ministers in relation to use of land that is the subject of a delegation. Relevant duties are defined in section 20(3). The effect of these sections is to enable the Scottish Ministers to require that specific duties to which they are subject continue to be exercised in relation to the management of land subject to a delegation; these duties must be set out by the Scottish Ministers in relation to the delegation.

## **Part 4 - Felling**

### ***Offence of unauthorised felling***

42. Section 23 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of unauthorised felling. Where the offence is committed in respect of more than one tree the maximum fine is to be determined as if the person had been convicted of a separate offence in respect of each tree.

43. Section 23(1)(a) and (b) set out where the offence does not apply. Under section 23(1)(a) a person is exempt from the offence if the felling is carried out in accordance with regulations made by the Scottish Ministers under section 24. Regulations under section 24 may provide that the offence does not apply to particular categories of person, particular places or activities,

particular circumstances and trees of particular descriptions. Section 65(2)(a) provides that regulations under section 24(1) are subject to affirmative procedure. Under section 23(1)(b), the felling of a tree is not an offence if the felling is carried out in accordance with a felling permission (section 27), a felling direction (section 31), a restocking direction (section 33), a registered notice to comply (section 35) or a remedial notice (section 48).

### ***Felling permission***

44. Chapter 3 of Part 4 makes provision for regulation of felling via felling permissions issued by the Scottish Ministers.

45. Section 25(1) and (2) provides for an owner or – with the written permission of an owner – an occupier of the land on which a tree is located to apply to the Scottish Ministers for permission to fell a tree. Section 25(3) enables the Scottish Ministers, by regulations, to make further provision about applications for felling permission. Regulations may include provision about the way in which applications are to be made and the information to be provided in applications. Section 65(1)(a) provides that regulations under section 25(3) are subject to negative procedure.

46. Section 26 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of knowingly or recklessly providing false or misleading information in an application for felling permission.

47. Section 27 makes provision about decisions on applications. The Scottish Ministers may grant an application (with or without conditions) or refuse an application, and must have regard to their duty (under section 2) to promote SFM in making a decision. Subsections (4), (5) and (6) respectively make provision about (a) the type of conditions that can be included in a felling permission, which can include conditions setting out any steps to be taken after the felling is carried out (“continuing conditions”), (b) specify circumstances in which conditions cannot be imposed, and (c) enable conditions to be varied or revoked. Section 27(7) provides that the Scottish Ministers can, by regulations, make further provision about decisions on applications for felling permissions. Regulations may, in particular, include provision about matters set out in subsection (8). Section 65(1)(b) provides that regulations under section 27(7) are subject to negative procedure.

48. If the Scottish Ministers refuse an application they must give reasons for the refusal (section 27(3)). Under section 29(1), a person who suffers loss as a result of the Scottish Ministers’ refusal of a felling permission is entitled to compensation in accordance with provisions made in regulations by the Scottish Ministers. Section 29(2) provides that regulations may include provision about the persons entitled to compensation, the procedure for applying, information to be provided in applications, the way in which the amount of compensation is to be determined, the way in which any disputes about compensation are to be determined, and appeals about decisions relating to compensation. Section 65(1)(c) provides that regulations under section 29(1) are subject to negative procedure.

49. Section 28 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without reasonable excuse, to comply with a continuing condition on a felling permission granted to a person.

50. Section 30 makes provision about the interaction between regulation of felling under the Bill and tree preservation orders made or having effect as if made under section 160 of the Town and Country Planning (Scotland) Act 1997 (which is consequentially amended by paragraph 2 of schedule 1 of the Bill), including requirements to consult with planning authorities (subsection (1)). Where a felling permission, a felling or restocking direction, a registered notice to comply or a remedial notice exists in relation to a tree covered by a tree preservation order, felling carried out in accordance with it will not breach such an order (subsections (2) and (3)).

### ***Felling directions***

51. Chapter 4 of Part 4 makes provision for the Scottish Ministers to require felling. Section 31 makes provision for the issue of directions by the Scottish Ministers requiring that trees are felled (“felling directions”). Subsections (1) and (2) set out the circumstances in which a direction can be given ((a) to prevent deterioration or further deterioration in the quality of timber of the trees, (b) to improve the growth of other trees or (c) to prevent or reduce harm caused by the presence of trees) and the person (the owner of the land on which the trees are located) to whom a direction can be given. The Scottish Ministers must under subsection (3) have regard to their duty to promote SFM (under section 2) when deciding to give a felling direction and may vary or revoke directions including any conditions imposed on directions (subsection (4)). Subsection (5) enables the Scottish Ministers to, by regulations, make further provision about felling directions. Regulations may include provision about the circumstances in which a direction may not be given, requirements to be included in a direction, how directions are to be notified, and the imposition of conditions on a felling direction (which may include steps that must be taken after the direction is complied with). Section 65(1)(d) provides that regulations under section 31(5) are subject to negative procedure.

52. Section 32 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without a reasonable excuse, to comply with a felling direction (including any condition imposed on it) given to a person.

### ***Restocking directions***

53. Chapter 5 of Part 4 makes provision for the Scottish Ministers to require restocking. Section 33 makes provision for the issue of directions by the Scottish Ministers requiring an owner of land to stock particular land (“restocking directions”). Subsection (1) sets out the circumstances in which a direction may be given and subsection (2) provides detail on what the Scottish Ministers may require under a direction.

54. The Scottish Ministers must have regard to their duty to promote SFM (under section 2) when deciding to give a restocking direction and may vary or revoke a direction including any conditions imposed on the direction (subsections (4) and (5)). Subsections (6) and (7) make provision enabling an owner who has been served with and complies with a restocking direction to recover the costs of compliance from another person in circumstances where that other person (a) was responsible for the felling to which the restocking direction relates, or (b) failed to

comply with the continuing condition on a felling permission to which the restocking direction relates.

55. Subsection (8) enables the Scottish Ministers to, by regulations, make further provision about restocking directions; regulations may include provision about the persons to whom a restocking direction may not be given, the circumstances in which a direction may not be given, requirements to be included in a direction, how directions are to be notified, and the imposition of conditions on a direction (which may include steps that must be taken after the direction is complied with). Section 65(1)(e) provides that regulations under section 33(8) are subject to negative procedure.

56. Section 34 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without a reasonable excuse, to comply with a restocking direction (including any condition imposed on it) given to a person.

***Continuing conditions on felling permission, felling directions and restocking directions: notices to comply***

57. Chapters 6 and 7 of Part 4 permit the Scottish Ministers to register certain notices. Section 39 defines, for those purposes, the meaning of “register”. In respect of the notices specified at section 39(2), ‘register’ means register the information contained in a notice in the Land Register for Scotland or (as the case may be) record the notice in the General Register of Sasines. The effect of registering notices is that the obligations imposed by the notice are easily assessed by any prospective new owner and are automatically passed to any future owners of the land to which they relate. The notices are:

- (a) a notice to comply (under section 35(2));
- (b) a notice of variation (under section 37(2));
- (c) a notice of discharge from compliance (under section 38(2));
- (d) a notice of liability for expenses (under section 56); or
- (e) a notice of discharge of liability for expenses (under section 58(2)).

58. Section 40 makes provision about the description of land to be included in registrations of the notices set out at (a)–(e) of paragraph 57.

59. Section 35 makes provision for the Scottish Ministers to apply to register a notice to comply with a felling direction, a restocking direction or a continuing condition on felling permission (if the felling allowed by the permission has been carried out). Such a notice is called a “notice to comply”. An owner (including a new owner) who fails, without reasonable excuse, to comply with a registered notice to comply commits an offence punishable upon summary conviction by a fine of up to level 5 on the standard scale (section 36).

60. Section 37 makes provision enabling the variation of registered notices to comply. In order to vary a registered notice to comply—

- (a) all of the owners of the land must agree to the variation;

- (b) the Scottish Ministers must agree to the variation;
- (c) the agreement must be in writing; and
- (d) a notice (called a “notice of variation”) must be registered by the Scottish Ministers (section 37(2)).

61. Section 38 requires the Scottish Ministers to apply to register a notice of discharge from compliance where:

- (a) they are satisfied that a registered notice to comply has been complied with; or
- (b) they have agreed in writing with an owner of land to which a registered notice to comply relates that the notice is to be discharged.

62. Where there is more than one owner of the land, agreement from all of the owners is not required: the Scottish Ministers may reach agreement to discharge the registered notice to comply with any of the owners (section 38(1)(b)).

63. Section 41 provides that the Keeper of the Registers of Scotland is not required to investigate or determine the accuracy of information contained in notices to comply, notices of variation, notices of discharge from compliance, notices of liability for expenses, or notices of discharge of liability for expenses.

## ***Compliance***

### *Requests for information*

64. Section 42 provides powers for the Scottish Ministers to request information about compliance with felling permission conditions, felling and restocking directions (including any associated conditions) or registered notices to comply, for the purpose of monitoring compliance with those. The persons from whom the Scottish Ministers may request the information are set out in subsection (3).

65. Section 43 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of knowingly or recklessly providing false or misleading information in response to a request for information under section 42.

### *Site visits with the consent of the owner or occupier*

66. Section 44(1) enables the Scottish Ministers to enter land mentioned in subsection (2) to monitor compliance with felling permission conditions, a felling or restocking direction (including any associated conditions) or a registered notice to comply. The power is only exercisable with the consent of an owner or occupier of the land mentioned in subsection (2). If consent is given, the Scottish Ministers may exercise the powers in section 54.

*Powers of entry*

67. Sections 45 to 47 provide the Scottish Ministers with powers of entry to land for the purposes of:

- (a) determining whether unauthorised felling has taken place or is taking place;
- (b) determining whether they need to give a felling or restocking direction; or
- (c) determining whether a person has failed or is failing to comply with a condition on a felling permission, a felling or restocking direction (including any associated conditions), a registered notice to comply or a remedial notice.

*Remedial notices*

68. Section 48 makes provision about remedial notices, as defined at subsection (2). Subsection (1) enables the Scottish Ministers to give a person a remedial notice if it appears to them that the person has failed or is failing to comply with a condition on felling permission, a felling or restocking direction (including any associated conditions) or a registered notice to comply.

69. Section 48(3) requires that the Scottish Ministers give a copy of a remedial notice to the owner of the applicable land. Subsection (4) provides that a person may take any steps or stop any activity specified in the remedial notice despite any provision in any agreement relating to the trees or the land to which the notice relates or any associated conditions of the felling permission, felling or restocking direction or, as the case may be, registered notice to comply, which would otherwise prevent that person from doing so. Subsection (5) provides that the Scottish Ministers may vary or revoke a remedial notice.

70. Section 49 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without reasonable excuse, to comply with a remedial notice.

*Giving documents to owner or occupier*

71. Section 50 makes provision for how notices or other documents are to be given to an owner or occupier of land for the purposes of Part 4 of the Bill where the person's name or address cannot be ascertained after reasonable enquiry.

*Step-in power*

72. Section 51 provides powers for the Scottish Ministers to enter land to which a remedial notice relates and to take the steps, or stop the activity, set out in the notice. The step-in power may be exercised in circumstances where a person has failed to comply with a remedial notice within the period specified in it for compliance.

*Powers of entry and step-in power: application to court*

73. Section 52 provides that, in connection with the exercise of powers under sections 45, 46, 47 and 51, the Scottish Ministers may apply to the sheriff or a justice of the peace for a warrant to enter the land concerned and, if necessary, to use reasonable force in doing so.

74. Subsection (3) provides that a warrant may only be granted if the sheriff or justice of the peace is satisfied, by evidence on oath, that the conditions specified in that subsection are met. Subsection (4) provides that a warrant may not authorise entry to Crown land, entry to a dwelling or the use of force against an individual. Subsection (5) makes provision about expiry of warrants.

*Powers of entry and step-in power: offences*

75. Section 53 creates two offences, each punishable upon summary conviction by a fine of up to level 5 on the standard scale. The offences are of intentionally obstructing the Scottish Ministers in exercising their powers under sections 45, 46, 47 (powers of entry) or section 51 (step-in power).

*Powers of entry and step-in power: further provision*

76. Section 54 makes further provision for the purpose of the exercise by the Scottish Ministers of the powers in sections 44, 45, 46, 47 and 51. As set out in subsection (2) of that section, this includes powers for the Scottish Ministers to take onto the land other persons, materials and equipment as may be reasonably be required; to take samples; to mark things for identification purposes; to require access to, inspect or take copies of information (including information kept in a computer) and to gather evidence. However, these powers may be exercised only at a reasonable time and do not authorise entry to a dwelling (subsections (3) and (4)). Moreover, a person exercising the power must on request produce written evidence of that person's entitlement to do so (subsection (5)). If the Scottish Ministers cause damage in exercising the powers listed in subsection (1) they must take reasonable steps to remedy the damage or, if it is not possible to do so, must pay compensation (subsection (6)). If the Scottish Ministers enter unoccupied land in exercising the powers listed in subsection (1) they must leave the land as effectively secured against unauthorised entry as they found it and, if they cause loss or damage by failing to comply with that requirement, they must pay compensation (subsections (7) and (8)).

*Step-in power: recovery of expenses*

77. Section 55 makes provision enabling the Scottish Ministers to recover from the person who has failed to comply with a remedial notice expenses in connection with the exercise of the Scottish Ministers' section 51 step-in power. The expenses which may be recovered are set out in subsection (2), and include administrative expenses and interest.

78. Section 56 provides powers for the Scottish Ministers to apply to register a notice of liability for expenses specifying the matters set out in that section. This is for the purposes of enabling them to recover the expenses including (in accordance with section 57) from any new owner of the land to which the notice relates unless the liability was discharged prior to the acquisition of the land by the new owner (see section 58).

79. Section 57 makes provision to enable the recovery of expenses from a new owner of land, who will become severally liable for those expenses along with the former owner of the land, where a notice of liability for expenses is registered in relation to the land at least 14 days before the date on which the new owner acquired a right to the land (subsections (1) and (2)). However, subsection (3) provides that the former owner of the land does not cease to be liable for expenses

and interest under section 55 by virtue only of ceasing to be the owner of the land. Moreover, subsections (4) and (5) provide the new owner with a right to recover from the previous owner any amount paid by the new owner in satisfaction of the liability for the expenses and interest due under section 55, including in the case where the new owner ceases to own the land.

80. Section 58 introduces a requirement for the Scottish Ministers to apply to register a notice of discharge of liability of expenses where liability for expenses and interest to which a registered notice of liability for expenses has been discharged. The Scottish Ministers must specify the matters mentioned in subsection (2) in the notice.

#### *Time limit for prosecution*

81. Section 59 makes provision about the time limit for prosecution of offences under sections 23, 26, 28, 32, 34, 36, 43 or 49. Section 136 of the Criminal Procedure (Scotland) Act 1995 provides that summary-only offences must be prosecuted within six months of the commission of the offence. Section 59 changes that so that proceedings must be commenced within six months of the date on which evidence that the prosecutor believes sufficient to justify proceedings comes to the prosecutor's knowledge. That is subject to a backstop date of three years of the commission of the offence (or in the case of a continuous contravention, after the last date on which the offence was committed). Section 59 defines the date on which proceedings are to be deemed to be commenced by reference to the Criminal Procedure (Scotland) Act 1995, section 136(3).

#### *Appeals*

82. Section 60(1) creates a right of appeal against certain decisions by the Scottish Ministers under Part 4 as specified under that subsection. Subsection (2) provides that the Scottish Ministers, by regulations, may make further provision about appeals under subsection (1); the matters which may in particular be provided for in regulations are set out in subsection (3). Section 65(1)(f) provides that regulations under section 60(2) are subject to the negative procedure and may modify any enactment (including the Bill once enacted) (subsection (4)).

### **Part 5 - General powers**

83. Sections 61 to 64 provide general powers to support the Scottish Ministers in connection with carrying out their functions under the Bill. Section 61 enables the Scottish Ministers to conduct research and inquiries, collect data and publish statistics or other information, provide education and training and encourage or assist other person to do these things. Section 62 enables the Scottish Ministers to form companies in connection with carrying out their functions under the Bill. Section 63 enables the Scottish Ministers to provide financial assistance including grants, loans, guarantees and indemnities and attach conditions in respect of any financial assistance provided. Section 64 provides that the Scottish Ministers may impose charges as they consider appropriate. This will enable the existing charging arrangements in place for activities on the National Forest Estate to be carried forward when management transfers to the Scottish Ministers. Section 6(g) provides that when exercising those general powers for the purpose of or in connection with the carrying out of other functions as specified in section 6, the Scottish Ministers must have regard to the forestry strategy (as prepared under section 3).

## **Part 6 - General and final provisions**

84. Section 65 makes provision for the exercise and scope of regulation-making powers under the Bill including the applicable procedures. Section 66 allows the Scottish Ministers to make ancillary provision by regulations to give full effect to the Bill or any provision made under it (including a power to modify any enactment). Section 67 makes provision about interpretation. Section 68 introduces schedules 1 and 2 (which, respectively, modify and repeal the enactments to the extent specified in those schedules). (See paragraphs 32 and 50 for a further explanation of the effect of the amendments made to the enactments mentioned in schedule 1.) Section 69 makes provision to save existing forestry dedication agreements under the Forestry Act 1967 (see paragraph 35 for a further explanation as regards the scope of those agreements). Section 70 provides that the Forestry Commissioners' functions are no longer exercisable in or as regards Scotland and, in consequence, schedule 2 repeals enactments so far as relating to the functions of the Forestry Commissioners in relation to Scotland.

85. Sections 72 makes provision about Crown application and exempts the Crown (but not those in the service of the Crown) from criminal liability in relation to the Bill. Section 73 makes provision about access to Crown land and has the effect that powers of entry are exercisable in relation to Crown land only with the consent of the appropriate authority. Subsection (2) lists types of Crown land and the appropriate authority in relation to each type of that land.

86. Section 74 deals with commencement of the provisions in the Bill and section 75 provides that the short title of the Act is the Forestry and Land Management (Scotland) Act 2018.

*This document relates to the Forestry and Land Management (Scotland) Bill (SP Bill 11) as introduced in the Scottish Parliament on 10 May 2017*

# **FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL**

## **EXPLANATORY NOTES**

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