Scottish Woodlot Association
Evidence submitted to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill
5 September 2014

Background
The Scottish Woodlot Association Limited (SWA) is an Industrial & Provident Society: a Co-operative. It is a grass-roots, non-profit distributing, forestry co-operative, whose members are working to implement Woodlot Licences and encourage small-scale forestry. It was founded in 2012 by a group of forestry professionals to bring Woodlot Licences to Scotland, giving rural people a stake in their local forests.

A Woodlot Licence (WL) is a lease agreement whereby an individual rents an area of woodland from a landowner on a long-term basis, to manage productively. The model has been inspired by the situation in British Columbia, Canada, where a successful Woodlot Licence programme has been running for over 30 years.

Benefits of woodlot licences include:
- They allow individuals and their families affordable access to woodland to manage
- They support rural lifestyles & livelihoods, and wider rural development
- They deliver high quality management due to the personal input of the WL holder, & their intimate knowledge of woodland
- They can bring ‘difficult’ areas of woodland back into management, generating income for landowners

For more information see: http://www.scottishwoodlotassociation.co.uk/
Introduction
The SWA welcomes the opportunity to comment on the Community Empowerment (Scotland) Bill (CEB), as introduced. Whilst we support much of what is proposed by the Bill, we confine our comments to those sections most directly relevant to our work. We consider these below, in order of priority to us, rather than the order in which they appear in the Bill.

In recent months, the SWA has begun to roll out pilot Woodlot Licences on private ground across Scotland. We now wish to extend this to include publicly-owned woodland, including that owned by Scottish Ministers, believing that in many situations this will deliver enhanced public benefit.

At present there are legislative restrictions on who can lease woodland for forestry purposes from Scottish Ministers, and we have previously held discussions with Scottish Government and Forestry Commission Scotland in an attempt to address this issue. Our briefing paper outlining the issue and proposing solutions is attached to this submission as Appendix A.

Comments on Bill

1. Part 5 Asset Transfer Requests
We welcome the statement that a ‘community controlled body’ as defined in Section 14 of the Bill can be a ‘community transfer body’, and particularly that it can include a community of interest. We note however that this statement is qualified by Section 53 such that eligibility for a particular ‘community controlled body’ to request asset transfer by purchase, may be different from its eligibility to request asset transfer by leasing. We consider these situations separately below in relation to the consequences for the SWA.

Asset Transfer by Leasing
As the CEB stands, the SWA would currently be eligible to request asset transfer by leasing, which we welcome. This will potentially allow us to lease woodland from most of the ‘relevant authorities’ listed in Schedule 3, which will greatly expand our ability to deliver Woodlot Licences.

However, there is one key problem for the SWA in relation to requests to Forestry Commission Scotland (FCS), representing Scottish Ministers: the provisions in the CEB are incompatible with the Forestry Act 1967, which precludes FCS from leasing woodland for forestry purposes. Hence despite the flexibility afforded by the CEB, the Forestry Act still would not allow the SWA to lease woodland from FCS. This represents a major problem to the SWA, as Scottish Ministers are the largest owners of woodland in Scotland.

This restriction was addressed to some degree in the Public Services Reform (Scotland) Act 2010 (PSRA), in relation to community bodies, to allow them to lease woodland from FCS.
However, at that time the definition of community bodies used was much narrower than that of the ‘community controlled body’ proposed in the CEB – and in our view, unduly restrictive.

In January 2014, the SWA therefore proposed amending the PRSA to allow leasing for forestry purposes to a broader range of bodies, more in keeping with that proposed by the CEB. Full detail of our proposal to the Minister for the Environment & Climate Change is attached as Appendix A.

**The SWA believes the current CEB is the ideal opportunity to introduce such a legislative amendment to the PSRA, and remove the incompatibility between CEB, and PSRA & Forestry Act.**

The necessary amendment could usefully be included in Schedule 4 ‘Minor and Consequential Amendments’.

**Asset Transfer by Purchase**

As mentioned above, we note that the definition of ‘community controlled body’ eligible to make a request for asset transfer by purchase is qualified by Section 53.

We have no problem with such restriction in principle; however we are concerned that this section not only introduces qualifying criteria (which we accept as reasonable), but introduces some specific organisational types (companies & SCIOs) as eligible, but not others.

**The SWA would like to see the inclusion of Industrial & Provident Societies (IPS) – with appropriate rules – in this section.**

We recognise that paragraph 2(a) of Section 50 and paragraph 1(c) of Section 53 together give Scottish Ministers discretion to designate particular bodies (which might include IPSs) as eligible for asset transfer by purchase, but at this stage the process and timescale for this is not clear, and hence our preference would be for Section 53 to include the additional flexibility proposed above from the outset.

2. **Part 4 Community Right to Buy Land**

The SWA does not expect the Community Right to Buy to be a significant opportunity for our organisation, hence we make minimal comment on this section.

Our comments do however echo our thinking above on the definition of an eligible community body. The CEB proposes to extend the types of legal entities that can use the community right to buy provisions to include Scottish Charitable Incorporated Organisations (SCIOs), and allow for other legal entities to be added by subordinate legislation.
As above, we believe Industrial and Provident Societies with appropriate rules should be included from the outset, and not have to await the uncertainty of subordinate legislation.

It is the belief of the SWA that the qualifying criteria for a body to be accepted as eligible are most important, not the organisational type, and that legislation should define what these criteria are, rather than specifying particular organisational types.

3. Part 7 Allotments

The SWA notes that the inclusion of allotments in the CEB introduces an element of provision for individuals, rather than communities per se.

We welcome this recognition that the well-being and prospects of individuals, as members of their community, can be important elements in the health and well-being of the community more widely.

We note that the principles attached to allotments – the right to request an allotment; their personal & non-profit nature etc – could also be extended to small Woodlot Licences, which could provide similar benefits for a family, but based on woodland produce (firewood, Non-Timber Forest Products etc).

We invite the Local Government and Regeneration Committee (LGRC) to consider the potential of small Woodlot Licences, analogous to allotments, as a way to support families especially in rural areas; and to consider whether the CEB might be a good opportunity to introduce this concept, if necessary on a pilot basis.

We further note that, should such personal Woodlot Licences be supported, whilst they would be possible on most publicly-owned woodland, the restrictions of the Forestry Act as described earlier would preclude the use of FCS land, and thus a legislative amendment to the Act would be required.

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The Scottish Woodlot Association is happy to discuss the submission above further, and can be contacted via e-mail info@scottishwoodlotassociation.co.uk or by phoning the Secretary on 07742 443 107.

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APPENDIX A (submitted to Scottish Government on 21 January 2014)
SWA Background Briefing:
Proposal for Scottish Government support for woodlot leasing on state land by the Scottish Woodlot Association (SWA)

Summary
Current legislation permits Forestry Commission Scotland (FCS) to lease land for forestry purposes to eligible community organisations. However legislation wording precludes cooperatives such as the SWA. This paper proposes a positive legislative amendment that would facilitate woodlotting on state forest land.

Background
Historically, under the Forestry Acts, the Forestry Commission was unable to lease land for forestry purposes although it has been able to lease land for non-forestry purposes such as managing recreation facilities. In 2008, the Scottish Government consulted on proposals contained in the Scottish Climate Change Bill that would enable the leasing of 25% of the National Forest Estate to raise revenue for climate change mitigation. Whilst this proposal was dropped, support was expressed by consultees for powers to enable FCS to lease land for forestry purposes to communities. Enabling legislation was passed in 2010.

The Public Services Reform (Scotland) Act 2010 allows FCS to offer eligible community organisations the opportunity to lease national forest land for forestry purposes. Discretion is reserved to the Forestry Commissioners and/or Scottish Ministers in some areas, however there appears to be limited flexibility for including groups such as the SWA in the definition of community.

We reproduce the relevant sections of the PSR Act in the Appendix, highlight current limitations in the text and make a proposal for a positive amendment to the Act.

Discussion
The limiting factor in Section 7C is the requirement that a community body must be a company limited by guarantee. The discretion to vary this is not given to Commissioners under subsection 2, which allows other criteria to be varied. Nor is discretion available to Scottish Ministers. This is an issue for SWA as an Industrial & Provident Society, and more widely for community groups who are adopting other alternative structures such as Community Interest Companies and Scottish Charitable Incorporated Organisations.
The solution – an amendment to the PSR Act (2010)

We suggest including further eligible organisational types in Section 7C, subsection (1). These organisations to include:

- Industrial and Provident Societies
- Community Interest Companies
- Scottish Charitable Incorporated Organisations

Further, we recommend that the wording of Section 7C, subsection (4) be amended to include community of interest groups; whose purpose complies with Section 7C, subsection (3).

Conclusion

We suggest a simple amendment to the PSR Act (2010) will have a transformative and positive impact on Scotland’s forestry sector, making it more diverse, more resilient and yielding more economic benefits at a local level.

This proposed amendment could be introduced as a Scottish Statutory Instrument (SSI) tabled in the Scottish Parliament.

Appendix 1. Extract from the Public Services Reform (Scotland) Act 2010 relating to leasing

11 Delegation of certain functions of Forestry Commissioners under Forestry Act 1967

In the Forestry Act 1967 (c. 10), after section 7A insert—

“7B Delegation of functions of Commissioners: Scotland

(1) The Commissioners may, to such extent and subject to such conditions as they think appropriate, delegate their functions under section 3(1) and (3) of this Act to such community bodies as they consider appropriate.

(2) A delegation under subsection (1) may only be made in relation to land in Scotland—

(a) placed at the disposal of the Commissioners by the Scottish Ministers under this Act, and

(b) which is let to the community body to which the delegation is made.

(3) A delegation under subsection (1) does not affect the ability of the Commissioners to carry out the function delegated.

(4) A delegation under subsection (1) does not affect the ability of the Scottish Ministers to—

(a) determine which land in Scotland is placed at the disposal of the Forestry Commissioners,
(b) give directions under section 1 to the Commissioners in relation to the land in question.

(5) A delegation under subsection (1) may be varied or revoked at any time.

(6) In this section, “community body” has the meaning given in section 7C.

7C Delegation of functions under section 7B: community bodies

(1) A community body is, subject to subsection (3), a company limited by guarantee the articles of association of which include the following—

(a) a definition of the community to which the company relates,
(b) provision that the company must have not fewer than 20 members,
(c) provision that the majority of the members of the company is to consist of members of the community,
(d) provision by which the members of the company who consist of members of the community have control of the company,
(e) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts.

(2) The Commissioners may, if they think it in the public interest to do so, disapply such requirements specified in paragraphs (b) to (d) in subsection (1) in relation to any body they may specify.

(3) A body is not a community body unless the Commissioners have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.

(4) Unless the Scottish Ministers otherwise direct, a community—

(a) must be defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units, and
(b) must comprise the persons from time to time—

(i) resident in that postcode unit or in one of those postcode units, and

(ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).

(5) In subsection (4) above, “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.

(6) In subsection (1), “company limited by guarantee” has the meaning given by section 3(3) of the Companies Act 2006 (c. 46)."
The Scottish Woodlot Association Limited is an Industrial and Provident Society,
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