RURAL ECONOMY AND CONNECTIVITY COMMITTEE

FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL

SUBMISSION FROM THE COMMUNITY WOODLANDS ASSOCIATION

Introduction
The Community Woodlands Association (CWA) welcomes the opportunity to give evidence on the Forestry and Land Management (Scotland) Bill. We support the general principles of the Bill but have a number of suggestions to strengthen the Bill and better deliver its policy aims, namely:

- Greater clarity on the definition and use of the term “sustainable forest management”.
- Provision for open consultation and a specified review period for the Scottish Forestry Strategy.
- Greater clarity over the definition and use of the terms “forestry land” and “other land”. Provision that Ministers must have regard to the future use of land when considering disposal.
- Clarity with respect to the intention of the sections covering “delegation of functions to communities” and, if they do not add to existing provisions, their removal.
- A better definition of felling.

In addition, we have commented on a number of non-legislative issues which are referenced in the Policy Memorandum and Financial Memorandum accompanying the Bill and we suggest that the Bill require the Scottish Government to publish a Statement detailing the future arrangements for the management of forestry in Scotland.

Duty to promote sustainable forest management
We welcome the proposed duty on Scottish Ministers to promote sustainable forest management (SFM), but believe it would be useful to clarify the definition and use of this phrase, in particular with respect to the UK Forest Standard.

The Policy Memorandum suggests a relatively broad meaning: “SFM balances the economic, environmental and social benefits of forestry and can be defined as —the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity and vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions at local, national and global levels, and does not cause damage to other ecosystems”

However we are aware that on occasion the Scottish Government employs a narrower definition, equating SFM with compliance with the UK Forest Standard e.g. the Forestry Commission Scotland Annual Report and Accounts for 2015-16¹ in explaining Forest Enterprise Scotland’s funding, says (p78): “In carrying out its activities our Agency (Forest Enterprise Scotland) is expected to practice sustainable forest management in line with the UK Forestry Standard. We also charge the Agency with delivering additional social and environmental outputs. In order to deliver these additional outputs the Agency is given an annual funding grant based on agreed programmes.”

¹ (available at [http://scotland.forestry.gov.uk/supporting/management/reports-plans-and-accounts])
We consider that whilst the UKFS should be maintained as the minimum standard for management for all forests and woodlands, it should be made clear that Scottish Ministers, in managing the National Forest Estate and in supporting private and community sector forestry should be expected to exceed the standard and deliver a broad vision of sustainable forest management.

**Scottish Forestry Strategy**

We welcome the requirement that Scottish Ministers must prepare a forestry strategy, incorporating their objectives, priorities and policies with respect to economic development of forestry, the conservation and enhancement of the environment and the realisation of the social benefits of forestry. We suggest two improvements:

Currently it is proposed that “In preparing or revising the forestry strategy, the Scottish Ministers must consult such persons as they consider appropriate”. Forestry has a wide range of active, engaged stakeholders, generates considerable public interest and interacts with a wide range of other policy areas. We consider therefore that the preparation (and periodic review) of the strategy should include a process of open consultation, similar to that provided for in the Climate Change (Scotland) Act 2009, which, in laying out the duty on Scottish Ministers to prepare a Land Use Strategy, requires: “Before laying the strategy before the Scottish Parliament, the Scottish Ministers must publish a draft strategy and consult with such bodies as they consider appropriate and also with the general public”. It would be appropriate for the Bill to specify a date (perhaps 1 year after Royal Assent) by which the strategy must be laid before Parliament, to ensure sufficient time for open consultation. This consultation process should be welcomed as an opportunity to “promote sustainable forest management”.

It is currently proposed that “The Scottish Ministers must keep the forestry strategy under review, and may, if they consider it appropriate to do so, revise the strategy”. We consider that the Bill should specify a review period of 5 years. A document such as the Scottish Forestry Strategy inevitably reflects current circumstances and policy agendas and loses currency over time, so regular review is necessary: the current version, published in 2006 and now very out-of-date, illustrates this well.

**Management of land by Scottish Ministers**

We understand and commend the policy objectives to create more flexibility in the use of the National Forest Estate and enable a wider land management role to help manage Scotland’s publicly-owned land in the national interest, however sections 9-16 have generated significant confusion with respect to “forestry land” and “other land”, and under what circumstances they are managed for sustainable forest management and sustainable development respectively.

It appears that this confusion arises as a result of attempting to maintain the NFE as a specific and coherent unit, and then having to create additional provisions to take account of the existing complexity of the estate. Thus 10(a) labels the National Forest Estate as by default “forestry land” which (by 9(1)) must be managed in a way that promotes sustainable development.

---

2 The NFE includes >200,000ha of unafforested land. Much of this land (open space, riparian zones, areas above current treeline) is managed integrally with the forest; it may never have trees on but is part of a broader ecological management unit (including deer management) and it is sensible to consider this as forestry land delivering SFM. However the NFE also includes significant “other land” managed for agriculture, wind farms, etc.
forest management, unless 9(3) applies, which allows Scottish Ministers to manage forestry land for the purpose of furthering the achievement of sustainable development.

We consider it would be preferable to start by re-assessing the status of the component parts of the NFE and if necessary reclassifying some areas:

- Land with trees or unafforested land managed as part of an adjacent forest could be classified as “forestry land” where the duty to promote SFM applies.
- Unafforested land intended to be managed for a wider set of objectives furthering the achievement of sustainable development could be classified as “non-forestry land” where the duty to further achievement of sustainable development applies.

If and when Scottish Ministers acquire additional land (to be managed by Forestry and Land Scotland) this can be classified as “forestry” or “non-forestry” land with management objectives identified as appropriate.

**Disposal of land**

Section 17 gives Scottish Ministers broad powers to dispose of land and clarifies that “dispose of land” includes “the sale, gift or lease of the land”, whilst section 6 provides that Scottish Ministers must have regard to the forestry strategy when disposing of land in the national forest estate under section 17. However the “horizon” of this regard is unclear: must Ministers have regard to the forestry strategy merely when identifying land for disposal, or does it require that Ministers must take the future management of the land (and its contribution to delivery of the strategy) into account?

We consider that the latter should be the case, and that where forestry land is disposed of (whether by sale, gift or lease), Scottish Ministers should take reasonable steps to ensure that the future management of forestry land is at least to UKFS and that future management of “other land” further the achievement of sustainable development.

**Delegation of functions to community bodies**

Sections 18-20 provide for the delegation of functions under section 9 or 13 to community bodies. Whilst we welcome the positive intent with respect to community empowerment it is not clear that these sections extend existing provisions.

One possible interpretation of sections 18-20 is that they would permit Scottish Ministers to contract directly with (and net fund) community bodies to take over management of forest or other land owned by Ministers (i.e. without the relationship being mediated in any way by Forestry & Land Scotland).

CWA would welcome such a proposal; however, this interpretation is not supported by the Policy Memorandum. If, as it seems, these sections are merely intended to facilitate the lease of land to community bodies, then we consider that they are unnecessary and can be deleted.

Forestry Commissioners have historically been restricted in their powers to delegate their functions with respect to forestry. Whilst FC/FCS have always been able to lease land for non-forestry purposes such as agriculture, the leasing of land for forestry purposes was
prohibited until the Public Services Reform (Scotland) Act 2010, which permitted leasing to eligible community bodies.\(^3\)

We understand that this section is intended simply to transfer the powers in the Public Services Reform Act from Forestry Commissioners to Scottish Ministers; however, since Scottish Ministers are not bound by the same restrictions that applied to the Commissioners, they do not need specific powers to delegate their functions.

As discussed previously Section 17 gives Ministers powers to dispose of land by sale, gift or lease (to any individual or organisation) subject to having regard to the Scottish Forestry Strategy.

Part 5 of the Community Empowerment (Scotland) Act 2015 gives eligible community bodies the right to request buy, lease or occupy any land or buildings owned by Scottish Ministers and public bodies and defines the process by which asset transfer requests must be evaluated and decisions made.

We do not believe that the provisions in section 18 – 20 add any rights or opportunities for community bodies which are not already provided by the Community Empowerment Act; indeed they narrow the options for eligibility. Furthermore the eligibility criteria in section 19 do not precisely match those in part 5 of the CEA, giving the prospect that a group eligible to buy would not be eligible to lease, and vice versa.\(^4\)

**Felling**

We note that the definition in section 22 “Felling… means intentionally killing a tree” should be amended as it is inaccurate (most broadleaves and a few conifers are not killed by felling; a ring-barked tree is not felled) and contrary to the ordinary meaning of the word.

We suggest the definition should be along the lines of “Felling includes any method of intentionally killing a tree, in addition to the ordinary meaning of the term”.

**Statement on future arrangements for the management of forestry**

The future arrangements for the management of forestry by Scottish Ministers (i.e. a Forestry Division within the Scottish Government and a new Executive Agency: Forestry and Land Scotland) are set out in the Policy Memorandum but are not provided for in the Bill itself.

Given the extensive and wide-ranging concerns expressed by stakeholders we consider that the Bill should require the Scottish Government to publish a Statement as to how they propose to manage and administer their responsibilities under the Bill, with provision that any material change to the arrangements set out in that Statement must be notified to Parliament, and be the subject of an open consultation.

**Forestry and Land Scotland non-executives**

We note that the Financial memorandum states that “Forestry and Land Scotland (as a Scottish Government Executive Agency) will need to recruit at least three part-time non-executives to advise the Chief Executive on audit and risk and related matters”.

---

\(^3\) This was subsequently amended to include SCIOs and Community Benefits Societies as eligible bodies by Chapter 6 of the Community Empowerment (Scotland) Act 2015.

\(^4\) We can provide a more detailed explanation of this point if that would be useful for the committee
Given the very wide scope of activities and operations that Forestry and Land Scotland will engage in and the high levels of stakeholder interest in forestry we consider it vital that the remit of the non-executives covers all aspects of the organisation’s policy and management (i.e. they should have a similar remit to the current non-execs on FCS’s National Committee for Scotland).

**Costs of IT and rebranding**

We note the considerable variance in projected IT costs, and that these and the very substantial rebranding costs are intended to be subsumed within anticipated overall budget provision. We are concerned that in practice these substantial costs will be covered by funds transferred from development programmes and social and environmental provision, and believe that if there are additional short term costs these should be met by additional short term funding from the Scottish Government.

Community Woodland Association
August 2017