Summary

NFU Scotland (NFUS) believes that responsible growth and management of the forestry sector poses little or no threat to farming and crofting. NFUS has no objection to the general principles of the Bill in fulfilling the commitment to fully devolve Forestry Commission Scotland to allow Scottish Ministers to manage the national forest estate for the first time.

However, NFUS wishes to raise concerns regarding Part 3 of the Bill which will allow Ministers to exercise compulsory purchase land to “further the achievement of sustainable development”. NFUS suggests that this provision risks undermining relations between farming and forestry.

Compulsory purchase

In a recent discussion paper on compulsory purchase, the Scottish Law Commission (SLC) recognised “the peculiarly disturbing circumstances of losing…property under a statutory process” and stressed that “it is of the highest importance that, as it affects ordinary people, the legislation should be as clear as possible.”

Many NFUS members who have had land acquired by compulsory purchase as part of the Aberdeen Western Peripheral Route project have reported issues with compensation payments and the behaviour of contractors.

Several NFUS members have also reported problems with the District Valuer handling their case. These include bad experiences in negotiations over value for land taken, a lack of constructive dialogue, and extremely slow processing of queries.

NFUS is sceptical that two of the fundamental principles of valuations for compulsory purchase – that the seller and purchaser are both ‘willing’ and that the seller ‘no better or worse off’ – are being consistently and rigorously abided by.

NFUS therefore agrees with the SLC recommendation that Scottish compulsory purchase legislation is “not fit for purpose…[and] should be repealed, and replaced by a new statute.”

‘Sustainable development’

The principle of ‘sustainable development’ has been a widely accepted term within planning regulations for some time, although NFUS understands there is no official definition of the term written into statute.

---

1 Scottish Law Commission ‘Discussion Paper on Compulsory Purchase’ (2014) p.28
2 Ibid.
3 www.gov.scot/Publications/2010/02/03132605/7
Whilst the main use of ‘sustainable development’ is on the face of the Land Reform (Scotland) Act, it has also been referenced in other recent Scottish Government legislation and guidance, including: the Community Empowerment (Scotland) Act 2015; the consultation on Guidance in Engaging Communities in Decisions Relating to Land; the consultation on the Land Rights and Responsibilities Statement; and the consultation on the long-term management of the Crown Estate in Scotland.

Considering the increasing use of the term ‘sustainable development’ within Scottish legislation and policy, for some time NFUS has called for an official definition to bring clarity and guidance on its application.

NFUS understands that in a written submission commenting on the Land Reform Bill in August 2015, the Law Society of Scotland (LSS) commented\(^4\) that the wording of Part 5 (pertaining to ‘sustainable development’) could lead to legal uncertainty about what the legislation is intended to cover. The LSS proposed that some clarity be provided via worked examples. NFUS supports this proposal and is disappointed that this recommendation was not pursued during the drafting of the Land Reform Act.

Given the fluidity around the definition and application of the term ‘sustainable development’, NFUS is concerned about a proposed expansion of existing compulsory purchase powers to include their application to “furthering the achievement of sustainable development”.

Compulsory purchase powers are already used to overcome ‘ransom strips’ to allow forestry to be managed and harvested. NFUS believes that the major expansion proposed in the Bill could see them applied in a much wider range of circumstances – perhaps to allow renewable energy and tourism developments and to facilitate community ownership of land.

At the Rural Economy and Connectivity Committee evidence session on 7 June, the Scottish Government’s Forestry and Land Management Bill Team could provide no further clarity as to how compulsory purchase “to further the achievement of sustainable development” would be used, stating:

“The powers would be exercised in accordance with the Government’s policy of the day for the outcomes that it wanted the new agency to achieve… I am afraid that I am unable to give the committee a specific example of when a Government of the future would use the power in relation to sustainable development.”\(^5\)

By proposing to extend the already flawed and feared compulsory purchase powers to further delivery of such a malleable concept, NFUS is concerned that the problems highlighted by the SLC and LSS will be compounded rather than remedied.

---


\(^5\) Rural Economy and Connectivity Committee ‘Official Report’ (7 June 2017) p.10
However positive the intentions behind the proposal, the severe shortcomings of the compulsory purchase process and ‘blank cheque’ that “furthering the achievement of sustainable development” represents, means that NFU Scotland is opposed to the proposed expansion in these powers.

**Further considerations**

NFU Scotland’s concerns are compounded by a lack of staff within the new forestry structures who have the skills and expertise to engage directly with farmers and crofters. The potential for misunderstanding and conflict is increased when the parties in a potentially difficult and unbalanced ‘negotiation’ have little appreciation of each other’s circumstances.

NFU Scotland
August 2017