RURAL ECONOMY AND CONNECTIVITY COMMITTEE

FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL

SUBMISSION BY RSPB SCOTLAND

Summary
1. RSPB Scotland welcomes the Bill and commitment to Sustainable Forest Management (SFM). We believe that a full definition of sustainable forest management should be given in the Bill. We support the use of the Forest Europe definition of SFM. We would welcome a stronger focus on the provision of “public goods for public money” and “public land for public benefits”, recognising more explicitly the vital role that woodland plays in the provision of ecosystem services such as biodiversity, carbon management and flood mitigation.

2. The Bill should include a commitment to the implementation and monitoring of the UK Forestry Standard (UKFS). The status of the UKFS should be strengthened to make adherence to it and its associated guidelines a mandatory, minimum basic standard by which sustainable forest management can be assessed and reported upon to the Scottish parliament.

3. There is insufficient reference made to biodiversity throughout the Bill, including insufficient protections for priority open habitats from inappropriate afforestation and a lack of provision to secure opportunities for habitat restoration. Clear reference to biodiversity legislation, particularly the Nature Conservation (Scotland) Act 2004, should be included.

4. There should be clearer definitions of a number of important terms and their relation to the key principles of the forestry stated in the Bill. We seek clarification of the terms “forestry land” and “community body”. “Sustainable development”, as defined in other Acts should also be included as a standard definition. We also consider that the definition of “felling” is inappropriate and recommend that it is amended. As the Bill stands, we have concerns that current definitions will pave the way for inappropriate development of public land under the duty for “sustainable development”.

5. We suggest that the duty to “prepare” a forestry strategy should be expanded to include its implementation, monitoring and review.

6. We believe it would be beneficial to set out the structure and function of the Forest and Land Scotland agency, including its scope, powers and likely reporting mechanisms. We are concerned that there is currently a lack of public scrutiny of this potentially significant change to the management of public land in Scotland.

7. More information regarding cross border working and how this will be managed would be useful.

Background
RSPB Scotland has approximately 80,000 members and manages over 12,000 ha of woodland, much of which is certified to UK Woodland Assurance Standard (UKWAS) level. We welcome the inclusion of sustainable forest management as a statutory duty on Scottish Ministers and are satisfied that there is a commitment to improved policy alignment and integration within Scottish Government. We particularly welcome the broad focus of the Bill and are pleased that there is recognition of the multiple benefits of woodland and movement away from a narrow focus on the production of a timber stock.
We remain supportive of sustainable woodland expansion, where this is subject to appropriate consultation and assessment procedures, and is located and managed in the most appropriate manner for biodiversity and to generate public goods for public money. As forestry is the only industry which currently acts as a net carbon sink, we welcome the commitment to continue to expand Scotland’s woodland area from its current level of 18%. The “right trees in the right place” can play an important role in hitting our emissions reduction targets, as well as providing other benefits to biodiversity and people. However, Scotland’s ambitious tree-planting targets cannot be considered in isolation of other existing land use priorities nor other sectoral land use targets if conflicts are to be avoided. Therefore, integrated, multipurpose land use, delivering multiple benefits is essential. Development of a land use strategy (LUS) for Scotland was a key commitment of the Climate Change (Scotland) Act 2009, recognising the important role that influencing land use can play in reducing emissions and adapting to climate change. As such, the Land Use Strategy should be the overarching strategy which coordinates and directs land management priorities in Scotland and sits above all other sectoral strategies concerning land use, including forestry. Better coordination of policies, strategies and plans across sectors should facilitate delivery of forestry planting targets in harmony with a wide range of domestic and international obligations and aspirations. Climate mitigation is a clear example of a benefit of forestry but only if it is carried out in a sustainable manner. RSPB supports the principles of sustainable land use and the integration of key sectors under the Land Use Strategy, as derived from the Climate Change (Scotland) Act 2009. This Bill, and the forthcoming new Climate Change Bill, represent an opportunity to align policy and legislation related to forestry and sustainable development, and to strengthen the duties on bodies implementing the Land Use Strategy which should provide the context and strategy the Scottish Forestry Strategy.

1. Does the Bill achieve its aims and are you in favour overall? Is there anything else that you feel should be included or excluded from the Bill?

In general terms we support the overall spirit of the Bill, particularly its focus on Sustainable Forest Management (SFM). However, we cannot adequately assess whether it will achieve its aims as we believe the Bill does not contain sufficient detail in a number of key areas. We recognise that secondary legislation permits a degree of flexibility, but have concerns that there will be less scrutiny of any subsequent regulations. We believe that Any provisions made under this Act must comply with the principles of sustainable forest management and/ or sustainable development. Specifically, we request that in Section 60 a fifth clause is included to ensure that decisions made by Scottish Ministers under regulations made under this part comply with principles of SFM and sustainable development. We welcome much of the content of the policy memorandum but feel that more of its detail should be included in the primary legislation to ensure compliance and long term commitment to the policy principles. We recommend that section 65, “Section 33(8) is moved from subsection (1) to subsection (2) so that it is subject to the affirmative procedure.

We support the intention of Section 9(2)(b) to have regard to environmental legislation however we are concerned that throughout the Bill there is no reference to biodiversity or nature conservation legislation. For example, Section 9 (2)(b) I references “the environment”, which means land could be managed for other environmental objectives such as flood mitigation or carbon storage, without any consideration of benefits or negative impacts on wildlife. We also note that there is no explicitly stated obligation to “have regard to” the Scottish Biodiversity Strategy (and associated documents). In addition to the Climate
Change (Scotland) Act 2009 and the Land Reform (Scotland) Act 2016, the Nature Conservation (Scotland) Act 2004; the Wildlife and Natural Environment (Scotland) Act 2011; Water Environment (Controlled Activities) (Scotland) Regulations (CAR) 2011; and Water Environment and Water Services (Scotland) Act 2005 should also been referenced in the Bill and considered in the preparation of a forestry strategy. This will ensure that all relevant duties are placed on Scottish Ministers in the management of publicly owned land.

The recent changes to the Forestry Environmental Impact Assessment (EIA) Regulations in Scotland have left the environment vulnerable to negative impacts of unregulated forestry. Assurances that the UKFS can adequately act as a substitute for the EIA process must now be given strength by ensuring that a genuine commitment to the ongoing implementation, monitoring and improvement of the UKFS (and any successors) is enshrined in the new legislation. The status of the UKFS should be strengthened to make adherence to it and its associated guidelines a mandatory, minimum basic standard by which sustainable forest management can be assessed and reported upon to the devolved parliaments.

We note that compliance with the UKFS is not currently audited well and can be considered to be weak in some key areas, notably biodiversity protection and habitat restoration of previously afforested sites. We therefore propose that the Bill considers UKFS to be the minimum acceptable standard for meeting SFM criteria, and looks to develop a higher level of biodiversity and other sustainability measures or actively promote UKWAS as a higher level of sustainability. This would enhance Scotland’s reputation as a world leader in sustainable forest management. We advise that all publicly funded forestry schemes meet relevant objectives set out in the Scottish Biodiversity Strategy (and associated documents).

Throughout the Bill there are various issues with terminology and definitions. For example, we believe the definition of “felling” is inaccurate, and would be inappropriate for use in situations such as coppicing (i.e. where felling does not kill the tree but permits regrowth for future harvesting). We suggest that the definition of “felling” from the Forestry Act (Northern Ireland) 2010 would be an appropriate and welcome alternative.

The phrase “have regard to” is used repeatedly throughout the Bill. This wording is weak and insufficient to ensure compliance to the principles of SFM and/or sustainable development. We suggest that merely “having regard” to a particular policy or strategy would potentially leave scope to discount key principles if it was deemed to be advantageous to do so. We suggest the wording should be amended to “comply with” or “in accordance with” the principles of the duties under sections 9 and 13.

Definitions of other key phrases are also required. For example, Sustainable Forest Management is widely used as a term but may be understood differently by different parties. We would therefore suggest that SFM is defined in the Bill. The Forest Europe definition of SFM (referred to in the policy memorandum) is an appropriate standard to use. Likewise the term “forestry” is ambiguous and we propose that the definition used in the Norway Forestry Act is appropriate to define the modern scope of forestry activity.

We note that the duties to promote sustainable forest management and sustainable development are currently upon the Scottish Ministers, not all public bodies. We suggest that, as defined in the Nature Conservation (Scotland) Act 2004, the duties in section 9 and 13 should be upon “every public body and office-holder”. We believe that in
order to maintain effective delivery, the duties should be placed upon delivery bodies such as Forest Enterprise Scotland and its successor organisation (Forest and Land Scotland).

In order to improve accountability and transparency, we believe that Scottish Ministers should publish and report to parliament the way the Forestry Directorate is to be structured, with a precise indication of accountabilities and responsibilities. The current structures under which forestry operates have aided transparency and engagement and have been largely effective in supporting consultation (albeit the consultation process could still be improved upon). We strongly believe that the new structures must be as, or more, effective than the current operational set-up. We seek clarification on the likely future role of the current Regional Advisory Committee and/or the Regional Forestry Forums, and trust that they will still play an important role in providing impartial advice to Scottish Ministers on forestry related matters. In this process, we support Confor’s proposal to appoint a Chief Forestry Officer. We strongly advise that this post is occupied by an individual who understands the wider context of sustainable forest management and is not someone with vested interests in any one part of the sector. The current public consultation process via the forestry registers is reasonably effective, particularly in comparison with the agricultural sector; we are supportive of the ongoing role that the registers will play going forward (in line with any revisions as a result of the MacKinnon and House reviews).

2. What are your views on the Bill’s statutory requirement to produce a Scottish Government Forestry Strategy based on sustainable forest management?

We welcome the duty to prepare a Scottish Forestry Strategy, however we note that the duty does not include any commitment to implement, monitor or report to parliament on progress. Furthermore, there is no indication of a consultation process, timescales for preparation and implementation or review periods for the strategy. As stated above, there is no standardised definition of SFM provided in the Bill. The definition should make reference to the UKFS as the minimum requirement to be met to comply with SFM principles. As the UK is a signatory of Forest Europe, we propose that Scotland makes a commitment to be a champion of the Helsinki Principles of sustainable forest management.

We note that the duty to promote SFM implies balance between the “3 chambers of sustainable development” (environmental, social and economic, as defined by the UK Woodland Assurance Scheme), but it is likely that the needs of one chamber will probably be dominant on any given site.¹

When it comes to practical delivery of the Scottish Forestry Strategy objectives, conflicts and opportunities may arise with other land uses, for example peatland restoration, agriculture, renewable energy, flood risk management, water management and biodiversity enhancement. The Land Use Strategy, as an overarching strategy, can coordinate and direct land management priorities in Scotland. Embedding the Land Use Strategy Principles within the new Scottish Forestry Strategy should ensure that these different interests are considered and balanced at a national level. At a regional and local level, development and delivery of comprehensive regional land use frameworks should identify capacity for forestry expansion and improvements, identify areas where this would also

deliver benefits for other sectors and vice versa. Through this mechanism, land use can be balanced to deliver maximum benefits for people and wildlife at a regional scale. We also encourage the creation and management of some woodlands specifically for biodiversity or social outcomes. This approach would not replace current good practice guidelines for new woodland which set out requirements for open space (etc) within woodland units. In these situations we suggest that compliance with the Biodiversity Duty may be best achieved by conducting appropriate ecological surveys and maintaining biodiversity areas within woodlands.

We would welcome a more explicit commitment to the conservation and restoration of open habitats (particularly peatlands), within the definitions of SFM and sustainable development. We would also like to see more recognition to regeneration of woodland as an alternative to planting/restocking in woodland management and expansion. Such an approach is widely implemented throughout Europe, including in Norway and France. Similar wording to that of the Norwegian Forestry Act would be satisfactory to capture this approach.

3. The Bill will provide new powers to Scottish Ministers over subjects such as tree health and the ability to conduct research. What are your views on these powers? More details on post-devolution arrangements for cross-border working are required, particularly relating to confirming an ongoing commitment to the UK Forestry Standard and setting out the role of Forest Research under the new devolved arrangements.

We seek clarity over the transfer of Plant Health Act 1967 functions (Part 2, Chapter 2), and would question where within Scottish Government the powers will reside.

4. The Scottish Government’s intention is that the Bill should provide greater flexibility and wider powers in relation to land management, with a focus on sustainable development. The Bill also contains provisions regarding compulsory purchase. How do you feel this will work in practice?

In our previous response to the “Future of Forestry” Consultation, we highlighted several key areas of concern. We feel that the Bill does not provide sufficient clarification on several of these key issues, notably the ongoing lack of detail regarding the likely structure and function of Forest and Land Scotland. We believe that more debate is required regarding the potential pros and cons of creating a single management agency for public land in Scotland. We have concerns regarding the potential lack of any future consultation with stakeholders regarding the purpose, scope, remit, structure and operation of the new agency. We are also unclear as to how the powers and provisions in the Bill relate to the wider land reform agenda. The Bill in its current format creates uncertainty over the future land management role of other statutory agencies, e.g. Scottish Natural Heritage. We have previously proposed that the new land agency is guided by the Sandford Principles, to ensure that Scotland’s natural assets (such as heritage woodlands and national nature reserves) are protected against development and inappropriate afforestation. We also wish to see safeguards in place which ensure the agency will receive funding from government and will not be required to generate its own revenue through timber production, possibly to the detriment of ecologically or socially valuable sites. The agency should be subject to all relevant public duties, and we welcome Section 20(2) which confirms these duties will apply to land managed on behalf of the Scottish Ministers by community bodies.

The vision of the Land Rights and Responsibilities Statement, which is being finalised following consultation, states that ownership, management and use of land and buildings in
Scotland should contribute to the collective benefit of the people of Scotland. The Bill should require that Scottish Ministers and Forestry Land Scotland act in accordance with this statement and ensure that the 7 Principles for land ownership, use and management proposed under the Statement are embedded within the new Scottish Forestry Strategy.

We welcome in principle the desire to have more flexible land use on the public estate than just tree-related activity, provided that there are no negative biodiversity impacts through development. We seek clarification regarding the definitions of land management categories used throughout the Bill, particularly Section 10(b) which includes the whole National Forest Estate, made up as it is of forested and unforested land. If this land is subject to the section 9 duty to promote sustainable forestry then there is the risk that open ground habitats could be inappropriately afforested. Similarly, the duty to promote SFM on forestry land could result in a decrease in the amount of previously inappropriately afforested land that is restored to open ground habitats, with the additional risk that this land is disposed of in order to generate funds for land purchase elsewhere.

Conversely, the duty to promote sustainable development under section 13 could risk the loss of publicly owned land to potentially inappropriate development, if it is determined by Ministers that there would an overriding financial benefit to do so (for example, the clearance of native woodland to facilitate new local housing). We seek clarification regarding the process by which disputed situations will be assessed and what safeguards will be in place to protect biodiversity and the natural environment, particularly in sites which are disposed of.

We note that under section 17 there is no mention of how revenue generated from the disposal of land is to be spent. We interpret this to mean that revenue may be reinvested into wider activity, in addition to forestry related activity. This has the potential to be a positive outcome if the money is invested to benefit environmental and social schemes on the public estate, but we would not be supportive of funds leaving the sector to support other areas of government activity unless clear environmental benefits are identified.

We are unclear as to the purpose of the duty to publish a description of forestry land as stated in section 12. We would welcome a spatial expression of forestry land via a public facing web mapping tool (as proposed in the policy memorandum), particularly if this tool linked to wider land use and nature conservation data layers such as peat depth data, species distribution information etc. Such tools have been developed and proved useful during the Regional Land Use Pilots in Aberdeenshire and the Borders for considering land use in a holistic way and identifying opportunities for delivery of multiple benefits.

We welcome provisions for community and charitable NGOs to manage land in the public interest. With regard to section 19, we are surprised that a community body must have a least 20 members as this could potentially prevent smaller groups from applying to manage land. The Community Empowerment (Scotland) Act 2015 could be referenced and defines a community body as:
“bodies, whether or not formally constituted, established for purposes which consist of or include that of promoting or improving the interests of any communities (however described) resident or otherwise present in the area of the local authority for which the community planning partnership is carrying out community planning”.

We note that the delegation of functions outlined in section 18 can be “varied or revoked at any time”. We question whether this is fair, if a set notification period should apply and whether there is any right to appeal when a delegation has been revoked?

We also seek clarity regarding the decision making process for the delegation of functions to community bodies. In situations where the community wishes to alter the management of the land, does the forestry directorate retain decision making powers, or do these revert to the local authority (particularly in the case of built development)? Could land being managed for environmental purposes be transferred to a community body who wish to convert it into productive woodland or a sustainable built development? Similarly, could a currently productive forest be transferred to a community body for habitat restoration purposes, and if so, would they be required to carry out compensatory works elsewhere?

With regard to the power of compulsory purchase of land we believe that there must be protocols in place and enforced to ensure that this power is not abused. We note that the current power under the Forestry Act 1967 (as amended) is not widely used as other mechanisms have proved effective in securing land for forestry (and, in future, sustainable development) purposes.

5. The Bill will update the regulatory regime and enforcement powers for felling and restocking trees. Do you feel it is fit for purpose?
We expect the exemptions to the provisions of section 23 and the restocking provisions of section 33(9) to be clearly set out in secondary legislation.

We would welcome clarification regarding the ongoing status of trees to be felled as developments under the Town and Country Planning (Scotland) 1997 Act, as amended by The Planning etc. (Scotland) Act 2006.

Presently Forestry Commission Scotland (Forest Enterprise Scotland) plays a prominent role in the setting of standards for, and practical implementation of, deer control on the National Forest Estate. Deer populations require to be managed to allow woodland habitats to develop and regenerate. It is essential that the significant contribution that FCS makes to deer management is retained in some form under the new arrangements.

We seek clarity over section 33(2)(c) and whether this paving way for a requirement to carry out off-site compensatory planting? We are not in favour of a presumption for planting, restocking or compensatory planting and would have concerns about any moves to make these activities compulsory.

RSPB Scotland
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