

## Environment and Forestry Directorate

Natural Resources Division

The Scottish Government

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Edward Mountain MSP  
Convener, Rural Economy and Connectivity  
Committee

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15 June 2017

Dear Mr Mountain

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

Further to the 7 June Scottish Government evidence session on the Forestry and Land Management (Scotland) Bill, this letter provides information on a number of points on which we agreed to provide further detail and responses to the additional questions for which time did not allow during the meeting.

Mindful of the Committee's next evidence session on the Bill we have endeavoured to cover as many of the follow-up points in advance of your meeting on 21 June. In recognition of the range of views and questions expressed by several Committee members on Compulsory Purchase Orders (CPO), and the need for us to gather material from other parts of government on this topic, we will revert with a full response on the CPO-related questions as quickly as possible.

#### **What is the definition of “sustainable development”?**

As discussed on 7 June, it is common to leave a term undefined in legislation, if that term is well understood and the ordinary meaning is suitable for the purposes of the legislation. In the Court of Session case of *Paicr Crofters Limited and Paicr Renewables Limited v the Scottish Ministers*, Lord President Gill ruled that

“the expression sustainable development is in common parlance [...]. It is an expression that would be readily understood by the legislators, the Ministers and the Land Court”

“Sustainable development” is therefore not defined in the Bill, an approach adopted in recent legislation such as the Land Reform (Scotland) Act 2016 and the Community Empowerment (Scotland) Act 2015. However, the Committee may find it helpful to review recent definitions provided to Parliament such as the following extract from the Policy Memorandum for the

relatively recent Land Reform (Scotland) Bill, which we believe is a useful working definition of the term:

“Sustainable development is defined as development that is planned with appropriate regard for its longer term consequences, and is geared towards assisting social and economic advancement that can lead to further opportunities and a higher quality of life for people whilst protecting the environment. Sustainable development requires an integrated approach to social, economic and environmental outcomes.”

(Discussed in the Stage 1 report, available at [http://www.parliament.scot/S4\\_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/RACCES042015R10Rev.pdf](http://www.parliament.scot/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/RACCES042015R10Rev.pdf) . Paragraphs 262 to 271, including a statement that the Rural Affairs, Climate Change and Environment Committee agreed that there was a clearly understood definition of the term.)

### **What is the definition of “sustainable economic growth”?**

The Scottish Government’s purpose is to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Sustainable economic growth is defined by progress towards the seven Purpose Targets:

<http://www.gov.scot/About/Performance/scotPerforms/purposetargets>

### **Are there any aspects of the 1967 Forestry Act that are not included in this bill in their original or updated form? What elements of the bill will be dropped as a result of the repeal of the 1967 Act and what things are new or additional?**

One of the principal purposes of the Bill is to ensure that the Forestry Commissioners have no continuing statutory role in Scotland. It does this by repealing the Forestry Act 1967 – although it is important to note that the Act will continue to apply in England and Wales.

The Bill gives the Scottish Ministers new functions which correspond to those the Forestry Commissioners currently have in the Forestry Act 1967, modernising them where appropriate. However, some of the Forestry Commissioners’ functions have not been replicated in the Bill, for the following reasons:

- Power to enter into forestry dedication agreements: Although the agreements that are currently in place will be carried forward, these are no longer considered to be a necessary or useful mechanism for establishing or maintaining forestry.
- Power to make orders for haulage facilities: This power allows the Commissioners to require an owner or occupier of land to ‘afford the necessary facilities’ where they determine that haulage facilities are insufficient for the extraction of timber from a wood or forest. Using compulsory purchase orders for SFM, with all of the safeguards that are in place to ensure that they are used proportionately, was deemed to be a more streamlined approach.
- Power to prevent damage by rabbits, hares and vermin (including squirrels): This allows Commissioners to authorise competent persons to enter land in order to control animals that are damaging/are likely to damage trees or plants, owing to the failure of the occupier to control them. Obstructing those carrying out control is an offence and the Commissioners can recover the cost of control from that person. This power does not fit with the modern operational landscape for land management and has not been used for a considerable period of time.
- Link between conviction for illegal felling and the power to restock: the requirement for a conviction to be secured, before a restocking notice can be served, has been

removed in order to create a process that focusses on addressing the harm of illegal felling on a case-by-case basis. It does this by allowing Ministers to consider restocking notices separately from any considerations relating to reporting illegal felling to the Procurator Fiscal.

- Committees – either established in order to provide advice to Commissioners (Regional Committees) or specifically appointed to consider reviews or appeals: The process for appeals against decisions of the Scottish Ministers, as the new regulator, will now be set out in secondary legislation. The statutory underpinning for Regional Committees will be removed but it will be open to the new forestry division to consider and establish appropriate arrangements to make use of local advice, assistance and input.
- Exemption for Crown Land: the National Forest Estate will be subject to the same statutory requirements as private land.
- Power to make bylaws restricting or preventing access: Commissioners can currently make bylaws closing the National Forest Estate (or parts of it) to the public. Transferring this power to the Scottish Ministers would cut across the powers that Access Authorities already have to determine whether access rights should be restricted in their area.

The following areas are new in the Bill:

- The statutory requirement on the Scottish Ministers to prepare, keep under review and lay before Parliament a forestry strategy. The Scottish Ministers will have to have regard to the strategy when carrying out any forestry functions under the Bill, ensuring that it underpins and guides all activities.
- The requirement for the regulator to have regard to Sustainable Forest Management (SFM) when making decisions, for example on felling permissions, is also new and will ensure that the whole system is underpinned by SFM.
- The Bill also provides wider land management functions for the Scottish Ministers in order to provide adequate tools for the new agency, Forestry and Land Scotland, to have greater flexibility for managing the National Forest Estate, to carry out management of land that is not forestry land and provide advice on issues not related to forestry.
- As noted at Committee the power to CPO land for the wider purpose of sustainable development is one of the new tools available to Ministers' in order that they may fulfil this wider land management role.
- The other significant change is that much of the detail that the Forestry Act 1967 currently contains, relating to the regulation of forestry, will now be set out in Regulations and the conditions placed on land as a result of that regulation may now be registered.

**Can you provide an organogram structure diagram of how the agencies, divisions, directorates and ministers will fit together under the bill? (we have 2 A4 diagrams already, so just if you have anything in addition to this)**

Please see the page attached to the end of this letter which supplements the diagrams in the Policy Memorandum and the information sheet provided to the Committee.

**Will the forestry research budget that currently comes from DEFRA come to the Scottish Government?**

The core budget for all cross-border functions, including forestry research, is currently held by DEFRA on behalf of the UK and devolved administrations. The Forestry Governance Project Board's work to develop new cross-border arrangements includes the equitable

division of that core budget between Scotland, Wales and the UK. Recommendations are due to be made to the Ministers of all three Administrations for their joint agreement. Scotland's share of the forestry research budget will come to the Scottish Government as part of that agreement.

**What impact will new organisational arrangements associated with the bill have on staff employed by the current organisation?**

The Scottish Ministers have made a commitment that all Forestry Commission Scotland (FCS) and Forest Enterprise Scotland (FES) members of staff will transfer to the Scottish Government and that there will be no compulsory redundancies as a result of completing the devolution of forestry. FCS and FCS staff are already civil servants: they will remain as such as they transfer into the Scottish Government and, for pensions, will remain part of the Principal Civil Service Pension Scheme. The local office network will also be retained as part of the transfer.

Under the Cabinet Office Statement of Policy (COSOP) provisions, the rights and existing terms and conditions of FCS and FES staff will be protected on transfer to the new Forestry Division and executive agency. Any proposals to bring those terms and conditions into alignment with the Scottish Government's would be subject to consultation and negotiation with the trade unions, at that point.

**Does the bill impact Forestry grant funding and the way funds are administered in the SRDP?**

As set out in para 11 of the Financial Memorandum, enabling powers for financial assistance (section 63 of the Bill) will allow the Scottish Ministers to continue to distribute grants in the same way as FCS and FES currently do. There will be no impact on levels of grant funding or the way in which funds are administered in the SRDP.

We hope that this information is helpful as you continue to take evidence on the Bill.

Yours sincerely



**CATHERINE MURDOCH  
DEPUTY BILL MANAGER**

**Outline of Scottish Government structures**

- Provided to Rural Economy and Connectivity Committee for the purposes of illustrating the organisational structures that will be in place following the transfer of functions from the Forestry Commissioners to Scottish Ministers
- Directorate for Economic Development Provided as a comparison

