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Dear Mr Mountain

FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL

Further to Catherine Murdoch's letter of 15 June this letter completes the Bill Team's follow-up to the evidence session on 7 June by providing information in response to the Committee's questions on powers of compulsory purchase.

The Committee asked:

What is the procedure that must be followed for the compulsory purchase of land?

The procedure for use of the majority of compulsory purchase powers held by acquiring authorities (including Scottish Ministers) is set out in the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 ("the 1947 Act"). The powers of CPO that exist currently at section 40 of the Forestry Act 1967 do not follow the procedure in the 1947 Act but are exercised in accordance with Schedule 5 of the Forestry Act 1967. The Bill takes the opportunity – in bringing CPO powers forward into the new statutory framework – to align the process to be followed with that of other CPO regimes in Scotland. The Bill (paragraph 1 of Schedule 1) therefore amends the 1947 Act to bring into its remit the compulsory purchase powers at section 16, meaning that the procedure for the powers of CPO under the Bill will follow the standard approach.

The procedure for CPO set out in the 1947 Act is explained on page 6 of the following SPICE briefing:

<http://www.parliament.scot/Research%20briefings%20and%20fact%20sheets/SB09-71.pdf>.

The 1947 Act includes provisions for notification of proposed CPOs, hearings or inquiries in the case of objections; rights of appeal and to compensation, in compliance with applicable ECHR requirements. Members will wish to note that the SPICE briefing was prepared with a focus on local authority powers of CPO but the procedure in the case of Scottish Ministers as acquiring authority is broadly the same. However, as Scottish Ministers are both an acquiring authority and a confirming authority, arrangements are commonly made within Scottish Government and its agencies to ensure adequate separation of functions.

In addition, Scottish Government policy for the use of CPO is set out in Planning Circular 6/2011: <http://www.gov.scot/Publications/2011/10/21133522/0>. This confirms that acquiring authorities must be able to justify the use of compulsory purchase and the interference with individual property rights because of the public interest in the achievement of the underlying objective for which the CPO is being pursued. In part, this will normally be done by reference to an existing plan or strategy that supports the case for intervention in the public interest. Moreover the exercise of CPO powers should be proportionate.

Could the Minister make a compulsory purchase of land to create a path to access woodland under the sustainable development provision, even if alternative access existed?

All use of compulsory powers must be in line with the applicable Scottish Government policy and legal framework. Thus, in terms of Planning Circular 6/2011, the Scottish Government as acquiring authority would have to establish that the use of the power is in the public interest and why alternative options are not suitable. In the example of creating a path to access woodland, if the path were for the purpose of recreational access we consider that powers available to local authorities under the Land Reform (Scotland) Act 2003 would appear to be the most appropriate vehicle. If path is taken to mean a forest road to extract or maintain timber, we consider that the power of CPO in the Bill for Sustainable Forest Management, rather than for Sustainable Development, would be more appropriate. If alternative access existed in either case the acquiring authority would have to demonstrate why that alternative access was not suitable and, hence, why the public interest supported the use of compulsory purchase.

If land is bought by compulsory purchase to further sustainable development, will the bill allow ministers to delegate the management of that land to a community body?

The Bill does not prevent the delegation of management of land purchased by CPO to a community body. Section 18 provides that Scottish Ministers may delegate to such an extent and on such terms as they consider appropriate, and that delegations may be varied or revoked at any time. It is anticipated that Scottish Ministers would consider on a case-by-case basis any applications for a delegation in relation to land that had been acquired by CPO.

If land that has been purchased is no longer required for sustainable development, would the government be obliged to sell it back to the person from whom it was compulsorily purchased?

The process to be followed by authorities, including the Scottish Government, for disposing of land that has been purchased compulsorily and which is no longer required for the intended purpose is set out in the so-called "Crichel Down Rules". Planning circular 5/2011 provides advice on these rules and is available at: <http://www.gov.scot/Resource/Doc/360205/0121755.pdf>. Broadly, the rules state that former owners should, as a general principle, be given a first opportunity to repurchase the land previously in their ownership, provided that it has not been materially changed in character since acquisition.

I hope this information is helpful to the Committee as they continue Stage 1 scrutiny of the Bill.

Yours sincerely

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