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Stage 1 report on the Forestry and Land Management (Scotland) Bill



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Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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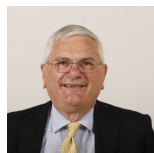
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Executive Summary

The Rural Economy and Connectivity Committee considered the Forestry and Land Management (Scotland) bill at Stage 1. It has made a number of recommendations for improvement and calls for clarification in relation to the bill which are summarised below. Overall it supports the general principles of the bill at Stage 1.

Transfer of Forestry Commission Scotland activities

The Scottish Government proposes to split the functions of the Forestry Commission between a Government division and a new land management agency. It is acknowledged that this is being dealt with out-with the scope of the bill. However, the Committee heard wide-ranging concerns on the issue and calls on the Scottish Government to provide reassurance with regard to its proposals.

Given the wide-ranging concerns expressed by stakeholders at the separation of the functions of the Forestry Commission the Committee calls on the Scottish Government to provide further reassurance with regard to its proposals. It recommends that the Scottish Government provide a comprehensive statement, alongside the bill, setting out how it will manage and administer its forestry responsibilities. This should include particular detail on the creation of the proposed land management agency and how a close and effective working relationship will be maintained between it and the forestry division.

The Committee acknowledges the wide range of expertise which is required in modern forestry and notes the particular concern of many stakeholders that the professional expertise of foresters could be diluted under the proposed new structure. It therefore calls on the Scottish Government to set out specifically in the statement recommended above how the forestry-related skills and expertise will be retained and developed under the new structure. In addition, the statement should clarify the future roles that are envisaged for the National Committee for Scotland and Regional Forestry Forums.

The Committee further recommends that any significant future change to the arrangements set out in the statement must be notified to Parliament, and be the subject of further consultation.

The Committee also considers that a clear message would be sent as to the status attached to forestry under the new structure if the head of the proposed dedicated forestry division should be designated as 'Chief Forester'. It calls on the Scottish Government to give consideration to this proposal.

Forestry Strategy - review

The Committee considers it essential that a statutory process exists to ensure that a regular revision and review of the Forestry Strategy is undertaken. It therefore recommends that, in addition to ongoing monitoring, the bill be amended to place a requirement on Scottish Ministers to review the Forestry Strategy every 5 years with a commitment to refresh the Strategy every 10 years.

The Committee also recommends that this refresh be subject to full consultation with forestry stakeholders and that an appropriate requirement is placed on the face of the bill to allow the Parliament the opportunity to scrutinise a draft strategy before a final version is published.

Forestry Strategy - links with other policy areas

The Committee believes that strong links between forestry and policy areas such as land use, planning, community empowerment, climate change and biodiversity are vital. It notes the Scottish Government's awareness of its existing statutory commitments. However, it is clear that stakeholders are seeking reassurance that the need for this policy integration will be clear and unambiguous and that there will be a requirement for it to be delivered.

The Committee therefore calls on the Scottish Government to include an overarching, high-level statement of ambition, on the face of the bill, that makes clear that modern forestry strategy and practices will reflect an integrated approach to land use, community interests and the environment.

Forestry strategy - woodland expansion

The Committee recognises the vital role that timber production has in the rural economy. It acknowledges the long term nature of the industry and the need for reassurance and future security. The Committee is of the view that the most appropriate place for setting out planting targets and a commitment to appropriate levels of reforestation is in the Forestry Strategy. This would allow for a regular review to take place and for production and planting targets to be sufficiently responsive and flexible to address national requirements.

Forestry strategy - sustainable forest management

The Committee notes the Scottish Government argument that sustainable forest management is a dynamic term and that by placing the definition on the face of the bill it could become outdated over time. However, for clarity and avoidance of doubt in future, it recommends that the Scottish Government make a commitment that, for as long as sustainable forest management is the goal, the accepted definition should be included in the Forestry Strategy.

The Committee also calls on the Scottish Government to clearly set out within the Forest Strategy how it will integrate with the UK Forestry Standard, which is the current framework for the delivery of sustainable forest management in the UK.

The Committee recognises the benefits of sustainable forest management and agrees with those who suggested in evidence that there would be advantage in extending the duty. It therefore recommends that the Scottish Government gives consideration to extending the duty to promote sustainable forest management to all relevant public bodies. It also encourages the Scottish Government to consider how it may effectively promote sustainable forest management in the private sector.

Tree health and silvicultural material testing functions

The Committee believes that the cross border nature of Forest Research is critical to ensuring the health of Scotland's trees and those across the UK. It recommends that the Scottish Government should bring forward an amendment to the bill to strengthen the provisions relating to tree health and other forestry research from a power to a duty.

The Committee also calls on the Scottish Government to provide a written update on its ongoing discussions with the rest of the UK on the cross border functions of Forest Research. This should include clarity, when possible, on whether it will be delivered by a single joint body in future. It further calls on the Scottish Government to take the concerns of stakeholders as expressed in this report into account during these discussions.

The Committee recommends that an appropriate framework agreement for a continued cross-border approach to forest research and tree health should be agreed and in place before the relevant sections of the bill come into force.

Land management - clarity on purpose

The Committee welcomes the Scottish Government's recognition of the need for clarity in the bill regarding the designation of afforested land which must be managed for sustainable forest management and 'other' land which will be managed for sustainable development. It calls for amendments to be brought forward by the Scottish Government which provide a clear and easily understood distinction between these two categories of land.

Land management - definition of sustainable development

The Committee acknowledges that it is not current practice to define 'sustainable development' in legislation. However, some stakeholders are clearly seeking clarity on the term and its use in relation to forestry. The Committee recommends that the Scottish Government should make a clear commitment to include the current working definition of sustainable development in the Forestry Strategy.

Land management - duty to promote sustainable development

The Committee recommends that, to provide consistency with the recommendation above regarding sustainable forest management, the Scottish Government should consider extending the duty to promote sustainable development beyond Scottish Ministers to all public bodies.

Land management - acquisition and compulsory purchase

The Committee acknowledges the concerns of some stakeholders in relation to the compulsory purchase provisions in the bill and notes that current guidance on compulsory purchase does not include direct reference to sustainable development. It also notes stakeholder comments on the need to review the system of compulsory purchase more generally. The Committee welcomes the Scottish Government's commitment to look carefully at the way in which the proposed extension of powers for compulsory purchase in relation to sustainable development is set out in the bill.

The Committee recognises the need for the retention of compulsory purchase powers which may be required in certain circumstances in order to unlock the potential in forestry land. With this in mind, it is content for the powers in the 1967 Forestry Act in relation to compulsory purchase to be replicated in the bill. However, the majorityⁱ of the Committee is of the view that the Scottish Government is yet to provide sufficient justification for its proposed extension of compulsory purchase powers to cover sustainable development.

The majorityⁱⁱ of the Committee therefore calls for the bill to be amended to remove the provision at section 16 (1)(b) which allows for the compulsory purchase of land by Scottish Ministers in relation to sustainable development.

Land management - disposal of land

ⁱ John Finnie and Rhoda Grant dissented

ⁱⁱ John Finnie, Rhoda Grant, Fulton McGregor and Stewart Stevenson dissented

The Committee considers that reinvestment of generated income into the National Forest Estate is an essential component of land disposal. It recognises that this is the current practice of Forest Enterprise Scotland. However, it recommends that, due to the long term strategic nature of forestry, a commitment to continuing with this practice should be set out in the forestry strategy, to ensure security and continuity over time.

The Committee also calls on the Scottish Government to explore options for public consultation on certain categories of disposal. For example, if they exceed a certain scale.

Community empowerment

The Committee has a number of concerns regarding the sections on community bodies. In particular, the Committee questions the definition of community body. In addition, it questions the need for a particular section on community bodies when section 17 allows Scottish Ministers to sell, lease or gift land to anyone.

The Committee welcomes the Scottish Government's acknowledgement that there may be overlap between the current drafting of the bill and the Community Empowerment Act 2015. It calls on the Scottish Government to explore this issue further to determine whether the sections on community bodies are required as they currently stand and, if it is determined that they are not, to bring forward appropriate amendments at Stage 2.

As noted previously, it also calls on the Scottish Government to include greater detail and clarity in the Forestry Strategy on how the relevant provisions of the bill and the Community Empowerment Act 2015 will apply to forestry and sustainable development in future.

Felling - definition

The Committee welcomes the Scottish Government commitment to bring forward an amendment at Stage 2 to provide a more appropriate definition of 'felling'.

Felling - regulations

The Committee notes the Scottish Government's commitment to consult closely with stakeholders on the content of the felling regulations and modernisation of the exemption rules. It also welcomes the Scottish Government commitment to ensure a smooth transition between the Forestry Act 1967 felling requirements and those introduced under the new regulations.

The Committee calls for all regulations brought forward by the Scottish Government in relation to felling and felling exemptions to be subject to the affirmative procedure.

Felling - directions

The Committee notes the Scottish Government's reassurance that the felling directions contained in the bill would not be used to force private forestry owners to fell against their wishes. However, in the interests of clarity it calls for clear guidance on the execution of felling directions to be issued by the Scottish Government to coincide with the commencement of these provisions.

Felling - notices to comply

The Committee welcomes the Scottish Government's commitment to further consider the means by which notices to comply should be registered. The Committee is of the view that the registration system should be proportionate as well as cost and resource effective.

Financial Memorandum

The Committee notes the concerns of some stakeholders that the move of the Forestry Commission into the Scottish Government may mean a reduction in financial transparency and the number of budget lines related to forestry. The Committee would expect the Scottish Government to maintain current levels of transparency in relation to targets, accounts and reporting which relate to forestry. It would have serious concerns if the Parliament's ability to scrutinise the forestry functions of the Scottish Government were compromised in any way as a consequence of an organisational change.

The Committee welcomes the assurance from the Scottish Government that the bill will not impact on forestry funding and that more, not less, information will be provided within future Draft Budget documents.

Financial Memorandum - branding and IT costs

The Committee recognises the strength of the current Forestry Commission brand. It recommends that if a rebranding exercise must occur that costs be kept to a minimum. It also recommends that the Scottish Government consider a rolling approach to the rebranding exercise, for example only changing branding when vehicles or equipment are replaced

The Committee acknowledges the Scottish Government's assertions that the current Forestry Commission IT system is not fit for purpose and would require an upgrade even if the bill was not being put forward. It looks forward to seeing further detail from the Scottish Government on costs associated with this exercise which it understands will be provided before the conclusion of the bill's parliamentary passage.

Introduction

1. The Forestry and Land Management (Scotland) Bill (“the bill”) was introduced in the Scottish Parliament by Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity on 10 May 2017. The Rural Economy and Connectivity Committee was designated as the lead committee for Stage 1 consideration of the bill.
2. The Committee launched a call for views on 2 June 2017 which ran until 16 August 2017. It received 41 submissions. It took evidence on the bill in July and September 2017 from a range of landowner and tenant organisations, forestry forum representatives and industry bodies as well as forestry policy and academic stakeholders. A full list of oral and written evidence received is available in Annexes B and C.

Committee at Fishnish Pier, Mull



Source: Rural Economy and Connectivity Committee

Background

3. Scotland has a total of 1.44 million hectares of woodland, 33% of which is owned and managed by the Forestry Commission. The forestry sector (including associated wood processing, supply chains and forest related tourism) has recently been estimated to support around 26,000 jobs with £954m of gross value added. The sector is of particular importance to the rural economy ¹.
4. The bill provides for the management of forestry in Scotland to be fully devolved and accountable to the Scottish Ministers and to the Scottish Parliament. Scottish Ministers currently determine strategy and policy for forestry in Scotland but the management of forestry, including of the National Forest Estate (NFE) has, since devolution, remained with the Forestry Commissioners. The Commissioners are a UK Non-Ministerial Department and, currently, a cross-border public authority.
5. The bill proposes to transfer the powers and duties of the Forestry Commissioners, as they relate to Scotland, to Scottish Ministers. It will also replace the Forestry Act 1967 as it relates to Scotland with what the Scottish Government states will be a modern approach to the development, support and regulation of forestry.
6. The stated policy objectives of the bill include improved accountability, transparency and policy alignment, modernisation of legislation and more effective use of Scotland's publicly owned land. It provides Scottish Ministers with a duty to promote sustainable forest management and publish a forestry strategy.
7. The bill is part of a larger programme of work to complete the devolution of forestry. This includes establishing new cross-border arrangements with the UK and Welsh Governments for the exercise of forestry functions currently delivered across Great Britain. The programme of work also includes the creation – by non-legislative means – of a new organisational structure for forestry and land management in Scotland.
8. The bill is the principal vehicle to make the legislative changes associated with the forestry devolution programme; however, once the bill has completed its parliamentary passage, orders will be required under the Scotland Act 1998 to:
 - wind up the Forestry Commissioners as a cross-border public authority;
 - transfer staff, relevant property and liabilities to the Scottish Ministers; and
 - underpin the new cross-border arrangements.

Powers for the Scottish Ministers to promote, develop, construct and operate renewable energy installations on land that they manage, and to delegate that function to community bodies, will also be sought via a Scotland Act order.

Transfer of Forestry Commission Scotland activities

9. The Policy Memorandum to the bill sets out the organisational arrangements to transfer the activities presently delivered by Forestry Commission Scotland (FCS) to the Scottish Government. FCS provides policy, advice, regulation and grants while Forest Enterprise Scotland (FES) is an Executive Agency of the Forestry Commission which currently manages the NFE.
10. The Scottish Government intends for the forestry functions currently carried out by FCS to be undertaken by a dedicated forestry division within the Scottish Government. In addition, a new executive agency called Forestry and Land Scotland (FLS) will take on the functions currently carried out by FES. The Memorandum states that "as both the division and executive agency will be part of the Scottish Administration and share the same legal identity as the Scottish Ministers, they do not need to be established in the bill itself." ²
11. The Committee acknowledges the fact that the creation of the new agency and administrative arrangements are out with the scope of the bill. However, in evidence received several of the stakeholders expressed concern at the proposed plans. As such, the Committee considers it desirable to address this matter in this report.
12. While the majority of stakeholders welcomed the opportunity to fully devolve forestry matters to Scotland and recognised the need to update forestry legislation, several did not agree with the proposed approach of establishing a forestry division within the Scottish Government.
13. For example, the Forestry Commission Trade Unions (a partnership of all trade unions representing Forestry Commission staff) stated that it endorses the move of FCS and FES staff into the Scottish Government. However, its members strongly oppose the separation of the current Forestry Commission activities into a Government division and an agency. This was seen as a threat to successful delivery of forestry functions and the trades unions believe it is essential for all FCS and FES staff to identify themselves as part of a single Civil Service body.
14. Submissions received by the Committee made it clear that the Forestry Commission is a well-respected organisation which has a long history and a strong reputation and brand. Questions were raised as to why the current organisation should be divided into a Scottish Government division and an agency when it is considered to be performing well under current structural arrangements.
15. Concerns were raised at the lack of public consultation by the Scottish Government around the proposed creation of the Forestry and Land Scotland agency - including its scope, powers and reporting mechanisms. There was also uncertainty at how the agency would interact with existing bodies such as the Land Commission.
16. Organisations such as the five Scottish Forestry Forums, Community Land Scotland, CONFOR, Community Woodland Association, the Institute of Chartered Foresters, the Royal Scottish Forestry Society, and the National Trust Scotland expressed concerns that integration with the Scottish Government structure as a

division could result in a loss of professional expertise in forestry. It was also suggested that, although the Scottish Government is currently strongly committed to forestry from a policy perspective, this could change over time. There was concern that the forestry functions of a Government division may be diluted in future.

17. The Royal Scottish Forestry Society noted a concern that "even if this loss of focus were not to occur, there would inevitably be a loss of visibility leading to less transparency, less public accountability and poorer governance".³

18. Dr Maggie Keegan from Scottish Environment Link echoed this point. She said—

” What will happen to some of the structures that come with the Forestry Commission currently—for example, the national committee for Scotland, which has an advisory role, and the regional forestry forums, from which the committee took evidence? There are also annual reporting, planting and restocking targets and the financial accounts, which go to Parliament and can be scrutinised. Will that level of scrutiny still happen when the commission becomes a division of the Scottish Government?

Source: Rural Economy and Connectivity Committee 06 September 2017 [Draft], Dr Keegan, contrib. 181⁴

19. Willie McGhee of the Forest Policy Group commented on the strong track record of the Forestry Commission of being open and receptive to community views. He said "the Forestry Commission has consistently listened through regional fora, and we want that to be maintained."⁵

20. Submissions also discussed the importance of preserving the strong culture currently present in the Forestry Commission and the importance of retaining experienced, specialist staff. It was noted that in the previous Forestry Act 1967 there was a requirement for special technical knowledge and experience of forestry and the timber trade and that this requirement is missing from the bill. CONFOR said —

” Keeping knowledgeable, experienced and dedicated professional foresters in key leadership positions in the public sector, both in regulating the private sector and managing public forestry land, will be vital for maintaining standards and retaining trust in public forestry.⁶

21. Organisations such as CONFOR, Scottish Environment Link, Woodland Trust, the Royal Scottish Forestry Society, Ballogie Estates and Aberdeen University suggested that the Scottish Government should create the technical post of Chief Forester. This would be an executive role similar to that of the Chief Planner. Stakeholders also advocated that the role of 'forester' should be officially recognised within the Civil Service to ensure that the current expertise and professionalism of the FCS is retained and valued.

22. In oral evidence, Ginny Gardener from the Scottish Government responded to these concerns. She said that the Scottish Ministers believe that the proposals for organisational structures deal with these issues. She stated that the commitment to transfer all staff and to maintain the local office network would retain the local engagement and knowledge that currently exist. She also noted that there is

already a range of specialist staff across the Scottish Government operating effectively with continuing professional development.

23. In response to the concern about separating the Forestry Commission from Forestry Enterprise Scotland, she explained that the Scottish Ministers already see them as separate bodies with separate functions. She added that keeping them separate is also a response to feedback from stakeholders about the benefits of separating the regulatory function, which currently sits with the Forestry Commission Scotland, and the regulated body, which is Forest Enterprise Scotland.
24. Jo O Hara from the Forestry Commission stated that she is currently a Forestry Commissioner and a civil servant who answers to the Scottish Government on policy and budget matters. She noted that "the situation is uncomfortable, it is awkward and it is unclear"⁷. She argued that the proposed change would make things clearer and more transparent. Simon Hodge from FES also noted that although the NFE is managed by Scottish Ministers it is also accountable to a cross border body which can create difficulties.
25. In evidence, the Cabinet Secretary acknowledged that the expertise in the Commission is highly valued. He stated that FES has always been an agency; however, under the bill proposals it will cease to be an agency of the Forestry Commission and will become an agency of the Scottish Government. He expressed the view that, with regard to the staff, things should carry on as before.
26. Concerns were also raised about the cost of the breakup of the Forestry Commission as central services, such as Human Resources and Communications, would need to be duplicated across the country. More discussion of this is undertaken in the section on the Financial Memorandum.

27. Given the wide-ranging concerns expressed by stakeholders at the separation of the functions of the Forestry Commission the Committee calls on the Scottish Government to provide further reassurance with regard to its proposals. It recommends that the Scottish Government provide a comprehensive statement, alongside the bill, setting out how it will manage and administer its forestry responsibilities. This should include particular detail on the creation of the proposed land management agency and how a close and effective working relationship will be maintained between it and the forestry division.
28. The Committee acknowledges the wide range of expertise which is required in modern forestry and notes the particular concern of many stakeholders that the professional expertise of foresters could be diluted under the proposed new structure. It therefore calls on the Scottish Government to set out specifically in the statement recommended above how the forestry-related skills and expertise will be retained and developed under the new structure. In addition, the statement should clarify the future roles that are envisaged for the National Committee for Scotland and Regional Forestry Forums.
29. The Committee further recommends that any significant future change to the arrangements set out in the statement must be notified to Parliament, and be the subject of further consultation.

30. The Committee also considers that a clear message would be sent as to the status attached to forestry under the new structure if the head of the proposed dedicated forestry division should be designated as 'Chief Forester'. It calls on the Scottish Government to give consideration to this proposal.

Forestry Strategy

Consultation and review

31. Section 3 of the bill states that Scottish Ministers must prepare strategy which sets out its objectives, priorities and policies in regards to forestry. The bill also sets out requirements on the preparation and publication of the strategy as well as the need to consult on its development. Scottish Ministers must have regard to the forestry strategy in certain circumstances.
 32. Stakeholders were very positive about the creation of a statutory Forestry Strategy. It was viewed as a vital document which would guide the commercial, environmental and social benefits of forestry in Scotland. However, further detail was requested by some stakeholders on the consultation for drafting and the timescales for review and implementation.
 33. It is currently proposed within the bill that “the Scottish Ministers must keep the forestry strategy under review, and may, if they consider it appropriate to do so, revise the strategy”⁸. Several stakeholders, such as the Community Woodlands Association, Community Land Scotland and the Scottish Woodland Trust recommended that reviews should take place every 5 years.
 34. Scottish Environment Link noted that the duty does not include any commitment or detail on stakeholder engagement, consultation, implementation, monitoring or updating of Parliament on progress of the strategy. The bill's duties were contrasted with the duties in the Climate Change (Scotland) Act 2009 which were seen as far more robust.
 35. The Cabinet Secretary argued that having a provision in the bill to require the production of a Forestry Strategy would increase accountability and transparency. He stated that the process to consult and lay a document before the Parliament was a well-established and, in his view, the correct approach. However, he indicated that he would be keen to hear the Committee's view on this matter.
36. The Committee considers it essential that a statutory process exists to ensure that a regular revision and review of the Forestry Strategy is undertaken. It therefore recommends that, in addition to ongoing monitoring, the bill be amended to place a requirement on Scottish Ministers to review the Forestry Strategy every 5 years with a commitment to refresh the Strategy every 10 years.
 37. The Committee also recommends that this refresh be subject to full consultation with forestry stakeholders and that an appropriate requirement is placed on the face of the bill to allow the Parliament the opportunity to scrutinise a draft strategy before a final version is published.

Strategy content

38. Stakeholders expressed the view that the links between Forestry and other policy areas must be clear and robust in the strategy. For example, the Scottish Woodland Trust urged the Scottish Government to strengthen the links in relation to the Land Use Strategy (LUS). It stated that—
 - ” The LUS – and especially Regional Land Use Strategies – have to sit at the heart of the process of better integrating our land uses, agro-forestry and identifying sites for woodland expansions.⁹
39. Scottish Woodland Trust and RSPB also advocated links to the Biodiversity Strategy which is required by the Nature Conservation Act 2004. The need for links to the Scottish Economic Strategy, Planning and Climate Change policy was also noted. It was argued that all of these policies need to be working together to achieve the national outcomes desired by the Scottish Government.
40. Community Land Scotland outlined examples of the areas in which additional value can be created by forestry. This included, the promotion of human rights and equalities, reducing socio-economic disadvantage, supporting community empowerment and encouraging diversity in land ownership. It argued that these are important considerations which should be taken into account when dealing with land related matters.
41. The Forest Policy Group noted that there has been a tendency towards an asymmetric delivery of the Forestry Strategy, giving more resource and emphasis to some parts than to others. It argued that it is important that forestry in the future meets the full scope of its potential throughout Scotland. It also called for particular reference to be included to diversifying the ownership of woodlands and forests.
42. It was acknowledged in evidence that forestry has much to contribute to the delivery of wider economic, environmental and social policies in Scotland, including supporting integrated land use. The Cabinet Secretary provided reassurance that the strategy would include high level objectives such as the environment and climate change, woodland creation, increasing community engagement, urban forestry and protecting against pests and diseases.
43. The Cabinet Secretary argued that it would be duplication to restate the Scottish Government's existing duties on the face of the bill. The Policy Memorandum states that in preparing the Scottish Forestry Strategy, the Scottish Ministers are required to have regard to the Scottish Land Use Strategy and to the Land Rights and Responsibilities Statement. It was argued that this requirement complements the Scottish Ministers' existing statutory responsibilities that guide relevant policy development (e.g. climate change and biodiversity duties).
44. Carole Barker Munro from the Scottish Government's bill team noted that where there is an existing statutory duty they are not referenced on the face of the bill. For example, the climate change targets and the biodiversity duty. She explained that section 4 of the bill relates to strategies that are required by law but do not impose duties on Scottish Ministers with regard to how to act. She also noted that any future policies relevant to forestry would be dealt with under section 3(3), which covers the economic, environmental and social aspects of forestry.

45. Jo O Hara of the Forestry Commission also argued that by bringing the Forestry Commission into the Scottish Government it would bring clarity on its commitment to deliver on the Government's agenda across all policy areas.
46. The Committee believes that strong links between forestry and policy areas such as land use, planning, community empowerment, climate change and biodiversity are vital. It notes the Scottish Government's awareness of its existing statutory commitments. However, it is clear that stakeholders are seeking reassurance that the need for this policy integration will be clear and unambiguous and that there will be a requirement for it to be delivered.
47. The Committee therefore calls on the Scottish Government to include an overarching, high level statement of ambition, on the face of the bill, that makes clear that modern forestry strategy and practices will reflect an integrated approach to land use, community interests and the environment.

Forestry expansion

48. Although it was acknowledged that planting targets will be included in the Forestry Strategy, stakeholders argued that a commitment to forestry expansion should also be included on the face of the bill. Organisations such as CONFOR, Reforesting Scotland and Aberdeen University recommended that the bill must include details of how the Scottish Government will deal with the projected decline in timber production in the next 50 years. Fears were expressed that although the current Scottish Government is very supportive of forestry this may not be the case if the political will changes in future. Aberdeen University states that the long time-scales associated with the forestry industry require stable, long-lasting government policies.
49. CONFOR noted that the Forestry Act 1967 contained a clear statement of support for expanding the forestry resource and that this commitment should be continued. It said that —
- ” Management of forestry land should include a duty on Ministers to maintain the productive capacity of the National Forest Estate. The whole forestry sector relies on this capacity for over a third of future wood supply so its maintenance is essential for the future of the industry and the many thousands of people who are employed in it.¹⁰
50. However, Scottish Land and Estates and Community Land Scotland stated that in 20 or 30 years Scotland may have achieved sufficient planting. It was felt that for the longevity of the bill to be maintained, the ambition toward further afforestation should only be included in the Forest Strategy.
51. The Cabinet Secretary argued that the annual planting targets will be included in the Forest Strategy which will become a statutory duty. He said—

- ” The forestry strategy will give us an opportunity to set out the target of planting 10,000 hectares per annum—and rising—which I think we have agreed across the political spectrum. There will then be a statutory duty in that regard, which I will have to fulfil.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Fergus Ewing, contrib. 119¹¹

52. The Committee recognises the vital role that timber production has in the rural economy. It acknowledges the long term nature of the industry and the need for reassurance and future security of timber supply. The Committee is of the view that the most appropriate place for setting out planting targets and a commitment to appropriate levels of reforestation is in the Forestry Strategy. This would allow for a regular review to take place and for production and planting targets to be sufficiently responsive and flexible to address national requirements.

Sustainable forest management

53. The bill places a statutory duty on Scottish Ministers to promote sustainable forest management. In the Policy Memorandum it states—

- ” 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. ¹²

54. The commitment to sustainable forest management within the bill was broadly welcomed across all submissions. For example, the National Trust for Scotland felt that it would ensure that sites inappropriate for forestry development and culturally important landscapes such as battlefields are sufficiently protected.

55. However, Reforesting Scotland and CONFOR, while supportive of the principle, argued that terms such as sustainable forest management have a long history of being abused and lack a common understanding. To combat this, they advocated that the definition of sustainable forest management from the policy memorandum should be included on the face of the bill.

56. Jon Hollingdale of the Community Woodland Association said—

- ” The term “sustainable forest management” will not be relevant to any other bill that goes through Parliament. It is not like the term “sustainable development”, which is used widely; it is a technical term and it would be useful for the bill to set out what we understand it to mean today.

Source: Rural Economy and Connectivity Committee 06 September 2017 [Draft], Jon Hollingdale, contrib. 39¹³

57. The Community Woodland Association noted that on occasion the Scottish Government employs a narrower definition, equating sustainable forest management with compliance with the UK Forest Standard (UKFS). It argued that UKFS should be maintained as the minimum standard for management for all forests and woodlands and that Scottish Ministers should be expected to exceed the standard and deliver a broad vision of sustainable forest management.
58. Scottish Environment Link also noted that there is very little reference to the UKFS in the policy memorandum (and no reference in the bill). It stated that it would be helpful if the Scottish Government could explain how the proposed Scottish Forestry Strategy will align with the UKFS since it currently provides the framework for delivery of sustainable forest management in the UK.
59. The Cabinet Secretary stated that sustainable forest management is not a static concept, it is dynamic and our understanding of it will change over time. He argued that by placing the current definition on the face of the bill it would be in danger of being outmoded or restrictive in future.
60. The Committee notes the Scottish Government argument that sustainable forest management is a dynamic term and that by placing the definition on the face of the bill it could become outdated over time. However, for clarity and avoidance of doubt in future, it recommends that the Scottish Government make a commitment that, for as long as sustainable forest management is the goal, the accepted definition should be included in the Forestry Strategy.
61. The Committee also calls on the Scottish Government to clearly set out within the Forest Strategy how it will integrate with the UK Forestry Standard, which is the current framework for the delivery of sustainable forest management in the UK.

Extension of duties

62. Paths for All noted that, as drafted, the duties to promote sustainable forest management are currently only placed upon the Scottish Ministers. It argued that this should be extended to all public bodies and an equivalent duty created for private forest owners.
63. Scottish Environment Link and the Woodland Trust echoed this call. They argued that the duty should be extended to all public bodies and office-holders in a similar way as the Nature Conservation (Scotland) Act 2004 does with the Biodiversity Duty. Woodland Trust also noted that an expansion to include all private landowners across the country might be especially useful in light of the current deer management debate.
64. The Forestry Commission Trade Unions noted the reality of the current situation and that in order to encourage the private sector to practice sustainable forest management they will have to rely on grants, incentives and encouragement.
65. The Committee recognises the benefits of sustainable forest management and agrees with those who suggested in evidence that there would be advantage in extending the duty. It therefore recommends that the Scottish Government gives

consideration to extending the duty to promote sustainable forest management to all relevant public bodies. It also encourages the Scottish Government to consider how it may effectively promote sustainable forest management in the private sector.

Tree Health and Silvicultural Material Testing Functions

66. The bill provides for the Scottish Ministers to replace the Forestry Commissioners as the competent body in relation to Scotland for tree health and silvicultural material testing under the Plant Health Act 1967 and the Plant Varieties and Seeds Act 1964. This means that responsibility for all plant health in Scotland will reside in one place.
67. There was a clear view expressed in submissions that the research functions of the current UK wide Forestry Commission are crucial to the continuing health of Scotland's forests. Reforesting Scotland argued that the import of new tree diseases from abroad is one of the largest threats to both the economic and ecological (and therefore the social) benefits of forests.
68. The National Trust for Scotland stated that clarification is required on how cross-border cooperation will continue or develop once devolution has taken place. It argued that the Scottish Government must work with DEFRA and the Welsh Government to provide a common standard for health and safety in the sector, and on the control of plant and tree disease. This point was echoed by the Scottish Woodland Trust who encouraged the Committee to seek an update on progress on the intra-Governmental negotiations through the Forestry Governance Project Board in relation to cross-border functions and shared research and standards.
69. The Chartered Institute of Foresters also stated that there is a need for effective arrangements regarding other cross-border functions such as inventory and forecasting, technical development, UK forestry statistics and support for improved standards of health and safety within the sector.
70. Scottish Woodland Trust also argued that the language in the bill should be strengthened in Section 61. It currently states that Ministers "may" conduct research, collect data and provide training. It advocated that due to the critical nature of the work this language should be strengthened to "must".
71. The Forestry Commission Trade Unions argued that any organisation created to manage the cross border functions must remain part of the civil service. BSW Timber also expressed concern that if Forest Research, which is currently a small agency within the Commission, were to be divided three ways, it would become so small and insignificant that it may become lost.
72. The Scottish Government informed the Committee in a letter that 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 budget between Scotland, Wales and the UK. It noted that 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.
73. In oral evidence the Cabinet Secretary said that it was prudent and right to continue to work on a cross-border basis to tackle disease. He noted that he was

encouraged by discussions with the UK and Welsh Minister on this topic to date. He said—

” We will co-operate across the UK. We are committed to ensuring that there are on-going effective cross-border arrangements where that makes sense and meets Scottish needs.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Fergus Ewing, contrib. 138¹⁴

74. The Committee believes that the cross border nature of Forest Research is critical to ensuring the health of Scotland's trees and those across the UK. It recommends that the Scottish Government should bring forward an amendment to the bill to strengthen the provisions relating to tree health and other forestry research from a power to a duty.
75. The Committee also calls on the Scottish Government to provide a written update on its ongoing discussions with the rest of the UK on the cross border functions of Forest Research. This should include clarity, when possible, on whether it will be delivered by a single joint body in future. It also calls on the Scottish Government to take the concerns of stakeholders as expressed in this report into account during these discussions.
76. The Committee recommends that an appropriate framework agreement for a continued cross-border approach to forest research and tree health should be agreed and in place before the relevant sections of the bill come into force.

Land Management

Management of land for sustainable development

77. The bill includes a new power in section 9 (3) to enable management of forestry land for the purpose of furthering sustainable development. This gives greater flexibility in the use of the National Forest Estate compared to what was permitted under the Forestry Act 1967, which required all activity to be tree-related.
78. Simon Hodge from FES explained that the current Act is focused solely on forestry and that there is now a desire to be involved in delivery of wider set of objectives. In particular, as one third of the estate—some 200,000 hectares—is not forestry land but other land. He stated that the bill provides an opportunity to recognise the value that 'other' land can deliver for purposes other than forestry.
79. However, the Committee has been made aware of the considerable confusion felt by stakeholders as to the difference between 'forestry land' and 'other land' to be managed for sustainable development.
80. For example, Grampian Forestry Forum noted concerns with the definition of forestry land in section 10 and 11 in the bill. As drafted, it designates the entire national forest estate as forestry land, to be managed under sustainable forest management. However, as highlighted, around one third of the estate is open mountain, bog, or farmland. It suggested that the term 'forestry land' should be replaced in the bill with 'national forest' and that section 10 (a) should read 'The afforested areas of the national forest estate'.
81. It also argued that to include this in 'forestry land' would result in a loss of focus in the Forestry Strategy, stretch the meaning of 'sustainable forest management' and misrepresent the scale of the national forest.
82. Community Woodlands Scotland proposed that the confusion may be resolved by re-assessing the status of the component parts of the National Forest Estate. Areas could be reclassified to be clearly 'forestry land', which would adhere to the principles of sustainable forest management, and 'non-forestry land' in which the duty to achieve further sustainable development would apply.
83. However, Malcolm Crosby from the FCTU expressed the view that the classification of non-forestry land would be artificial. He said—
- ” ... my previous role was in forest planning, the whole point of which is to bring everything together so that the plan includes everything—all the land that is not planted is equally important as anything that has trees on it. If you try to distinguish between them, it just becomes impossible.
- Source: Rural Economy and Connectivity Committee 06 September 2017 [Draft], Malcolm Crosby, contrib. 225¹⁵
84. The Cabinet Secretary stated that the Scottish Government had listened carefully to the concerns regarding confusion around the use of land for sustainable forest management and land for sustainable development. He assured the Committee that work had started to address the issue and that he recognised the need for clarity.

85. The Committee welcomes the Scottish Government's recognition of the need for clarity in the bill regarding the designation of afforested land which must be managed for sustainable forest management and 'other' land which will be managed for sustainable development. It calls for amendments to be brought forward by the Scottish Government which provide a clear and easily understood distinction between these two categories of land.

86. The Committee recommends that, to provide consistency with the recommendation above regarding sustainable forest management, the Scottish Government should give consideration to extending the duty to promote sustainable development to all relevant public bodies.

Definition of sustainable development

87. The Committee noted that no definition of sustainable development is provided in the bill or the accompanying documents and that this is consistent with the Land Reform (Scotland) Act 2016 and the Community Empowerment (Scotland) Act 2015.

88. Organisations such as the National Farmers Union for Scotland (NFUS) and the Institute of Chartered Foresters expressed concern at the lack of clarity on the new powers for sustainable development. NFUS stated that it is not against the concept of sustainable development. However, reassurance is required and examples of how land will be managed for sustainable development would be helpful. It expressed a fear that if there are no clear limits to how land will be managed there is a risk that the concept of sustainable development could become contested and divisive in the longer term.

89. The Scottish Government stated that it was a conscious decision not to define sustainable development in the bill. Officials argued that 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. It highlighted the court ruling by Lord Gill which stated 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 ¹⁶

90. The Scottish Government also directed the Committee to the Policy Memorandum for the relatively recent Land Reform (Scotland) Bill, which it believed to contain 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. ¹⁷

91. The Committee acknowledges that it is not current practice to define 'sustainable development' in legislation. However, some stakeholders are clearly seeking clarity on the term and its use in relation to forestry. In a similar manner to the issue regarding the definition of 'sustainable forest management' the Committee recommends that the Scottish Government should make a clear commitment to include the current working definition of sustainable development in the Forestry Strategy.

Acquisition and compulsory purchase

92. Sections 15, 16 and 17 of the bill deal with acquisition, compulsory purchase and disposal of land. The Forestry Act 1967 also contained provisions on acquisition and disposal of land and compulsory purchase.
93. The Scottish Government has, separate to this bill, published guidance which sets out its policy on the use of compulsory purchase orders in Scotland. The guidance states that a compulsory purchase order can allow organisations (including Scottish Ministers) to acquire land without the owner's permission, where there is a strong enough case for this in the public interest. It also sets out the issues to be taken into account and if compensation is required where compulsory purchase is being considered. The Committee notes that sustainable development is not mentioned in this guidance.
94. The bill widens the powers of compulsory purchase beyond those contained in the Forestry Act 1967 to include land for sustainable development. However, a broad array of submissions questioned the necessity for, not only broadening the powers, but indeed whether there was any requirement for such powers at all. DWP Harvesting cautioned that the increased powers of compulsory purchase could even be counterproductive to the aim of sustainable forest management.
95. Scottish Land and Estates said —

” There is a question that should be explored more fully which is whether compulsory purchase of forestry land and land for sustainable development purposes is appropriate at all? We do not believe it is. For the past 60 years, the Forestry Commission has relied on the voluntary approach to acquire land; a culture of co-operation that has worked well. ¹⁸
96. Stakeholders also noted that the existing compulsory purchase system was in need of review. However, in oral evidence, Peter Peacock from Community Land Scotland argued that compulsory purchase powers should be in the bill and that they were an important power for Ministers to have, even if a future review were required. He said—

” It is absolutely right that the power is in the bill and that Ministers have the opportunity to use it... Ministers would have to prove that it was the only way that they could get the land and that the need could not be met in alternative ways. It is not straightforward for Ministers to use the power; nonetheless, it is an important power for them to have.

Source: Rural Economy and Connectivity Committee 06 September 2017 [Draft], Peter Peacock, contrib. 86¹⁹

97. Perth and Argyll Regional Forestry Forum argued that the Scottish Government must clarify, precisely, what any new compulsory purchase powers are to be used for. South Lanarkshire Council stated that it could imagine potentially positive application for the wider powers. For example, enforcing changes to land management as flood mitigation measures. However, it noted that —

” In the context of primary legislation “sustainable development” would seem to be a rather broad and poorly defined term, given the potential scope and reach of the associated powers.²⁰

98. The Timber Transport Forum requested that, if compulsory purchase powers were to be used, that the provision of suitable haulage facilities and forest access roads be one of the reasons for use.

99. CONFOR and Scottish Land and Estates expressed concern about the interaction of two of the powers in the bill. The ability to compulsory purchase land and the ability to delegate land to community bodies. Stuart Goodall from CONFOR said—

” It would be almost like saying that we can take land from somebody to give it to somebody else.

Source: Rural Economy and Connectivity Committee 21 June 2017, Stuart Goodall, contrib. 97²¹

100. Carole Barker Munro from the Scottish Government explained that there is a symmetry in the bill, in that all the powers that are available for forestry are available for the broader land management purpose. That is why the power to acquire land and the power to acquire it through a compulsory purchase order have been included in relation to sustainable development.

101. The Cabinet Secretary explained that compulsory purchase powers are commonly provided for public bodies. He acknowledged that the powers had not been used for forestry purposes in 50 years. However, he argued that the presence of the power can often be a powerful lever which can assist in effectively concluding negotiations. If the Forestry Commission did not have that power as a backstop, then some of the successful land acquisition negotiations in the past 50 years may not have occurred. He said—

” The fact that CPO powers have not been used for 50 years in the context of forestry is testament to successful negotiation, but of course negotiation has been conducted on the basis that there is a backstop power that could be used, in extremis. The existence of such powers informs and helps to encourage the reaching of a negotiated conclusion.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Fergus Ewing, contrib. 173²²

102. However, the Cabinet Secretary acknowledged the concerns that people had about the extension to the powers of compulsory purchase and committed to considering whether these might be more tightly defined He said—

” ...I certainly undertake to study the issue carefully, to see whether, at stage 2, the use of the power should be more tightly defined and constrained, perhaps by reference to the implementation of the forestry strategy and the other duties on ministers. If there are other technical means of ensuring that the power is used only for purposes that most reasonable people would perceive as not just necessary but essential, I will be happy to consider them.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Fergus Ewing, contrib. 173²²

103. The Committee acknowledges the concerns of some stakeholders in relation to the compulsory purchase provisions in the bill and notes that current guidance on compulsory purchase does not include direct reference to sustainable development. It also notes stakeholder comments on the need to review the system of compulsory purchase more generally. The Committee welcomes the Scottish Government's commitment to look carefully at the way in which the proposed extension of powers for compulsory purchase in relation to sustainable development is set out in the bill.
104. The Committee recognises the need for the retention of compulsory purchase powers which may be required in certain circumstances in order to unlock the potential in forestry land. With this in mind, it is content for the powers in the 1967 Forestry Act in relation to compulsory purchase to be replicated in the bill. However, the majorityⁱⁱⁱ of the Committee is of the view that the Scottish Government is yet to provide sufficient justification for its proposed extension of compulsory purchase powers to cover sustainable development.
105. The majority^{iv} of the Committee therefore calls for the bill to be amended to remove the provision at section 16 (1)(b) which allows for the compulsory purchase of land by Scottish Ministers in relation to sustainable development.

Disposal of land

106. Section 17 gives Ministers the power to dispose of land. Submissions from organisations such as the National Trust for Scotland, Scottish Environment Link and CONFOR noted that there was a lack of clarity on where funds acquired through such disposals would be allocated. It was argued that there should be a requirement on the face of the bill to ensure that the proceeds of land sales are reinvested in new forest land acquisition or associated environmental projects.
107. Carol Barker-Munro explained to the Committee that any disposals have to be undertaken in accordance with the forestry strategy. However, the Community Woodlands Association said that there was a lack of clarity on this point—

iii John Finnie and Rhoda Grant dissented

iv John Finnie, Rhoda Grant, Fulton McGregor and Stewart Stevenson dissented

” ...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? ²³

108. The Community Woodlands Association also argued that Scottish Ministers should take reasonable steps to ensure that the future management of forestry land, after disposal, is required to be maintained at least to UKFS and that future management of “other land” furthers the achievement of sustainable development.

109. Forest Policy Group welcomed the flexibility introduced by new powers to dispose of land. It stated that this could be a boost for rural development if individuals and small business can lease woodland. However, it argued that under Section 17 there should be a requirement for disposals to be subject to public consultation if they exceed a certain scale. For example, the wholesale leasing of a proportion of the NFE to one organisation.

110. Simon Hodge from FES explained that it currently has two financial streams for disposal on the estate. One is called rationalisation, which is the disposal of small pockets of land and buildings that are no longer required. FES uses that income to fund capital activity, such as the purchase of vehicles and capital works on management buildings. The other, now called the new woodland investment programme, involves the larger-scale sale of land for reinvestment, principally into woodland creation. He also noted that in the past few years that fund has also been used to invest in, for example, integrated land management with farming for new entrants.

111. The Committee considers that reinvestment of generated income into the National Forest Estate is an essential component of land disposal. It recognises that this is the current practice of Forest Enterprise Scotland. However, it recommends that, due to the long term strategic nature of forestry, a commitment to continuing with this practice should be set out in the forestry strategy, to ensure security and continuity over time.

112. The Committee also calls on the Scottish Government to explore options for public consultation on certain categories of disposal. For example, if they exceed a certain scale.

Community Empowerment

113. Sections 18 - 20 allows the delegation of the management of forestry or other land to community bodies. It sets out the meaning of a community body and the elements these bodies must take into account when carrying out a delegated function.

114. Section 19 sets out the meaning of 'community body' as it pertains to the provisions set out in the bill. The Committee noted that this definition does not match the

Community Empowerment (Scotland) Act 2015 and that stakeholders expressed a lack of clarity on why the difference exists and called for a standardised approach.

115. The Committee heard from the Scottish Government that the definition used in the bill is taken directly from the current Forestry Act 1967, which was amended by the Community Empowerment (Scotland) Act 2015. The bill team explained that the 2015 Act has different definitions of a 'community body', depending on the purpose for which the provisions of that Act are applied.
116. The Committee noted that in the Forestry Act 1967, as amended by the Community Empowerment Act 2015, the definition only applied to delegation of forestry functions. This bill widens the potential delegation for the management of land for sustainable development. So whilst the definition might have been taken from the 1967 Forestry Act, the context in which the powers may be used are wider. It was noted by the Environment Climate Change and Land Reform Committee in correspondence that the meaning of community body in the bill seems to be much weaker than the definition which applies to non-forestry land and sustainable development land in the Community Empowerment (Scotland) Act 2015.
117. Section 19 (2) sets out a number of criteria which a community body must meet. However, subsection (3) allows Scottish Ministers to "disapply any or all of the requirements specified in paragraphs (b) to (f) of subsection (2) in relation to any particular body."²⁴ CONFOR said in oral evidence that—

” There is a lot of detail in section 19(2), but the next subsection basically gives the Scottish Ministers the ability to ignore it and disapply all those elements. We question whether that makes sense.

Source: Rural Economy and Connectivity Committee 21 June 2017, Stuart Goodall, contrib. 93²⁵

118. Community Land Scotland went further and questioned the need for sections 18 - 20 of the bill at all. It stated that they would only be relevant if they extended the existing powers around delegation, sale and leasing which are present in the Community Empowerment Act 2015 and it is unclear whether these sections do that.
119. Community Woodland Association echoed this point and stated that if sections 18 - 20 are merely intended to facilitate the lease of land to community bodies, then it would consider that they are unnecessary and can be deleted. It said—
- ” 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 [CEA]; 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.²⁶
120. In evidence Jon Hollingdale from the Community Woodland Association questioned the need for a specific section on community bodies when the previous section would allow the sale, lease or gift of land to anybody at all. He said—

” ...section 17 of the bill would give ministers the power to dispose of land by sale, lease or gift to anybody, without any caveat. It therefore seems rather strange to set up something special for community bodies. If the land can be leased to any private individual or any organisation, why is there a need to define special rules about the functions for community bodies?

Source: Rural Economy and Connectivity Committee 06 September 2017 [Draft], Jon Hollingdale, contrib. 103²⁷

121. The bill team acknowledged that there may be some overlap between the Community Empowerment Act and the bill. The bill team leader said—

” The bill almost provides another avenue for communities to access publicly owned land. Our starting point was the Forestry Act 1967, which had provisions to allow the Forestry Commission to overcome a specific legal hurdle.

We are listening to concerns about the fact that part 5 of the Community Empowerment (Scotland) Act 2015 is now in force for asset transfers and there could be an element of overlap. We are exploring that.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Carole Barker-Munro, contrib. 193²⁸

122. The bill team also made a commitment to respond to any potential unintended consequences for communities in terms of how the bill, as presently drafted, may interact with the requirements of Part 5 of the Community Empowerment (Scotland) Act 2015.

123. The Cabinet Secretary said—

” If there are opportunities for more community ownership, that would be a very good thing, although the questions of structure, finance, rights and responsibilities are inherently complex. In relation to community energy policy and renewable energy, we have seen many community ownership projects, which have been well supported by this Parliament, and I see no reason why there could not be similar opportunities in forestry.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Fergus Ewing, contrib. 199²⁹

124. The Committee has a number of concerns regarding the sections on community bodies. In particular, the Committee questions the definition of community body. In addition, it questions the need for a particular section on community bodies when section 17 allows Scottish Ministers to sell, lease or gift land to anyone.

125. The Committee welcomes the Scottish Government's acknowledgement that there may be overlap between the current drafting of the bill and the Community Empowerment Act 2015. It calls on the Scottish Government to explore this issue further to determine whether the sections on community bodies are required as they currently stand and, if it is determined that they are not, to bring forward appropriate amendments at Stage 2.

126. As noted previously, it also calls on the Scottish Government to include greater detail and clarity in the Forestry Strategy on how the relevant provisions of the bill and the Community Empowerment Act 2015 will apply to forestry and sustainable development in future.

Felling

127. The Forestry Act 1967 provided Forestry Commissioners with powers related to the felling of trees. Since this bill seeks to repeal the 1967 Forestry Act in Scotland, part 4 provides Scottish Ministers with similar powers. The Policy Memorandum³⁰ states that while the Forestry Act 1967 focused on timber production, the new regime allows for a broader view to be taken.

Definition

128. Stakeholders across the board raised concerns about the current definition in the bill of felling as "intentionally killing a tree". It was felt that this definition was factually incorrect. South Lanarkshire Council pointed out that most native hardwood species regenerate after felling. Scottish Woodland Trust suggested that the current definition would also exclude examples of felling which do not kill the tree (e.g. coppicing) but would include examples of killing trees which are not felling (e.g. ring barking).
129. Scottish Southern Electric also noted that the current use of the word "killing" has negative connotations and suggests that felling is a damaging and negative process when felling is a necessary process that serves positive outcomes in some circumstances.
130. Scottish Environment Link and Scottish Woodland Trust recommended the definition of "felling" used in the Forestry Act (Northern Ireland) 2010 should be used.
131. The Cabinet Secretary acknowledged the comments from stakeholders regarding this definition and agreed that an amendment was required to correct this within the bill.

132. The Committee welcomes the Scottish Government commitment to bring forward an amendment at Stage 2 to provide a more appropriate definition of "felling".

Felling regulations

133. The Scottish Government has stated that much of the detail on felling will come in regulations. Indeed, in this respect the bill can be described as an enabling or framework bill, which will allow provisions on felling to be more easily amended in future. However, some stakeholders voiced concerns with this enabling approach
134. Scottish Land and Estates expressed the view that, although it understands the general logic for bringing forward enabling bills, forestry is in many ways a special case. It highlighted the fact that forestry is a very long-term investment and investors seek as much certainty and security as possible before making a commitment. It argued that regulations, which are easily changed without the

scrutiny of the primary legislation process, are counter-intuitive for this particular industry. It continued to say that —

” Given that the felling and restocking provisions in the 1967 Act have served the industry well for the last 50 years, we cannot see why they have not simply been taken over into this bill. The failure to do so leaves some serious omissions.³¹

135. Seafield and Strathspey Estates highlighted that if the 1967 Forestry Act is repealed and felling provisions are not brought over into this bill, then there may be possible complications with the current licences and the retrospective application of any secondary legislation to existing permissions and schemes. They also argued that it is highly likely that consultation on the matter would result in the majority of respondents citing the benefits of the existing provisions. They therefore asserted that the regulations should be included on the face of the legislation.
136. However, South Lanarkshire Council said that it would consider Part 4 of the bill to be fit for purpose in that it largely involves the transfer of existing powers to Scottish Ministers. It would also agree that setting out the details of the regime in secondary legislation will allow for better engagement with sector and public interests and facilitate adaptation.

Exemptions

137. Felling exemptions are a particular area in which stakeholders argued for detail to be included on the face of the bill rather than in regulations.
138. For example, Scottish and Southern Energy Network (SSEN) has historically benefited from an exemption, under the 1967 Forestry Act. SSEN has a statutory duty to safeguard its network and ensure that there is no risk of interruption or interference caused by insufficient clearance from trees. The felling for which is currently permitted without the requirement for a felling licence due to an exemption on the face of the Act. It stated that while it supports reviewing and modernising forestry and land management in Scotland it has a number of concerns about how the bill takes account of the interests of bodies with statutory duties.
139. The Scottish Government stated that it has taken the view that it would be fairer to the sector, in the first instance, to work with it to develop the regulations. It explained that it would have been difficult for it to do that prior to the bill being published. The Cabinet Secretary stated that having the regulations in subordinate legislation would allow a more flexible, agile and risk-based regulatory regime.
140. Assurances were also provided by the Scottish Government in relation to exemptions. It stated that, following consultation with stakeholders, the intention was to recreate the exemptions in regulations. When asked about exemptions in relation to statutory duties of energy companies, Catherine Murdoch of the bill team said—

” The intention is that we will recreate exemptions that work, such as that one, or that we will tweak exemptions to make them work better in the future. There is no suggestion that we will drop such exemptions.

Source: Rural Economy and Connectivity Committee 13 September 2017 [Draft], Catherine Murdoch, contrib. 206³²

141. The bill team also assured the Committee that it would structure the commencement of the bill to ensure that there would be a seamless transition between the operation of the 1967 Forestry Act exemptions regime and the coming into force of the new regulations. The Committee was advised that the Scottish Government is currently working towards the new regulations coming into force in spring 2019.

142. The Committee notes the Scottish Government's commitment to consult closely with stakeholders on the content of the felling regulations and the modernisation of the exemption rules. It also welcomes the Scottish Government commitment to ensure a smooth transition between the Forestry Act 1967 felling requirements and those introduced under the new regulations.

143. The Committee calls for all regulations brought forward by the Scottish Government in relation to felling and felling exemptions to be subject to the affirmative procedure.

Direction powers

144. Section 31 of the bill allows Scottish Ministers to require particular trees to be felled, a so called 'felling direction'. The Central Scotland Regional Forestry Forum and the Royal Scottish Forestry Society stated that it was unclear why the bill should carry forward the felling direction powers from the 1967 Forestry Act into sections 31 and 32 of the bill. It argued that powers to require tree felling are only used by the Forestry Commission for tree health reasons – and these are provided for separately in the Plant Health Act 1967. They argued that if the felling direction provisions are retained in the bill, there should be a clear rationale for doing so.

145. The Scottish Environment, Food and Agriculture Research Institutes (SEFARI) argued that Section 31 must be used very carefully. It noted that there are many woods which remain un-thinned or un-harvested as it is not financially viable to do so, and suggested that the imposition of felling directions on land owners may result in their financial detriment. It called for discussions on the potential implications of the use of this provision between Scottish Ministers and land owners as well as for the provision of further information on the associated appeals process.

146. The Scottish Government stated in evidence that the felling direction powers will only be used to prevent deterioration of timber quality, improve growth or prevent or reduce harm caused by the presence of trees. There would be no use of the power to instruct private forestry owners to fell to meet market demands.

147. The Committee notes the Scottish Government's reassurance that the felling directions contained in the bill would not be used to force private forestry owners to fell against their wishes. However, in the interests of clarity it calls for clear guidance on the execution of felling directions to be issued by the Scottish Government to coincide with the commencement of these provisions.

Registering a notice to comply

148. Section 35 states that Scottish Ministers may register a notice to comply with continuing conditions on felling permissions, felling directions and restocking directions. Notices may be registered with the Land Register for Scotland or the General Register of Sasines.
 149. Seafield and Strathspey Estates said it was unaware of any significant failures in current compliance and questioned the need for the registration when the burdens on land are relatively short term. It argued that it seemed of questionable benefit and unduly onerous in terms of cost and complexity to require these to be included in the Land Register.
 150. The Cabinet Secretary explained that the bill will enable but not require the registration of notices. The explanatory notes accompanying the bill state that the effect of registering notices is that the obligations imposed by the notice are easily assessed by any prospective new owner and are automatically passed to any future owners of the land to which they relate.
 151. Jo O' Hara from the Forestry Commission explained that the power would mean that the Scottish Government could ensure that restocking notices could be enforced, even if there was a change in ownership. The bill team further explained that a risk based approach to registration was being explored and that the new owner would not be bound to comply with a notice unless something is registered.
 152. An alternative suggestion was also put forward by the Community Woodland Association which suggested that similar information could be made available on the Forestry Commission website and that this would be a less bureaucratic, expensive and resource intensive option.
 153. The Cabinet Secretary said that the Scottish Government agrees that notices to comply with continuing conditions could be included on an FCS web-based register rather than registered with Registers of Scotland. However, it would not allow for enforcement of the conditions after a change of ownership and there would perhaps be a risk that a new owner could claim ignorance of the conditions if they did not appear in the normal solicitors' searches or in the burdens section in the sasine register. However, he did indicate that the Scottish Government was considering how this issue should be taken forward.
154. The Committee welcomes the Scottish Government's commitment to further consider the means by which notices to comply should be registered. The Committee is of the view that the registration system should be proportionate as well as cost and resource effective.

Finance

155. The Financial Memorandum sets out the costs associated with measures in the bill. It states that —

” The Scottish Government has identified no financial implications for local authorities or other bodies, individuals or businesses as a direct result of the bill's provisions and only minimal additional cost on the Scottish Administration.
33

156. However, the Financial Memorandum also considers the costs associated with future cross-border collaboration with England and Wales and of new organisational structures - both of which fall outwith the scope of the bill. According to the SPICe bill briefing it is possible that these may be more substantial.

157. The Committee notes that Scottish Environment Link expressed concerns that if FCS becomes subsumed into the Scottish Government, there will be a lack of financial transparency and accountability. It highlighted that currently FCS and FES are separate bodies with discrete budgets. FCS also lays an annual report before Parliament and publishes corporate plans. If the bill passes and these discrete budget lines and reports are no longer available, it argued that it could make it more difficult to track Government support for forestry.

158. Questions were also raised as to how the charging powers as set out in section 64 would be used. Section 64 says—

” The Scottish Ministers may, for the purposes of or in connection with the carrying out of their functions under this Act, impose charges of such amounts as they consider appropriate.⁸

159. The Scottish Government stated that it has no intention of changing the current funding arrangements for forestry. It explained that FES is a public corporation with the ability to trade goods on the open market which is critical to the sustainable financial management of the estate. Simon Hodge of FES said that this section of the bill was not considered to be charging as such but rather it enables FES to participate in the trading of goods and services.

160. The Cabinet Secretary also provided assurance that the bill will have no impact on funding for forestry in Scotland. He stated that funding will continue to be provided via the Scottish Budget and approved and scrutinised by the Scottish Parliament and the Rural Economy and Connectivity Committee. He said "if I have learned anything, it is that that will mean that more information will be provided, rather than less".⁷

161. The Committee notes the concerns of some stakeholders that the move of the Forestry Commission into the Scottish Government may mean a reduction in financial transparency and the number of budget lines related to forestry. The Committee would expect the Scottish Government to maintain current levels of transparency in relation to targets, accounts and reporting which relate to

forestry. It would have serious concerns if the Parliament's ability to scrutinise the forestry functions of the Scottish Government were compromised in any way as a consequence of an organisational change.

162. The Committee welcomes the assurance from the Scottish Government that the bill will not impact on forestry funding and that more, not less, information will be provided within future Draft Budget documents.

Costs of rebranding and IT

163. The Scottish Government has stated that branding and website management for the new organisations is estimated to be £4.25 million, between 2017/18 - 2019/20. The cost of a rebranding exercise has caused concern with many stakeholders who feel it is unnecessary. Moving and integrating FCS and FES IT to the Scottish Government's network is estimated to cost between £2.05 - £8.05 million, between 2017/18 - 2020/21.
164. PCS union said—
- ” Change of brand and logo at huge cost when budgets are under extreme pressure would be received badly by FC [Forestry Commission] staff and the public, and may lead to reputational damage for SG [Scottish Government] and FC.³⁴
165. This was echoed by the Forestry Commission Trade Unions who felt that the proposal to find the money to complete these tasks from within current budgets would threaten resources required for delivery. It also argued that retaining a single body would reduce these requirements and help minimise costs.
166. The National Access Forum wanted to bring to the attention of the Committee the strength and importance of the current Forestry Commission Scotland brand which it argued encourages participation, particularly among the less confident users and family groups. It was clear that this brand identity should continue. It said—
- ” It is an instantly recognisable brand that conveys clear signals and reassurance to the public about the quality of the infrastructure, way making and experience the visitor is likely to enjoy at a site.³⁵
167. The Forestry Commission Trade Unions representative noted that the licence for use of the brand would continue to sit with the UK Government. However, it clarified that negotiations could take place to continue to use the brand with minimal changes.
168. The Scottish Government said that a minimal, common sense approach would be taken to the rebranding exercise and assured the Committee that the costs would not be taken away from any current programmes. They would be covered by reserves permitted by FES's public corporation status. The Cabinet Secretary stated that he was taking a close personal interest in this issue and that the green colour scheme of the current branding would be maintained.

169. In relation to IT costs, the Cabinet Secretary explained that the existing Forestry Commission computer system is not fit for purpose. There has been a lack of investment in recent years and the organisation needs to protect against system failure. He stated that the move to the Scottish Government Scottish Wide Area Network (SWAN) would be beneficial. However, there would be a need for a significant spend on IT systems even in the absence of the changes proposed by the bill. He stated his willingness to provide further detail on this as progress is made.
170. The Cabinet Secretary also noted that the estimates made in the Financial Memorandum were wide and that further work will need to be done to make them more accurate.
171. The Committee recognises the strength of the current Forestry Commission brand. It recommends that if a rebranding exercise must occur that costs be kept to a minimum. It also recommends that the Scottish Government consider a rolling approach to the rebranding exercise, for example only changing branding when vehicles or equipment are replaced
172. The Committee acknowledges the Scottish Government's assertions that the current Forestry Commission IT system is not fit for purpose and would require an upgrade even if the bill was not being put forward. It looks forward to seeing further detail from the Scottish Government on costs associated with this exercise which it understands will be provided before the conclusion of the bill's parliamentary passage.

Conclusion

173. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the bill. In doing so, the Rural Economy and Connectivity Committee has taken into consideration evidence from a wide range of stakeholders.
174. The Committee has made a number of recommendations for improvement and calls for clarification in relation to the provisions contained within the Forestry and Land Management (Scotland) Bill and looks forward to receiving the Scottish Government's responses to these points.
175. The Committee recommends that the Parliament agrees the general principles of the bill .

Annex A: Consideration by other Committees

176. The Delegated Powers and Law Reform Committee produced a report on the Forestry and Land Management (Scotland) Bill. It is available on the Scottish Parliament website. <https://digitalpublications.parliament.scot/Committees/Report/DPLR/2017/6/27/Forestry-and-Land-Management--Scotland--bill-at-Stage-1#Introduction>
177. The Environment, Climate Change and Land Reform (ECCLR) Committee sent a reporter to attend the bill committee sessions. The Committee also received the following correspondence from ECCLR in relation to the bill.
- [Letter from the Environment, Climate Change and Land Reform Committee to the Committee regarding the appointment of a ECCLR Committee reporter for the Forestry and Land Management \(Scotland\) Bill, 13 June 2017 \(193KB pdf\)](#)
 - [Letter from the Environment, Climate Change and Land Reform Committee to the Committee regarding the interests ECCLR Committee have in relation to the Bill, 22 June 2017 \(276KB pdf\)](#)
 - [Letter from the Environment, Climate Change and Land Reform Committee to the Committee regarding the views ECCLR Committee have in relation to Section 3, Section 8, Part 3 Sections 13-20 and Part 5 of the Bill, 19 September 2017 \(151KB pdf\)](#)
178. The Finance and Constitution Committee issued a call for views on the bill and no submissions were received.

Annex B: Extract of minutes

179. **17th Meeting, 2017 (Session 5), Wednesday 24 May**

5. Forestry and Land Management (Scotland) Bill (in private): The Committee agreed its approach to the scrutiny of the bill at Stage 1.

19th Meeting, 2017 (Session 5), Wednesday 7 June

1. Forestry and Land Management (Scotland) Bill: The Committee took evidence from— Carole Barker-Munro, Bill Manager, Ginny Gardner, Head of Forestry Devolution, Catherine Murdoch, Deputy Bill Manager, Gemma MacAllister, Solicitor, Jo O'Hara, Head of Forestry Commission Scotland, and Simon Hodge, Chief Executive, Forest Enterprise Scotland, Scottish Government.

Edward Mountain declared an interest as a farmer.

Peter Chapman declared an interest as a farmer.

Stewart Stevenson declared an interest as an owner of a small agricultural holding.

21st Meeting, 2017 (Session 5), Wednesday 21 June

1. Forestry and Land Management (Scotland) Bill: The Committee took evidence on the bill at Stage 1 from— Stuart Goodall, Chief Executive, Confor; Brendan Burns, Harvesting Contractor, Forestry Contractors Association; Malcolm Nicol, Managing Partner, Ballogie Estate Enterprises; Hamish MacLeod, Director of Public Affairs, BSW Sawmills; Ian Thomas, Chartered Forester, Institute of Chartered Foresters; David Henderson-Howat, Chair, Central Scotland Forestry Forum; Claire Glaister, Chair, Grampian Regional Forestry Forum; Patrick Hunter Blair, Chair, South Scotland Forestry Forum; Richard Stirling-Aird, Chair, Perth and Argyll Forestry Forum.

23rd Meeting, 2017 (Session 5), Wednesday 6 September

1. Forestry and Land Management (Scotland) bill: The Committee took evidence on the bill at Stage 1 from— Andrew Bauer, Deputy Director of Policy, NFU Scotland; Peter Peacock, Policy Director, Community Land Scotland; Jon Hollingdale, Chief Executive, Community Woodlands Association; Anne Gray, Senior Policy Officer (Land Use and Environment), Scottish Land and Estates; Willie McGhee, Coordinator, Forest Policy Group; Charles Dundas, Scottish Public Affairs Manager, Woodland Trust; Malcolm Crosby, Chair, Forestry Commission Trade Unions; Dr Maggie Keegan, Head of Policy and Planning, The Scottish Wildlife Trust, Scottish Environment Link; REC/S5/17/23/M Professor David Miller, Knowledge Exchange Coordinator, James Hutton Institute, SEFARI.

24th Meeting, 2017 (Session 5), Wednesday 13 September

3. Forestry and Land Management (Scotland) Bill: The Committee took evidence on the bill at Stage 1 from— Fergus Ewing, Cabinet Secretary for the Rural Economy and Connectivity, Ginny Gardner, Head of Forestry Devolution, Carole Barker-Munro, Bill Manager, Catherine Murdoch, Deputy Bill Manager, Barry

McCaffrey, Solicitor, Jo O'Hara, Head of Forestry Commission Scotland, and Simon Hodge, Chief Executive, Forest Enterprise Scotland, Scottish Government.

6. Forestry and Land Management (Scotland) Bill (in private): The Committee reviewed the evidence it has heard on the Forestry and Land Management (Scotland) Bill at Stage 1.

Annex C: Written evidence

180. Written evidence was received from the following individuals and organisations.

- [Anonymous 1 \(14KB pdf\)](#)
- [Ballogie Estate \(71KB pdf\)](#)
- [Bidwells \(64KB pdf\)](#)
- [Central Scotland Regional Forestry Forum \(127KB pdf\)](#)
- [Community Land Scotland \(148KB pdf\)](#)
- [Community Woodland Association \(250 KB pdf\)](#)
- [Confor \(192KB pdf\)](#)
- [Confor supplementary \(134KB pdf\)](#)
- [David Atkinson \(5KB pdf\)](#)
- [Dr Scott Wilson \(117KB pdf\)](#)
- [DWP Harvesting Limited \(101KB pdf\)](#)
- [Forest Policy Group \(237KB pdf\)](#)
- [Forestry Commission Trade Unions \(134KB pdf\)](#)
- [Grampian Regional Forestry Forum \(134KB pdf\)](#)
- [Highland and Islands Enterprise \(143KB pdf\)](#)
- [Highland and Islands Forestry Forum \(101KB pdf\)](#)
- [Institute of Chartered Foresters \(220KB pdf\)](#)
- [J.B Teasdale \(60KB pdf\)](#)
- [Ken Taylor \(5KB pdf\)](#)
- [National Access Forum \(203KB pdf\)](#)
- [NFU Scotland \(128KB pdf\)](#)
- [Paths for All \(146KB pdf\)](#)
- [PCS Scotland \(170 KB pdf\)](#)
- [Perth and Argyll Regional Forestry Forum \(124KB pdf\)](#)
- [Reforestation Scotland \(126KB pdf\)](#)
- [RSPB Scotland \(156KB pdf\)](#)

- [Royal Scottish Forestry Society \(144KB pdf\)](#)
- [Scottish and Southern Energy Networks \(62KB pdf\)](#)
- [Scottish Association for County Sports \(188KB pdf\)](#)
- [Scottish Environment LINK \(145KB pdf\)](#)
- [Scottish Land and Estates \(261KB pdf\)](#)
- [Scottish Wildlife Trust \(408KB pdf\)](#)
- [Seafield and Strathspey Estates \(159KB pdf\)](#)
- [SEFARI \(235KB pdf\)](#)
- [South Lanarkshire Council \(123KB pdf\)](#)
- [South Scotland Regional Forestry Forum \(125KB pdf\)](#)
- [Stirling Council \(63KB pdf\)](#)
- [The National Trust for Scotland \(130KB pdf\)](#)
- [Timber Transport Forum \(183KB pdf\)](#)
- [University of Aberdeen \(261KB pdf\)](#)
- [Woodland Trust \(138 KB pdf\)](#)

181. The following correspondence was received from the Scottish Government.

- [Letter from the Cabinet Secretary for Rural Economy and Connectivity to the Committee regarding an announcement of new organisational structures for forestry in Scotland, 11 May 2017 \(105KB pdf\)](#)
- [Letter from the Scottish Government to the Committee regarding responses to follow up questions from their appearance before the Committee on 7 June 2017, 15 June 2017 \(57KB pdf\)](#)
- [Further letter from the Scottish Government to the Committee regarding responses to questions about CPO from their appearance before the Committee on 7 June 2017, 29 June 2017 \(28KB pdf\)](#)
- [Letter from the Cabinet Secretary for the Rural Economy and Connectivity to the Committee regarding responses to follow up questions from his appearance before the Committee on 13 September 2017, 20 September 2017 \(112KB pdf\)](#)

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