



Law Society
of Scotland

Stage 3 Briefing

Forestry and Land Management (Scotland) Bill

February 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

This briefing paper is intended to inform MSPs of our comments on the Forestry and Land Management (Scotland) Bill. The Stage 3 Debate is scheduled to take place in the Scottish Parliament on 1 March 2018.

The Bill was introduced into the Scottish Parliament by the Cabinet Secretary for the Rural Economy and Connectivity, Fergus Ewing MSP, on 10 May 2017.

The Bill was allocated to the Scottish Parliament's Rural Economy and Connectivity Committee. The Committee issued a call for written evidence on 2 June 2017. We provided a written submission to the Rural Economy and Connectivity Committee.¹ On 6 October 2017 the Committee produced a Stage 1 Report.² The Stage 1 Debate took place in the Scottish Parliament on 7 November 2017 and the Scottish Parliament agreed to the general principles of the Bill. Amendments were made to the Bill at Stage 2.³

If you would like to discuss this paper, or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

General comments

The Forestry and Land Management (Scotland) Bill establishes a framework for the devolution of powers in relation to forestry to Scotland. The Bill includes the transfer of powers from the Forestry Commissioners in Scotland to Scottish Ministers; imposes upon Scottish Ministers a duty to promote sustainable forest management and publish a forestry strategy; widens provisions for management of forestry land and includes provisions on the management of land for sustainable development; sets out provisions for

¹ https://www.lawscot.org.uk/media/10575/rur_Iss-comments-on-forestry-and-land-management-scotland-bill.pdf

² <https://sp-bpr-en-prod-cdnep.azureedge.net/published/REC/2017/10/6/Stage-1-report-on-the-Forestry-and-Land-Management--Scotland--Bill/RECS052017.pdf>

³ [http://www.parliament.scot/Forestry%20and%20Land%20Management%20\(Scotland\)%20Bill/SPBill11AS052017.pdf](http://www.parliament.scot/Forestry%20and%20Land%20Management%20(Scotland)%20Bill/SPBill11AS052017.pdf)

compulsory purchase and the delegation of management functions to community bodies; and updates the regulatory regime for felling trees.

It should be noted that if the Bill is passed, further action will be required in order to complete the devolution of forestry. Firstly, orders will be required under the Scotland Act 1998, for example to wind up the Forestry Commissioners as a cross-border public authority, and secondly, new organisational arrangements will be required in order to transfer the activities presently delivered by the Forestry Commissioners in Scotland to the Scottish Government.

We note the policy justifications of the Bill for improved accountability, transparency and policy alignment; modernisation; and more effective use of Scotland's publicly-owned land. We welcome legislation capable of delivering on these objectives.

We are of the view that the public should have greater access to the benefits of publicly owned land, including the National Forest Estate, as well as information about that land. It is important that the public are able to benefit from the changes proposed in the Bill.

Compulsory Purchase of Land (CPO)

We welcome the move to bring the CPO regime for forestry and land management into line with the CPO regime under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947. We note that section 16 of the Bill gives Scottish Ministers the power to acquire land for forestry by CPO rather than by operating as a buyer in the market, as is currently the case. It is important that the CPO mechanism should only be used where genuinely required by strategic considerations. Our members have raised concerns that compulsory purchase orders could be used to bypass commercial negotiations in respect of forestry land, which in turn could serve to artificially depress prices.

Definition of 'felling'

In line with the intention of the Bill, it is important that the provisions capture any way of removing a tree. We therefore welcome the expansion of the definition of 'felling' in section 22, made by amendment at Stage 2 of the passage of the Bill. The definition now makes it clear that 'felling', in terms of the Bill, incorporates both the word's ordinary meaning and the intentional killing of trees.

Exemptions to unauthorised felling

Section 23 leaves the details of operation to secondary legislation. This seems both unnecessary and unhelpful when compared to the relevant sections of the Forestry Act 1967. While sections 9(2), 9(3) and 9(4) of the 1967 Act (which will be repealed as a result of the passing of the Bill) also rely on secondary legislation, they nonetheless specify the exemptions in the Act without the requirement to look to further enabling legislation. While we appreciate that the nature and scope of the exemptions themselves are separate considerations, it is clear from the primary legislation how they are defined. It is important that the law is clear and well defined.

Financial assistance

We have previously noted that it is not clear which body will become responsible for the administration of financial assistance under section 63 of the Bill. This is a function which was previously carried out by the Forestry Commission. Although the Bill makes provision for the Scottish Ministers to grant financial assistance, it is not clear how such funds will be administered on a practical level.

For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

AlisonMcNab@lawscot.org.uk