

Rural Economy and Connectivity Committee

Call for Views on the Forestry and Land Management (Scotland) Bill



A response by Scottish Environment LINK

August 2017

This response is endorsed by the following Scottish Environment LINK member organisations, who may also provide their own individual detailed responses: Scottish Wildlife Trust, Woodland Trust Scotland, RSPB Scotland, National Trust for Scotland, Butterfly Conservation Scotland, Soil Association Scotland, Ramblers Scotland and Trees for Life.

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

The aims of this Bill are admirable, and LINK supports them: the full devolution of forestry governance and policy to Scottish Ministers and the urgent modernisation of the current legislative framework. We also share the ambition for greater transparency, accountability and policy alignment.

We are very supportive of sustainable woodland expansion, where this is subject to appropriate consultation and assessment procedures, and is located and managed in the most appropriate manner for biodiversity and to generate public goods for public money.

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

We strongly believe that the new structures must be as, or more, effective than the current operational set-up. We seek clarification on the likely future role of the current National Committee for Scotland and the Regional Forestry Forums, and trust that they will still play an important role in providing impartial advice to Scottish Ministers on forestry related matters. To this end we support the idea of appointing a Chief Forestry Officer and having the role of “forester” officially recognised within the Civil Service to ensure that the current expertise and professionalism of FCS is retained and valued. We urge that the Chief Forestry Officer post should be occupied by an individual who understands the wider context of sustainable forest management and is not someone with vested interests in any one part of the sector.

Forestry Commission Scotland and Forest Enterprise Scotland are currently separate bodies with discrete budgets. Where currently the Scottish Budget contains separate lines for the Forestry Commission Scotland and FES, Parliament is able to scrutinise the Scottish

Government's budget provision for forestry and make recommendations for changes. Forestry Commission Scotland also lays an annual report before Parliament and publishes corporate plans. Were the Bill to be enacted presumably these budget lines will be subsumed within the Scottish Government's environment and forestry directorate and the annual reporting will cease. This could make it more difficult for this and future committees to track Government support for forestry through the advisory, regulatory and management functions that these directorates will provide. We believe that as part of the Bill process the Parliament should secure commitments from Government which will allow spending on these functions to be scrutinised. In fact, in order to improve accountability and transparency, we believe the structure and remit of the Forestry Directorate should be clearly set out within the Bill, with a precise indication of accountabilities and responsibilities. The current structures under which forestry operates have aided transparency and engagement and have been largely effective in supporting consultation.

Finally, the Bill's definition of "felling" is clearly wrong, as it excludes examples of felling which do not kill the tree (e.g. coppicing) and includes examples of killing trees which are not felling (e.g. ring barking). Confor's suggestion that the definition of felling should be "the ordinary meaning of the term" in addition to "any method of intentionally killing a tree" is a plausible solution, but we would also recommend the definition of "felling" used in the Forestry Act (Northern Ireland) 2010.

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

We welcome the duty to prepare a Scottish Forestry Strategy (SFS). However we note 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. Contrast this with section 57 of the Climate Change (Scotland) Act 2009 which offers much more detail.

The 1993 European Ministers' definition of Sustainable Forest Management (SFM) from the Policy Memorandum should be provided on the face of the Bill. This definition should also make reference to the UKFS as the minimum requirement to be met to comply with SFM principles. As the UK is a signatory of Forest Europe, we propose that Scotland makes a commitment to be a champion of the Helsinki Principles of sustainable forest management.

When it comes to practical delivery of the SFS objectives, conflicts and opportunities may arise with other land uses; for example peatland restoration or renewable energy. The Scottish Land Use Strategy, as an overarching strategy, should co-ordinate and direct land management priorities across Scotland.

We approve of the specific reference to the SFS' relationship to the Land Use Strategy (LUS) and the land rights and responsibilities statement, although are concerned that section 4(a) states that the SFS should only "have regard to" the LUS and the rights and responsibilities statement, and does not require that these policies must be integrated and aligned. 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 expansion. Equally there is no mention of the statutory Biodiversity Strategy as required by the Nature Conservation Act of 2004, nor to the Scottish Economic Strategy, or Scottish Planning Policy,

all of which need to be working together to achieve the national outcomes desired by the Scottish Government.

We seek assurances that the SFS will focus on significantly increasing the amount of native woodland across Scotland, ideally we would like to see the proportion of native trees on the National Forest Estate increased from 20% to 50%. Maximising the natural capital assets of forests delivers multiple benefits, and the SFS should include a more explicit commitment to the conservation and restoration of open habitats (particularly peatlands). We would also like to see more recognition given to regeneration of woodland as an alternative to planting or restocking in woodland management and expansion. Such an approach is widely implemented throughout Europe, including in Norway and France. Similar wording to that of the Norwegian Forestry Act would be satisfactory to capture this approach.

The duty for Sustainable Forest Management only applies to the National Forest Estate (NFE), therefore the Bill should create an equivalent duty for private forest owners. This could be achieved by giving the UKFS a statutory basis through the Bill.

There is very little reference of the UK Forest Standard (UKFS) in the policy memorandum (and no reference in the Bill) and it would be helpful if the Scottish Government could explain if/how the proposed Scottish Forestry Strategy will align with the UK Forest Standard, since the (UKFS) currently provides the framework for delivery of sustainable forest management in the UK.

LINK believes that all owners and managers of private forests and woodland have a responsibility to manage deer populations on their land. This Bill could provide an additional basis for creating the necessary step-change particularly regarding lowland deer management, (which would support the recommendations in the 2016 report by the Environment Climate Change and Land Reform Committee) by incorporating a duty of sustainable deer management for all forest owners.

We would support a five yearly review of the SFS to ensure that forestry best-practice is kept up-to-date.

3. The Bill will provide new powers to Scottish Ministers over subjects such as tree health and the ability to conduct research. What are your views on these powers?

A huge question mark still hangs over the future of the Forestry Commission's current cross-border functions, such as Forest Research, shared standards like the UK Forestry Standard, and our contribution to the international forestry debate.

The Bill's own policy memorandum states shared standards and some tree health functions "are at risk of disintegrating because of the ongoing uncertainty." We would urge the Scottish Government to provide an update on the progress of these discussions as soon as possible.

We suggest that in Part 5, paragraph 61 should be amended to state that Scottish ministers "must" (not "may") conduct research (etc.) in order to provide an evidence base for decision making.

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

We welcome in principle the desire to have more flexible land use on the public estate than just tree-related activity, provided that there are no negative biodiversity impacts through development.

However, it is difficult to forecast how these wider powers over land management might work when the detail of the new governance structures is not yet known. Beyond a line in the SNP manifesto, and the consultation on the Forestry Bill we do not believe that there has been a debate over the pros and cons of creating a single management agency for public land in Scotland. Nor do we know how it will consult with stakeholders, or engage with the public.

Will Forestry and Land Scotland manage the national forest estate in the same way as Forest Enterprise Scotland (FES) currently does? Will it continue FES' outstanding work as an exemplar of deer management across Scotland? Will there still be a programme of repositioning of the estate like the New Woodland Investment Programme? Section 17 gives Ministers the power to dispose of land, but a policy – or indeed statutory requirement – is needed to ensure that the proceeds of land sales are reinvested in new land acquisition or associated environmental projects.

There is considerable disquiet about the long-term ambition to manage all publically owned land, and what that will mean for SNH's National Nature Reserves (NNRs). Any new land agency must be guided by the Sandford Principles, to ensure that Scotland's priceless natural assets such as blanket bogs, unimproved grasslands, or semi-natural ancient woodlands are protected against development and inappropriate afforestation.

We do welcome section 20(2) which confirms that the various Ministerial duties to biodiversity etc... will apply to land managed by communities on behalf of the state.

It is concerning that the definitions of "forestry land" and "other lands" could mean that the third of the NFE which is currently open-ground land (200,000ha, or 3% of Scotland's total land mass) and which contains many important habitats, may run the risk of inappropriate afforestation – or elsewhere of not having inappropriate afforestation removed and original habitats restored - due to the new duty to promote Sustainable Forestry Management.

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

We welcome provisions for community and charitable NGOs to manage land in the public interest, but question why section 19 redefines "a community" after the 2015 Community

Empowerment Act has already done this, and set the bar lower at a minimum membership for a community body of 10, rather than 20 here. We are sure that a consistent definition would be very helpful.

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

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

With regard to the power of compulsory purchase of land we note that the Scottish Government’s recent position statement on the current planning bill says this is already an area of government requiring updated guidance:

“Whilst changes to Compulsory Purchase Orders, Compulsory Sale Orders and a development land tax could all influence the context for planning for housing, we are exploring options around these separately and they will not be taken forward as part of the Planning Bill. We will, however, pursue revised guidance for operation of existing CPO powers in the short term.”

We believe that if Ministers insist on retaining a power which has not been exercised in professional memory - nor do they anticipate using it in the future - then the necessity of that power is questionable, and there must be protocols and guidance put in place and enforced to ensure that this power is not abused.

5. The Bill will update the regulatory regime and enforcement powers for felling and restocking trees. Do you feel it is fit for purpose?

As forestry practitioners on many of our own properties, and key stakeholders in the forestry and land management industry we would expect to be fully involved in the consultation process, and drafting of the new felling and restocking regulations. Of especially interest are the provisions of section 23 and the restocking provisions of section 33(9).

Of particular interest to us in this Bill is section 33(2)(c) and whether this will lead to requirements for “off-site” compensatory planting? This could have significant implications on non-forest habitats, and assurances are needed that this clause will not allow important open-ground land to be inappropriately afforested “by the back door” of Ministerial direction.

Some LINK members have experience of situations where greater flexibility for the amendment of these regulations than the 1967 Act allows would have beneficial, but would like to know what safeguards the Scottish Government intend to put in place to ensure that the amendment of these regulations are as open, transparent and accountable as possible.