

Response to Stage 1 Call for Evidence Rural Economy and Connectivity Committee on the Forestry and Land Management (Scotland) Bill

Introduction

Community Land Scotland (CLS) supports the general principles of the Bill, while making specific suggestions as to how the Bill could be strengthened at Stage 2.

In particular CLS **welcomes**:

- widening of the existing statutory functions for forestry to include the potential ownership and management of other land in addition to forestry land, in order to meet a Scottish Government commitment to the creation of a 'land agency'
- new flexibilities to operating arrangements generally, and with respect to the leasing of land and the delegation of functions to communities and others
- powers, including those of compulsory purchase, to acquire land to fulfill the purposes of the Bill
- the duty on Scottish Ministers to create a Scottish Forestry Strategy and to thereafter have regard to such
- the commitments to Sustainable Forest Management, in respect of forest land, and to Sustainable Development in relation to other land

Areas where the Bill could be strengthened or clarified

Duties on Ministers

In addition to the duties currently proposed, the Bill could be usefully strengthened if Ministers were given further explicit duties of matters to which they must, in exercising their functions in relation to the Bill and specifically in preparing the forestry strategy, have regard to:

- (a) promoting respect for, and observance of, relevant human rights,
- (b) promoting respect for such internationally accepted principles and standards for responsible practices in relation to land,
- (c) encouraging equal opportunities (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998),
- (d) furthering the reduction of inequalities of outcome which result from socio-economic disadvantage,
- (e) supporting and facilitating community empowerment,
- (f) increasing the diversity of land ownership, and
- (g) furthering the achievement of sustainable development in relation to land.

These provisions would further align the duties of Ministers in relation to the functions of this Bill with considerations Ministers must have in relation to other land related matters.

Scottish Forestry Strategy

The proposed provisions for the Scottish Forestry Strategy could be strengthened by requiring its review more regularly than the 10 to 15 year review period proposed in the Policy Memorandum. At the very least, Ministers should be required to report to Parliament every 5 years on whether they believe the Strategy should be reviewed and in what respects, or not reviewed. Such a device would permit a regular taking stock of how the Strategy was operating, without requiring its formal review, unless that was felt necessary.

Further, given its central importance to the entire approach advocated in the Bill, the first and subsequent Scottish Forestry Strategy should be the subject of a full consultation open to anyone to respond, and the proposed Strategy should be put to Parliament for agreement and not simply tabled in Parliament.

Duty on Ministers to publish a Statement of the management and administrative arrangements they propose to set in place to fulfill their responsibilities under the Bill's provisions, as part of the Scottish Forestry Strategy, or otherwise

The Bill does not make provision for the arrangements that are set out in the Policy Memorandum on how Ministers propose to manage and administer their responsibilities under the Bill, that is, through a Forestry Division within the Scottish Government and an Executive Agency: Forests and Land Scotland.

Given the concerns of a number of respondents to earlier Scottish Government consultation with respect to the retention of expertise currently evident within the Forestry Commission, it would seem appropriate to have a requirement on the face of the Bill that the Scottish Government shall publish a Statement as part of the Forestry Strategy, or otherwise, of how they propose to manage and administer their responsibilities under the Bill. Further, that any material change to the arrangements set out in that Statement must be notified to Parliament and be the subject of an open consultation the results of which must also be reported to Parliament, before publishing a revised Statement of the arrangements which will operate thereafter. This would give a measure of formal transparency to the arrangements being proposed, without preventing at some future time their adaptation.

Further, given concerns about ensuring expertise from the Forestry Commission is retained and maintained within the new arrangements it may be useful to give Ministers a duty to the effect that they must ensure they retain such expertise in forestry matters as would be consistent with supporting them to meet their requirements flowing from the Bill.

Sustainability and bio-diversity

Paragraph 28 of the Policy Memorandum makes the point that as Ministers are generally bound by sustainability and bio-diversity requirements, it is not necessary to duplicate these requirements in this Bill. However, this is not a question of duplication, but a question of precision and clarity. Having explicit requirements on the face of this Bill for Ministers to have regard to these matters would make these requirements part of a coherent and explicit package of requirements flowing from this Bill.

Powers for Ministers (for use by the Forestry Division and Forests and Land Scotland)

Given the wider functions envisaged for Ministers and FLS, in addition to furthering sustainable development, Ministers should be given wider social and economic powers, such as those available to Highlands and Islands Enterprise to ensure the new arrangements are empowered to further socio and economic development to the fullest extent. It would be possible to further include that such powers could be used in conjunction with HIE, Scottish Enterprise and the (to be created) South of Scotland development Agency, where appropriate.

Definition of Sustainable Forest Management

While the Policy Memorandum refers to a definition of the term “Sustainable Forest Management”, it would be helpful to have this definition more firmly established. To this end it is suggested that Minister be placed under a duty to bring forward an Order which will set out the definition of “Sustainable Forest Management” that it is proposed should be used for the purposes of the Bill. Alternatively, there could be a requirement on Ministers to publish a Definition of Sustainable Forest Management for the purposes of the Bill.

Definition of Community Body

The definition within the Bill of “community body” appears different in some respects from that used in the Community Empowerment (Scotland) Act 2015 and it is not clear why this difference exists. Perhaps this is a matter the Committee could seek clarification on, and whether the differences are justified.

However, a further consideration may be whether the sections in the Bill (18, 19 & 20) are strictly necessary, given the existence of the Community Empowerment (Scotland) Act 2015 and the wider powers of this Bill with respect to delegation of powers, sales and leasing. It is very welcome that the Bill seeks to make provisions for communities and this send very positive signals about future intent, but it would be only in extending the provisions of the CEA or the other provisions of the Bill in relation to delegation, sale and leasing, that these provisions may be necessary, and it is not clear if these sections do extend existing or the proposed provisions.

Forestry land and land for sustainable development

The structure of the Bill and its references to forest and forestry land and, separately, land for sustainable development, principally as located in Section 9 and Section 15(1) (which relates back to Section 9) appears to make a distinction between “forestry land” and land for “sustainable development”, yet the references in Section 9, to which section 15(1) relates, uses only the terms “forest” or “forestry” when referring to land. This creates a confusion as to whether land for sustainable development is land that is not, either in whole or part, land for forestry. The Policy Memorandum seems to make clear that there are two purposes to the powers and duties being conferred by the Bill in relation to land, that is land for forestry purposes and other land. It would be helpful for greater clarity on the face of the Bill that there are two separate types of land falling to be potentially owned and/or managed under the Bill’s provisions, in lay terms that would be land for forestry and any other land for the purpose of furthering sustainable development.

Forest Crofts

Given growing interest in forest crofts as one means to involve more people in forest management and in the provision of housing, unless it is permitted by other provisions in the Bill, it should be made clear that Ministers could own land for the purpose of creating forest crofts on any forest land in their ownership.

Further, it would be helpful to place Ministers under a duty to have regard to the desirability of the creation of forest crofts, crofts, and other forms of agricultural tenancies, as part of the suite of duties they have.

Purchasing land at the request of communities, and for potential community purchase.

While provisions exist for communities to acquire land in the Land Reform (Scotland) Act 2003, as amended, it is not always possible for communities to have the capacity to buy land when it becomes available on the market, or to otherwise acquire land.

Given the wider duties envisaged for FLS and the policy intention of this Bill to have an agency with wide land related powers to, broadly, promote social and sustainable economic development , it would be helpful for the Bill to contain provisions which would allow communities to request FLS (Ministers) to purchase land, where it could be shown it would be in the public interest, for the purpose of providing for the furthering of the sustainable development of that community, and for FLS to hold and manage such land, or manage such land in conjunction with the community, and to otherwise hold the ownership of the land with a view to the community taking ownership of the land.

A power to FLS (Ministers) to be able to offer loan or grant aid to a community in the purchase of land where that purchase would further the purposes of the Scottish Forestry Strategy and the wider responsibilities of Ministers would be a useful additional flexibility within the array of powers flowing from this Bill.

Community Land Scotland
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