

RURAL ECONOMY AND CONNECTIVITY COMMITTEE
FORESTRY AND LAND MANAGEMENT (SCOTLAND) BILL
SUBMISSION FROM CONFOR

Summary

1. Confor welcomes the fact that this bill enshrines in legislation duties on Scottish Ministers to promote sustainable forest management and to maintain an updated forestry strategy.
2. The bill should contain a clear recognition of the benefits of woodland expansion, in particular to secure future investment and to help meet climate change targets. There should be commitments to maintaining the productive capacity of the National Forest Estate, and to reinvesting any funds from disposals back into forestry.
3. To ensure retention of professional staff in the long term, the bill should create a post of Chief Forester for Scotland. Ministers should commit to designating key professional posts.
4. The powers of Ministers to exercise compulsory purchase and enter into arrangements with landowners require demonstration of the need for these powers as well as clearer indications as to their limits, and under what circumstances they may be exercised.
5. The definition of 'forestry land' is very unclear as it appears to include large areas of land managed for other objectives.
6. The definitions of 'sustainable forest management', 'sustainable development', 'community body' and 'felling' all require clarification or amendment.
7. More information on how cross-border arrangements will be managed post-devolution would be helpful at this stage and as the Bill progresses through parliament.

Introduction

Forestry is a Scottish success story, contributing £1 billion every year to the Scottish economy.

Confor (www.confor.org.uk) has around 800 members in Scotland including forest management companies, sawmills and wood processors, forestry professionals and woodland owners. We are a not-for-profit membership organisation representing the whole sustainable forestry and wood supply chain, focusing on strategic issues vital to the success and sustainable future of the sector.

We welcome the introduction of this bill, which has the potential to provide much-needed stability for a long-term industry to give it the confidence to invest and grow. It is vital, however, that this Bill is right, and does not miss the opportunity to provide that confidence.

Detail

Sustainable Forest Management: It would be helpful to define Sustainable Forest Management as SFM is central to the Bill. Governments across Europe use the Forest Europe definition (referred to in the policy paper) and it is also referenced in the UK Forestry Standard – the reference standard for sustainable forest management in the UK:

"The stewardship and use of forest lands in a way and at a rate that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil now and in the future relevant ecological, economic and social functions at local, national and global levels and that does not cause damage to other ecosystems."

Woodland expansion: Members of RECC will be well aware of the need to increase levels of planting to combat the forecast shortfall in supplies of wood from around 2040-2070. This has the additional benefit of contributing to meeting Scotland's world-leading targets on tackling climate change. The 1967 Bill contained a clear statement in support of expanding the forestry resource. This Bill would benefit from a clear recognition of the benefits of tree planting, not least to provide confidence for future investment.

Productive capacity of the national forest estate: 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.

Part 3: Management of Land by Scottish Ministers: Part 3 is confusing as it brings in to the Bill "management of land to further sustainable development" that may not have trees on it or apparently anything to do with forestry. It also seeks to provide a basis for the activities of the proposed 'Forestry and Land Scotland' organisation that would supersede Forest Enterprise Scotland and which would have a remit beyond forestry. In doing so the Bill includes confusing language and definitions which make it difficult to understand how land is to be classified and/or managed.

The whole Bill is tightly focused on forestry except for section 13 on sustainable development. Section 13 appears to refer to land that is acquired by Scottish Ministers by agreement or by compulsory purchase and which is not "forestry land". On that basis, we view that section 13 has no relation to forestry or the forestry strategy.

In the sections of Part 3 that are under the heading "Management of forestry land" we have concerns.

The meaning of "other land" in section 10 (b) has been difficult to fathom. The explanation provided by Carole Barker-Munro on 7 June does provide some clarity, but the Bill could benefit from clearer wording on points like this.

"Forestry land" referred to in section 9 (3) can, according to the evidence by Carol Barker-Munro, be managed for sustainable forest management or sustainable development "having regard to the forestry strategy". This land may not be afforested – 200,000ha of the National Forest Estate (NFE) is not forest, and it can include "other land" (10 (b)) that may or may not be planted. Simon Hodge explained on 7 June that the intention of the Bill is to enable the new organisation that he currently heads to deliver "across a wider set of objectives" than "forestry and forestry purposes". This implies that the new organisation can manage land with forest for non-forestry purposes – this threatens to downgrade the

importance of forestry on the NFE and could be seen to undermine the primary duty under the Bill to promote sustainable forest management. It could be argued that “having regard to the forestry strategy” provides such a safeguard, but this is undermined by the reality that the NFE contains actively managed agricultural land and windfarms for example, and they surely won’t be managed “having regard to the forestry strategy”. In the Bill it is not clear what “having regard to” will mean in practice, and whether it provides any real, meaningful link to the forestry strategy.

One way forward could be to classify land as “forestry land” if it has trees or is managed as part of adjacent forest. If it is unafforested land and is intended to be managed for “a wider set of objectives” than forestry it could be classified as non-forestry land and have a section in the Bill that dealt specifically with this land. Carol Barker-Munro said to REC on 7th June “the purpose of defining “forestry land” in the Bill is to give transparency for the public and MSPs with regard to the land that should be subject to sustainable forest management”. That appears to make sense for land that is under trees and is managed for forestry, but not for land that is unafforested and is managed for “a wider set of objectives” than sustainable forestry management.

Sustainable Development: The bill grants Scottish Ministers widespread powers to acquire and manage land for sustainable development. Carol Barker-Munro explained that the definition is a “well used term” and its meaning is “clear to the legislature, judges and ministers”. As explained above it, appears that Section 13 operates effectively in isolation from the rest of the Bill, ie it does not relate to forestry land, sustainable forest management or the practice of forestry. However, the term “sustainable development” is also used in Section 9 (3) in relation to “forestry land”. As also explained above, we are concerned that this could result in a downgrading of forestry on afforested land owned and/or managed by Scottish Ministers. We would welcome clarity on the definition of sustainable development in the context of Section 9 (3).

Retaining professional staff: We recognise that the present government is committed to retaining a forestry division and staffing it with forestry professionals in key, relevant posts. However, there is no guarantee that a future government will maintain this commitment. To strengthen this, the Bill should create a position of Chief Forester for Scotland with responsibility for executing the functions of the bill. Scottish Ministers should also make a public commitment to designating key posts as professional posts.

Compulsory Purchase: The proposed power of compulsory purchase goes beyond the 1967 Act and lacks clarity or substantive justification. Scottish Government already has the power of compulsory purchase, so why is this additional power necessary? There is little evidence that compulsory purchase has ever been used for the purposes of forestry or sustainable forest management and those officials giving evidence to RECC on 7 June were unable to provide clear justification or guidance; while the new powers for ‘sustainable development’ are poorly defined and justified.

Disposal of land: Section 17 provides for the disposal of land, but makes no mention of how the proceeds from disposal will be utilised. Present policy is that the funds, normally, are reinvested in forestry related activity. There is no indication of how such funds will be used in future, and Simon Hodge’s response did not provide that clarity going forward. Carol Barker-Munro added that any disposals have to be “undertaken in accordance with the forestry strategy”. The act of disposing of the land should relate to the strategy, but it is not clear that this provision of the Bill also encompasses the utilisation of funds raised. This should be clarified in the Bill.

Community Body: Section 19.3 gives ministers extensive powers to delegate management of the NFE to any group. The circumstances in which 19.2 may be disapplied should be tighter than 'if ministers consider it in the public interest'.

Felling: The definition in section 22 'Felling means intentionally killing a tree' must be changed first because it is contrary to ordinary meaning (a felled broadleaf tree is not killed; a ring-barked tree is not felled) and second because it implies that the work of forestry is essentially destructive. A better definition might read, 'In this part, "Felling" includes any method of intentionally killing a tree, in addition to the ordinary meaning of the term.'

Power to enter into arrangements: Section 14 'Power to enter into arrangements', seems very vaguely worded. Is it wording which has been used elsewhere in legislation, in which case, how is it understood? Or, is it new, in which case it appears to need more careful wording? At present, it seems in danger of giving Scottish Ministers widespread powers to impose on private persons and/or to undertake charged-for forestry related activity in competition with the private sector from a monopoly or publicly-subsidised position.

Cross border arrangements: It would be helpful if the Scottish Government could provide ongoing information about the separate, but related process of reviewing cross-border arrangements (research etc), and how that affects, or is affected by, the process of the Scottish Forestry Bill.

Confor
20 June 2017