

Forestry and Land Management (Scotland) Bill

[AS AMENDED AT STAGE 2]

CONTENTS

Section

PART 1

OVERVIEW OF ACT

- 1 Overview of Act

PART 2

FORESTRY FUNCTIONS

CHAPTER 1

GENERAL FORESTRY FUNCTIONS

Duty to promote sustainable forest management

- 2 Duty to promote sustainable forest management

Forestry strategy

- 3 Duty to prepare forestry strategy
4 Preparation of forestry strategy
5 Publication of forestry strategy
6 Duty to have regard to forestry strategy
6A Report on forestry strategy

CHAPTER 2

TREE HEALTH AND SILVICULTURAL MATERIAL TESTING FUNCTIONS

- 7 Transfer of Plant Varieties and Seeds Act 1964 functions
8 Transfer of Plant Health Act 1967 functions

PART 3

MANAGEMENT OF LAND BY SCOTTISH MINISTERS

Management of forestry land

- 9 Management of forested land
10 Meaning of “forested land”
11 Meaning of “national forest estate”

Management of land to further sustainable development

- 13 Management of land to further sustainable development

Duty to publish map of land managed by Scottish Ministers

- 12 Duty to publish map of land managed by Scottish Ministers

Power to enter into arrangements

- 14 Power to enter into arrangements

Acquisition and disposal of land

- 15 Power to acquire land by agreement
16 Compulsory purchase of land
17 Power to dispose of land

PART 4

FELLING

CHAPTER 1

OVERVIEW AND KEY TERMS

- 21 Overview of Part 4
22 Key terms in Part 4

CHAPTER 2

OFFENCE OF UNAUTHORISED FELLING

- 23 Offence of unauthorised felling
24 Unauthorised felling: exemptions

CHAPTER 3

FELLING PERMISSION

- 25 Applications for felling permission
26 False or misleading information in applications: offence
27 Decisions on applications
28 Continuing conditions on felling permission: offence
29 Compensation for refusal of felling permission
30 Felling of trees subject to tree preservation orders

CHAPTER 4

FELLING DIRECTIONS

- 31 Felling directions
32 Felling directions: offence

CHAPTER 5

RESTOCKING DIRECTIONS

- 33 Restocking directions
34 Restocking directions: offence

CHAPTER 6

CONTINUING CONDITIONS ON FELLING PERMISSION, FELLING DIRECTIONS AND RESTOCKING DIRECTIONS: NOTICES TO COMPLY

- 35 Registration of notices to comply
- 36 Registered notices to comply: offence

CHAPTER 6A

REGISTRATION OF NOTICES UNDER CHAPTERS 6 AND 7

- 37 Registration of notices of variation
- 38 Registration of notices of discharge from compliance
- 39 Meaning of “register”
- 40 Descriptions of land
- 41 Receipt of notices by Keeper

CHAPTER 7

COMPLIANCE

Requests for information

- 42 Requests for information
- 43 Requests for information: offence

Site visits

- 44 Site visits with consent of owner or occupier

Powers of entry

- 45 Power of entry: unauthorised felling
- 46 Power of entry: decision to give felling directions or restocking directions
- 47 Power of entry: failure to comply

Remedial notices

- 48 Remedial notices
- 49 Remedial notices: offence
- 49A Registration of remedial notices
- 49B Registered remedial notices: offence

Giving documents to owner or occupier

- 50 Giving documents to owner or occupier

Step-in power

- 51 Step-in power

Powers of entry and step-in power: application to court

- 52 Powers of entry and step-in power: application to court

Powers of entry and step-in power: offences

- 53 Powers of entry and step-in power: offences

Powers of entry and step-in power: further provision

54 Powers of entry and step-in power: further provision

Step-in power: recovery of expenses

- 55 Step-in power: recovery of expenses
 56 Registration of notices of liability for expenses
 57 Recovery of expenses from new owner of land
 58 Registration of notices of discharge of liability for expenses

Time limit for prosecution

59 Time limit for prosecution

CHAPTER 8

APPEALS

60 Appeals against decisions by Scottish Ministers

PART 5

GENERAL POWERS

- 61 Information, research and education etc.
 62 Power to form companies etc.
 63 Financial assistance
 64 Charging
 64A Chief forester

PART 6

GENERAL AND FINAL PROVISIONS

- 65 Regulations
 66 Ancillary provision
 67 Interpretation
 68 Modifications of enactments and repeals
 69 Saving of existing forestry dedication agreements
 70 Forestry Commissioners' functions no longer exercisable in Scotland
 71 Index of defined expressions
 72 Crown application: general
 73 Crown application: powers of entry
 74 Commencement
 75 Short title

Schedule 1—Modifications of enactments
 Schedule 2—Repeals
 Schedule 3—Index of defined expressions

Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Forestry and Land Management (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about Scottish Ministers' functions in relation to forestry; to make provision about Scottish Ministers' functions in relation to the management of forested land and other land; and for connected purposes.

PART 1

OVERVIEW OF ACT

1 Overview of Act

This Act is arranged as follows—

Part 2 is about Scottish Ministers' forestry functions,

Part 3 is about management of land by Scottish Ministers,

Part 4 is about felling,

Part 5 is about Scottish Ministers' general powers under this Act,

Part 6 contains general and final provisions.

PART 2

FORESTRY FUNCTIONS

CHAPTER 1

GENERAL FORESTRY FUNCTIONS

Duty to promote sustainable forest management

2 Duty to promote sustainable forest management

The Scottish Ministers must promote sustainable forest management.

Forestry strategy

3 Duty to prepare forestry strategy

(1) The Scottish Ministers must prepare a forestry strategy.

- (2) The forestry strategy—
- (a) must set out the Scottish Ministers' objectives, priorities and policies with respect to the promotion of sustainable forest management, and
 - (b) may set out other matters with respect to the promotion of sustainable forest management.
- (3) The forestry strategy must include the Scottish Ministers' objectives, priorities and policies with respect to—
- (a) the economic development of forestry,
 - (b) the conservation and enhancement of the environment by means of sustainable forest management,
 - (c) the realisation of the social benefits of forestry,
 - (d) the acquisition and disposal of land under sections 15 to 17,
 - (e) the production and supply of timber and other forest products.
- (4) The Scottish Ministers—
- (a) must keep the forestry strategy under review, and
 - (b) may, if they consider it appropriate to do so, revise the strategy.

4 Preparation of forestry strategy

In preparing or revising the forestry strategy, the Scottish Ministers must—

- (a) consult with such bodies as they consider appropriate and also with the general public,
- (b) have regard to—
 - (i) the land use strategy (prepared under section 57 of the Climate Change (Scotland) Act 2009), and
 - (ii) the land rights and responsibilities statement (prepared under section 1 of the Land Reform (Scotland) Act 2016).

5 Publication of forestry strategy

- (1) The Scottish Ministers must publish the forestry strategy and each revision of it.
- (2) The Scottish Ministers must lay a copy of the forestry strategy and each revision of it before the Scottish Parliament.

6 Duty to have regard to forestry strategy

The Scottish Ministers must have regard to the forestry strategy when—

- (a) complying with their duty to promote sustainable forest management,
- (b) exercising any of their tree health and silvicultural material testing functions under the Plant Varieties and Seeds Act 1964 and the Plant Health Act 1967 (see Chapter 2),
- (c) managing forested land in accordance with section 9,

- (d) acquiring land under section 15(1) or 16(1),
- (e) disposing of forested land under section 17(1),
- (g) exercising any of the following functions for the purposes of or in connection with the carrying out of a function mentioned in paragraphs (a) to (e)—
 - (i) section 61 (information, research and education etc.),
 - (ii) section 62 (power to form companies etc.),
 - (iii) section 63 (financial assistance),
 - (iv) section 64 (charging).

6A Report on forestry strategy

- (1) The Scottish Ministers must, as soon as practicable after the end of each reporting period, prepare and publish a report setting out—
 - (a) progress made in the reporting period in respect of the objectives, priorities and policies included in the forestry strategy,
 - (b) an assessment of the extent to which funding and support provided by them has assisted in achieving such progress.
- (2) The Scottish Ministers must lay a copy of each report prepared and published under this section before the Scottish Parliament.
- (3) In this section, "reporting period" means—
 - (a) for the first report under this section, the period of 3 years beginning with the day the Bill for this Act receives Royal Assent,
 - (b) for each subsequent report, the period of 3 years from the end of the previous reporting period.

CHAPTER 2

TREE HEALTH AND SILVICULTURAL MATERIAL TESTING FUNCTIONS

7 Transfer of Plant Varieties and Seeds Act 1964 functions

In section 29 of the Plant Varieties and Seeds Act 1964 (application of Part 2 to seed potatoes: silvicultural propagating and planting material), subsections (2) and (4) are repealed.

8 Transfer of Plant Health Act 1967 functions

- (1) The Plant Health Act 1967 is amended as follows.
- (2) In section 1(2) (objects of Act and competent authorities under it)—
 - (a) before paragraph (a) insert—
 - “(za) for Scotland, the Scottish Ministers,”
 - (b) in paragraph (a), “and Scotland” is repealed,
 - (c) in paragraph (a)(ii)—
 - (i) “for England,” is repealed,

- (ii) “and, for Scotland, the Scottish Ministers” is repealed.
- (3) In section 6 (publication of orders), subsection (4) is repealed.

PART 3

MANAGEMENT OF LAND BY SCOTTISH MINISTERS

5

Management of forested land

9 Management of forested land

- (1) The Scottish Ministers must manage forested land in a way that promotes sustainable forest management.
- (2) The duty in subsection (1) includes, in particular, the use of forested land for—
- (a) the economic development of forestry,
- (b) the conservation and enhancement of the environment by means of sustainable forest management,
- (c) the realisation of the social benefits of forestry.
- (4) This section is subject to section 14(4).

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10 Meaning of “forested land”

- (1) In this Act, “forested land” means—
- (a) land in the national forest estate that is forested, and
- (b) other forested land that is—
- (i) owned by the Scottish Ministers, or
- (ii) managed by the Scottish Ministers on behalf of another person.
- (2) In this Act, “forested” includes undergoing afforestation.

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11 Meaning of “national forest estate”

In this Act, the “national forest estate” means land in Scotland—

- (a) that was at the disposal of the Forestry Commissioners under the Forestry Act 1967 immediately before the date on which this section comes into force, and
- (b) that is, for the time being, owned by the Scottish Ministers.

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Management of land to further sustainable development

13 Management of land to further sustainable development

- (1) The Scottish Ministers must manage land mentioned in subsection (2) for the purpose of furthering the achievement of sustainable development.
- (2) The land referred to in subsection (1) is—
- (a) land in the national forest estate that is not forested, and
- (b) other land that is not forested that is—

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- (i) owned by the Scottish Ministers having been acquired under section 15(1) or 16(1),
 - (ii) managed by the Scottish Ministers having been acquired under section 15(1) or 16(1), or
 - (iii) managed by the Scottish Ministers by virtue of an agreement under section 14(1).
- (3) This section is subject to section 14(4).

Duty to publish map of land managed by Scottish Ministers

12 Duty to publish map of land managed by Scottish Ministers

The Scottish Ministers must publish a map setting out the areas of land that are, for the time being—

- (a) forested land,
- (b) land within the meaning of section 13(2).

Power to enter into arrangements

14 Power to enter into arrangements

- (1) The Scottish Ministers may, for the purposes of managing land under section 9 or 13, enter into arrangements with any person for the management by the Scottish Ministers of land that the person has the right to manage.
- (2) The Scottish Ministers may enter into arrangements with any person to provide advice or assistance in relation to the management of land that the person has the right to manage.
- (3) An arrangement under subsection (1) or (2) may be on such terms as the Scottish Ministers may agree with that person.
- (4) Sections 9 and 13 apply in relation to land that the Scottish Ministers manage under subsection (1) subject to such terms as the Scottish Ministers may agree with that person.

Acquisition and disposal of land

15 Power to acquire land by agreement

- (1) The Scottish Ministers may, if they consider it appropriate to do so, acquire by agreement land for the purpose of exercising their functions under—
 - (a) section 9,
 - (b) section 13.
- (2) The power in subsection (1) includes, in particular, the power—
 - (a) to purchase, or enter into a lease for, land,
 - (b) to accept land as a gift,
 - (c) to acquire any right or interest in or over land.

16 Compulsory purchase of land

- (1) The Scottish Ministers may compulsorily acquire land that they require for the purpose of exercising their functions under—
- (a) section 9,
 - (b) section 13.
- (2) But the Scottish Ministers may not compulsorily acquire land if—
- (a) the land is subject to an arrangement under section 14(1),
 - (b) the land is—
 - (i) subject to a forestry dedication agreement, and
 - (ii) being managed in accordance with a plan of operations that has been approved by the Scottish Ministers, or
 - (c) the land is held or used by a Minister of the Crown or a department of the Government of the United Kingdom.
- (3) The power in subsection (1) includes, in particular, the power—
- (a) to acquire any right or interest in or over land,
 - (b) to acquire a servitude or other right in or over land by the creation of a new right.

17 Power to dispose of land

- (1) The Scottish Ministers may, if they consider it appropriate to do so, dispose of land mentioned in subsection (1A) for the purpose of exercising their functions under—
- (a) section 9,
 - (b) section 13.
- (1A) The land is—
- (a) land in the national forest estate,
 - (b) land within the meaning of section 10(1)(b)(i),
 - (c) land within the meaning of section 13(2)(b)(i).
- (1B) The Scottish Ministers must ensure that any funds received by them as a result of the disposal of land under subsection (1) are—
- (a) separately recorded, and
 - (b) used by them solely for the purposes of or in connection with the carrying out of their functions under this Act.
- (2) In subsection (1), “dispose of land” includes—
- (a) the sale, gift or lease of the land,
 - (b) the grant of any right or interest in or over the land.

PART 4

FELLING

CHAPTER 1

OVERVIEW AND KEY TERMS

5 **21 Overview of Part 4**

This Part is arranged as follows—

Chapter 2 sets out the offence of unauthorised felling,

Chapter 3 is about felling permission,

Chapter 4 is about felling directions,

10 Chapter 5 is about restocking directions,

Chapter 6 is about notices to comply,

Chapter 7 is about compliance,

Chapter 8 is about appeals against decisions relating to felling.

15 **22 Key terms in Part 4**

In this Part—

“felling” (and related expressions) includes intentionally killing a tree,

“felling direction” means a direction given under section 31,

“felling permission” means a permission granted under section 27,

“registered notice to comply” means a notice registered under section 35,

20 “registered remedial notice” means a notice registered under section 49A,

“remedial notice” means a notice given under section 48,

“restocking direction” means a direction given under section 33.

CHAPTER 2

OFFENCE OF UNAUTHORISED FELLING

25 **23 Offence of unauthorised felling**

(1) A person commits an offence if the person fells a tree unless—

(a) the felling is exempt under section 24, or

(b) the felling is carried out in accordance with—

(i) a felling permission,

30 (ii) a felling direction,

(iii) a restocking direction,

(iv) a registered notice to comply,

(v) a remedial notice, or

(vi) a registered remedial notice.

- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) Where an offence under subsection (1) is committed in respect of more than one tree, the maximum fine under subsection (2) is to be determined as if the person had been convicted of a separate offence in respect of each tree.

24 Unauthorised felling: exemptions

- (1) Section 23 does not apply to felling carried out in accordance with provision made in regulations made by the Scottish Ministers.
- (2) Regulations under subsection (1) may, in particular, provide that section 23 does not apply to—
- (a) particular categories of person,
 - (b) particular places or activities,
 - (c) particular circumstances,
 - (d) trees of particular descriptions.
- (3) Regulations under subsection (1) may modify any enactment (including this Act).

CHAPTER 3

FELLING PERMISSION

25 Applications for felling permission

- (1) A person mentioned in subsection (2) may apply to the Scottish Ministers for permission to fell a tree (a “felling permission”).
- (2) Those persons are—
- (a) an owner of the land on which the tree is located,
 - (b) with the written permission of an owner of the land, an occupier of that land.
- (3) The Scottish Ministers may by regulations make further provision about applications for felling permission.
- (4) Regulations under subsection (3) may, in particular, include provision about—
- (a) the way in which applications are to be made,
 - (b) the information to be provided in applications.

26 False or misleading information in applications: offence

- (1) A person commits an offence if the person knowingly or recklessly provides false or misleading information in an application for felling permission.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

27 Decisions on applications

- (1) The Scottish Ministers may—
- (a) grant an application for felling permission (with or without conditions), or
 - (b) refuse the application.
- 5 (2) In making a decision on the application, the Scottish Ministers must have regard to their duty to promote sustainable forest management.
- (3) If the Scottish Ministers refuse the application, they must give reasons for the refusal.
- (4) A condition on felling permission may, in particular, set out—
- (a) how felling is to be carried out,
 - 10 (b) when felling is to be carried out,
 - (c) persons who may carry out felling,
 - (d) steps that must be taken after felling is carried out (a “continuing condition”).
- (4A) A continuing condition on felling permission may, in particular, require persons to provide information to the Scottish Ministers.
- 15 (5) The Scottish Ministers may not impose conditions on felling permission if—
- (a) the application relates to trees which are on land that is subject to a forestry dedication agreement, and
 - (b) the proposed felling is in accordance with a plan of operations for that land that has been approved by the Scottish Ministers.
- 20 (6) The Scottish Ministers may vary or revoke a condition imposed on felling permission.
- (7) The Scottish Ministers may by regulations make further provision about decisions on applications for felling permission.
- (8) Regulations under subsection (7) may, in particular, include provision about—
- 25 (a) power for the Scottish Ministers to enter land on which a tree to which an application relates is located in order for them to make a decision in relation to the application,
 - (b) how decisions are to be notified,
 - (c) the imposition of conditions on felling permission,
 - (ca) the information which continuing conditions may require,
 - 30 (d) situations in which persons who have made an unsuccessful application for felling permission may be restricted from making a further application in relation to the same circumstances.

28 Continuing conditions on felling permission: offence

- 35 (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a continuing condition on felling permission granted to the person.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

29 Compensation for refusal of felling permission

- (1) If the Scottish Ministers refuse an application for felling permission, a person who suffers loss as a result of the refusal is entitled to compensation in accordance with provision made in regulations made by the Scottish Ministers.
- 5 (2) Regulations under subsection (1) may, in particular, include provision about—
- (a) persons who are entitled to compensation,
 - (b) the procedure for applying for compensation,
 - (c) the information to be provided in applications,
 - (d) the way in which the amount of compensation is to be determined,
 - 10 (e) the way in which any disputes about compensation are to be determined,
 - (f) appeals about decisions relating to compensation.

30 Felling of trees subject to tree preservation orders

- (1) If an application for felling permission relates to a tree that is covered by a tree preservation order, the Scottish Ministers may—
- 15 (a) after complying with subsection (1A), decide whether to grant permission, or
- (b) if consent under the order is required for the felling of the tree, refer the application to the planning authority that made the order.

(1A) The Scottish Ministers must—

- 20 (a) consult the planning authority that made the order, and
- (b) have regard to any representations made by that planning authority.

- (1B) Where an application is referred to a planning authority, the provisions of the order and any provisions of the Town and Country Planning (Scotland) Act 1997 relating to the order apply as if the application were an application to the planning authority for consent to fell the tree under the order.

25 (1C) Section 23 (offence of unauthorised felling) does not apply to felling where—

- (a) an application has been referred under subsection (1)(b),
- (b) the planning authority has consented to the felling, and
- (c) the felling is carried out in accordance with the consent.

- 30 (2) Felling of a tree that is covered by a tree preservation order is not a breach of the order if the felling is carried out in accordance with—

- (a) a felling permission,
- (b) a felling direction,
- (c) a restocking direction,
- (d) a registered notice to comply,
- 35 (e) a remedial notice, or
- (f) a registered remedial notice.

- (3) In this section and section 31, a tree is covered by a tree preservation order if the tree—

- (a) is subject to a tree preservation order, or
 - (b) forms part of a group of trees or woodland that is subject to a tree preservation order.
- (4) A “tree preservation order” means an order made or having effect as if made under section 160 of the Town and Country Planning (Scotland) Act 1997.

CHAPTER 4

FELLING DIRECTIONS

31 Felling directions

- (1) Subsection (2) applies if it appears to the Scottish Ministers that felling of trees is required—
- (a) to prevent deterioration or further deterioration in the quality of timber comprised in the trees,
 - (b) to improve the growth of other trees, or
 - (c) to prevent or reduce harm caused by the presence of the trees.
- (2) The Scottish Ministers may give a direction (a “felling direction”) to an owner of the land on which the trees are located requiring that person to fell those trees.
- (3) In deciding to give a felling direction, the Scottish Ministers must have regard to their duty to promote sustainable forest management.
- (3A) The Scottish Ministers must, before deciding to give a felling direction in relation to a tree that is covered by a tree preservation order—
- (a) consult the planning authority that made the order, and
 - (b) have regard to any representations made by that planning authority.
- (4) The Scottish Ministers may vary or revoke a felling direction (including any condition imposed on it).
- (5) The Scottish Ministers may by regulations make further provision about felling directions.
- (6) Regulations under subsection (5) may, in particular, include provision about—
- (a) the circumstances in which a felling direction may not be given,
 - (b) the requirements to be included in a felling direction,
 - (c) how felling directions are to be notified,
 - (d) the imposition of conditions on a felling direction (which may include steps that must be taken after the direction is complied with).

32 Felling directions: offence

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a felling direction (including any condition imposed on it) given to the person.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

CHAPTER 5

RESTOCKING DIRECTIONS

33 Restocking directions

- (1) Subsection (2) applies if it appears to the Scottish Ministers that—
- 5 (a) a tree has been felled and—
- (i) the felling is not exempt under section 24, and
- (ii) the felling is not carried out in accordance with a felling permission, a felling direction, a restocking direction, a registered notice to comply, a remedial notice or a registered remedial notice, or
- 10 (b) a continuing condition on felling permission in relation to land has not been complied with.
- (2) The Scottish Ministers may give a direction (a “restocking direction”) requiring an owner of the land on which the felled tree was located or (as the case may be) the land to which the continuing condition relates, to stock—
- 15 (a) the land on which the felled tree was located,
- (b) the land to which the continuing condition relates, or
- (c) with the consent of the Scottish Ministers, other land.
- (3) In subsection (2), “stock” includes the preparation of land for the planting of trees.
- (4) In deciding to give a restocking direction, the Scottish Ministers must have regard to their duty to promote sustainable forest management.
- 20 (5) The Scottish Ministers may vary or revoke a restocking direction (including any condition imposed on it).
- (6) Subsection (7) applies where—
- 25 (a) a person has complied with a restocking direction (including any condition imposed on it) given to the person, and
- (b) another person—
- (i) in a case where subsection (1)(a) applies, felled the tree to which the restocking direction relates, or
- (ii) in a case where subsection (1)(b) applies, failed to comply with the continuing condition on felling permission to which the restocking direction relates.
- 30 (7) The person who complied with the restocking direction may recover any expenses reasonably incurred by that person in complying with the restocking direction from the other person.
- 35 (8) The Scottish Ministers may by regulations make further provision about restocking directions.
- (9) Regulations under subsection (8) may, in particular, include provision about—
- (a) persons to whom a restocking direction may not be given,
- (b) the circumstances in which a restocking direction may not be given,

- (c) the requirements to be included in a restocking direction,
- (d) how restocking directions are to be notified,
- (e) the imposition of conditions on a restocking direction (which may include steps that must be taken after the direction is complied with).

5 **34 Restocking directions: offence**

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a restocking direction (including any condition imposed on it) given to the person.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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CHAPTER 6

CONTINUING CONDITIONS ON FELLING PERMISSION, FELLING DIRECTIONS AND RESTOCKING
DIRECTIONS: NOTICES TO COMPLY

35 Registration of notices to comply

- (1) This section applies—
 - 15 (a) if—
 - (i) a continuing condition has been imposed on felling permission in respect of land, and
 - (ii) the felling to which the felling permission relates has been carried out,
 - 20 (b) if a felling direction (including any condition imposed on it) has been given in respect of land,
 - (c) if a restocking direction (including any condition imposed on it) has been given in respect of land.
- (2) The Scottish Ministers may apply to register a notice (a “notice to comply”) in relation to that land specifying—
 - 25 (a) in the case of a continuing condition on felling permission, the effect of the condition and, if relevant, the date by which it must be complied with,
 - (b) in the case of a felling direction or a restocking direction, the effect of the direction and, if relevant, the date by which it must be complied with,
 - (c) a description of the land to which the condition or direction relates.

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36 Registered notices to comply: offence

- (1) An owner of the land to which a registered notice to comply relates commits an offence if that person fails, without reasonable excuse, to comply with the registered notice to comply.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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CHAPTER 6A

REGISTRATION OF NOTICES UNDER CHAPTERS 6 AND 7

37 Registration of notices of variation

5 (1) Subsection (2) applies where the Scottish Ministers and the owner of land to which a relevant registered notice relates agree in writing that the relevant registered notice is to be varied.

(1A) In this section and section 38, a “relevant registered notice” means—

- (a) a registered notice to comply,
- (b) a registered remedial notice.

10 (2) The Scottish Ministers must apply to register a notice (a “notice of variation”) specifying—

- (a) the date of registration of the relevant registered notice to which the notice of variation relates,
- (b) a description of the land to which the relevant registered notice relates,
- 15 (c) that the relevant registered notice is varied, and
- (d) a description of how the relevant registered notice is varied.

(3) On registration, the notice of variation varies the relevant registered notice to which it relates as described in subsection (2)(d).

38 Registration of notices of discharge from compliance

20 (1) Subsection (2) applies where—

- (a) the Scottish Ministers are satisfied that a relevant registered notice in respect of land has been complied with, or
- (b) the Scottish Ministers and an owner of land to which a relevant registered notice relates agree in writing that the relevant registered notice is to be discharged.

25 (2) The Scottish Ministers must apply to register a notice (a “notice of discharge from compliance”) in relation to the land specifying—

- (a) the date of registration of the relevant registered notice to which the notice of discharge from compliance relates,
- (b) a description of the land to which the relevant registered notice relates, and
- 30 (c) that the relevant registered notice is discharged.

(3) On registration, the notice of discharge from compliance discharges the relevant registered notice to which it relates.

39 Meaning of “register”

35 (1) In this Chapter and in Chapter 7, “register”, in relation to the notices mentioned in subsection (2), means register the information contained in the notice in question in the Land Register of Scotland or (as the case may be) record the notice in question in the General Register of Sasines, and “registered” and “registration” are to be construed accordingly.

- (2) The notices are—
- (a) a notice to comply,
 - (b) a notice of variation,
 - (c) a notice of discharge from compliance,
 - 5 (ca) a remedial notice,
 - (d) a notice of liability for expenses,
 - (e) a notice of discharge of liability for expenses.

40 Descriptions of land

10 For the purposes of sections 35(2)(c), 37(2)(b), 38(2)(b), 49A(b), 56(d) and 58(2)(c) the description of the land must—

- (a) in the case of land registered in the Land Register of Scotland, include the title number of the land,
- (b) in the case where the title to the land (or a larger area containing the land) is derived from a deed recorded in the General Register of Sasines, identify the land
15 by reference to that deed.

41 Receipt of notices by Keeper

- (1) The Keeper of the Registers of Scotland is not required to investigate or determine whether the information contained in a notice mentioned in subsection (2) that is submitted for registration is accurate.
- 20 (2) The notices are—
- (a) a notice to comply,
 - (b) a notice of variation,
 - (c) a notice of discharge from compliance,
 - (ca) a remedial notice,
 - 25 (d) a notice of liability for expenses,
 - (e) a notice of discharge of liability for expenses.

CHAPTER 7

COMPLIANCE

Requests for information

42 Requests for information

- (1) The Scottish Ministers may request information described in subsection (2) from a person mentioned in subsection (3).
- (2) The information is information about compliance with—
- (a) a condition on felling permission,
 - 35 (b) a felling direction (including any condition imposed on it),

- (c) a restocking direction (including any condition imposed on it),
- (d) a registered notice to comply,
- (e) a remedial notice (including any condition imposed on it),
- (f) a registered remedial notice.

5 (3) The persons are—

- (a) in the case of a condition on felling permission, the person to whom the permission was granted,
- (b) in the case of a felling direction or a restocking direction, the person to whom the direction was given or an occupier of the land to which the direction relates,
- 10 (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, an owner or occupier of the land to which the notice relates.

43 Requests for information: offence

- (1) A person commits an offence if the person knowingly or recklessly provides false or misleading information in response to a request for information under section 42.
- 15 (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Site visits

44 Site visits with consent of owner or occupier

- (1) The Scottish Ministers may enter land mentioned in subsection (2) with the consent of an owner or occupier of that land in order to monitor compliance with—
 - 20 (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it),
 - (d) a registered notice to comply,
 - 25 (e) a remedial notice (including any condition imposed on it),
 - (f) a registered remedial notice.
- (2) The land is—
 - (a) in the case of a condition on felling permission—
 - 30 (i) the land on which the tree to which the condition relates is located,
 - (ii) where it is a continuing condition, the land to which the continuing condition relates,
 - (b) in the case of a felling direction or a restocking direction, the land to which the direction relates,
 - 35 (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, the land to which the notice relates.

Powers of entry

45 Power of entry: unauthorised felling

(1) Subsection (2) applies if the Scottish Ministers have reason to believe that a tree has been felled or is being felled and—

- (a) the felling is not exempt under section 24, and
- (b) the felling is not carried out in accordance with—
 - (i) a felling permission,
 - (ii) a felling direction,
 - (iii) a restocking direction,
 - (iv) a registered notice to comply,
 - (v) a remedial notice, or
 - (vi) a registered remedial notice.

(2) The Scottish Ministers may enter the land on which the tree was or is located for the purpose of determining whether the tree has been felled or is being felled as described in subsection (1)(a) or (b).

46 Power of entry: decision to give felling directions or restocking directions

(1) Subsection (2) applies if the Scottish Ministers have reason to believe that they may need to give—

- (a) a felling direction in relation to a tree or in respect of land,
- (b) a restocking direction in respect of land.

(2) The Scottish Ministers may enter the land (or, in the case of a felling direction in relation to a tree, the land on which the tree is located) for the purpose of determining whether they need to give a felling direction or a restocking direction.

47 Power of entry: failure to comply

(1) Subsection (2) applies if the Scottish Ministers have reason to believe that a person has failed or is failing to comply with—

- (a) a condition on felling permission,
- (b) a felling direction (including any condition imposed on it),
- (c) a restocking direction (including any condition imposed on it),
- (d) a registered notice to comply,
- (e) a remedial notice (including any condition imposed on it), or
- (f) a registered remedial notice.

(2) The Scottish Ministers may enter land mentioned in subsection (3) for the purpose of determining whether a person has failed or is failing to comply with the condition, the direction or (as the case may be) the notice.

(3) The land is—

- (a) in the case of a condition on felling permission—

- (i) the land on which the tree to which the condition relates is located,
 - (ii) where it is a continuing condition, the land to which the continuing condition relates,
- (b) in the case of a felling direction or a restocking direction, the land to which the direction relates,
- (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, the land to which the notice relates.

Remedial notices

48 Remedial notices

- (1) The Scottish Ministers may give a person a remedial notice if it appears to them that the person has failed or is failing to comply with—
- (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it), or
 - (d) a registered notice to comply.
- (2) A “remedial notice” is a notice requiring the person—
- (a) to take such steps or stop such activity as may be specified in the notice in order to comply with or otherwise give effect to the condition, direction or (as the case may be) registered notice to comply, and
 - (b) to take the steps or stop the activity within such period as may be specified in the notice.
- (3) The Scottish Ministers must give a copy of a remedial notice to the owner of the land to which the condition, direction or (as the case may be) registered notice to comply relates (if the owner is not the person who is given the notice under subsection (1)).
- (4) A person may take any steps or stop any activity specified in a remedial notice despite—
- (a) any provision in any agreement relating to the trees or the land to which the notice relates that would otherwise prevent the person from taking those steps or stopping the activity,
 - (b) any condition on felling permission, felling direction, restocking direction or registered notice to comply under this Act that would otherwise prevent the person from taking those steps or stopping the activity.
- (5) The Scottish Ministers may vary or revoke a remedial notice (including any condition imposed on it).
- (5A) The Scottish Ministers may by regulations make further provision about remedial notices.
- (5B) Regulations under subsection (5A) may, in particular, include provision about the imposition of conditions on a remedial notice (which may include steps that must be taken after the notice is complied with).

49 Remedial notices: offence

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a remedial notice (including any condition imposed on it) given to the person.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

49A Registration of remedial notices

If a remedial notice (including any condition imposed on it) has been given in respect of land, the Scottish Ministers may apply to register a notice in relation to that land specifying—

- (a) the effect of the notice and, if relevant, the date by which it must be complied with,
- (b) a description of the land to which the notice relates.

49B Registered remedial notices: offence

- (1) An owner of the land to which a registered remedial notice relates commits an offence if that person fails, without reasonable excuse, to comply with the registered remedial notice.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Giving documents to owner or occupier

50 Giving documents to owner or occupier

Where in this Part a notice or other document is to be given to a person as the owner or occupier of land and the person's name or address cannot be ascertained after reasonable enquiry, it may be given by—

- (a) addressing it to the person by name or by the description of "owner" or "occupier" of the land (describing it), and
- (b) leaving it—
- (i) with a person who is or appears to be resident or employed on the land, or
- (ii) conspicuously affixed to some building or other object on or near the land.

Step-in power

51 Step-in power

If a person fails to comply with a remedial notice (including any condition imposed on it) or a registered remedial notice within the period specified in it for compliance, the Scottish Ministers may—

- (a) enter the land to which the notice relates, and
- (b) take the steps or stop the activity set out in the notice.

Powers of entry and step-in power: application to court

52 Powers of entry and step-in power: application to court

- (1) This section applies to the powers in sections 45, 46, 47 and 51.
- (2) A sheriff, a summary sheriff or a justice of the peace may by warrant authorise the Scottish Ministers—
- (a) to enter the land concerned, and
- (b) if necessary, to use reasonable force in doing so.
- (3) A warrant may be granted only if the sheriff, summary sheriff or justice is satisfied, by evidence on oath—
- (a) that there are reasonable grounds under section 45, 46, 47 or (as the case may be) 51 for entering the land concerned, and
- (b) that—
- (i) entry to the land has been refused,
- (ii) such a refusal is reasonably expected,
- (iii) the land is unoccupied, or
- (iv) the occupier is temporarily absent.
- (4) A warrant may not authorise—
- (a) entry to Crown land,
- (b) entry to a dwelling, or
- (c) the use of force against an individual.
- (5) A warrant expires—
- (a) when it is no longer needed for the purpose for which it was granted, or
- (b) if earlier, when any period as may be specified in it expires.

Powers of entry and step-in power: offences

53 Powers of entry and step-in power: offences

- (1) A person commits an offence if the person intentionally obstructs the Scottish Ministers in exercising their powers under section 45, 46 or 47.
- (2) A person commits an offence if the person intentionally obstructs the Scottish Ministers in exercising their powers under section 51.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Powers of entry and step-in power: further provision

54 Powers of entry and step-in power: further provision

- (1) Subsections (2) to (8) apply to the powers in sections 44, 45, 46, 47 and 51.
- (2) The Scottish Ministers may—

- (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purpose of assisting the Scottish Ministers to exercise the power,
- (b) do anything else which is reasonably required for that purpose,
- 5 (c) take samples of things on the land,
- (d) mark anything on the land for identification purposes,
- (e) require access to, inspect and take copies of, or extracts from, any information on the land,
- (f) take away any information to enable it to be copied or kept as evidence,
- 10 (g) require access to, inspect and check the operation of any computer and any associated apparatus or material and, for this purpose, require any person having charge of, or otherwise concerned with the operation of, any computer, apparatus or material to give the Scottish Ministers such assistance as they may reasonably require,
- 15 (h) where information is kept by means of a computer, require it to be produced in a form in which it can be taken away.
- (3) The power may be exercised only at a reasonable time.
- (4) The power does not authorise entry to a dwelling.
- (5) A person exercising the power must on request produce written evidence of the person's entitlement to do so.
- 20 (6) If the Scottish Ministers cause damage in exercising the power, the Scottish Ministers must—
- (a) take reasonable steps to remedy the damage, or
- (b) if it is not possible to remedy the damage, pay compensation for it.
- 25 (7) If the Scottish Ministers enter unoccupied land in exercising the power, they must leave the land as effectively secured against unauthorised entry as they found it.
- (8) If the Scottish Ministers cause loss or damage by failing to comply with subsection (7), they must pay compensation for the loss or damage.
- 30 (9) References in the following provisions to the Scottish Ministers include reference to persons authorised in writing by the Scottish Ministers—
- (a) section 44(1),
- (b) section 45(2),
- (c) section 46(2),
- (d) section 47(2),
- 35 (e) section 51,
- (f) subsections (2), (6), (7) and (8).

Step-in power: recovery of expenses

55 Step-in power: recovery of expenses

- 5 (1) The Scottish Ministers may recover the expenses mentioned in subsection (2) from the person who failed to comply with the remedial notice (including any condition imposed on it) or (as the case may be) the registered remedial notice.
- (2) The expenses are—
- 10 (a) any expenses reasonably incurred by the Scottish Ministers in taking steps under section 51,
- (b) any administrative expenses reasonably incurred by them in connection with recovering the expenses mentioned in paragraph (a), and
- (c) interest, at such reasonable rate as the Scottish Ministers may determine, in respect of the period beginning on a date specified by the Scottish Ministers until the whole amount is paid.
- 15 (3) The date specified under subsection (2)(c) must be after the date on which a demand for payment is served by the Scottish Ministers.
- (4) Each owner of the land is jointly and severally liable for the expenses and interest mentioned in this section.
- (5) Any sums recoverable under subsection (1) may be recovered as a debt.

56 Registration of notices of liability for expenses

20 The Scottish Ministers may apply to register a notice (a “notice of liability for expenses”) specifying—

- (a) the amount of the expenses payable in accordance with section 55(2)(a) and (b),
- (b) whether interest is payable under section 55(2)(c),
- (c) the action taken under section 51 to which those expenses relate,
- 25 (d) a description of the land in respect of which an owner is liable under section 51, and
- (e) the effect of section 57 in relation to a new owner of that land.

57 Recovery of expenses from new owner of land

- 30 (1) Subsection (2) applies where—
- (a) a notice of liability for expenses is registered in relation to the land, and
- (b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the land.
- (2) The new owner is severally liable with any former owner of the land for any expenses and interest for which the former owner is liable under section 55.
- 35 (3) An owner of land who is liable for expenses and interest under section 55 does not cease to be liable for the expenses and interest by virtue only of ceasing to be the owner of the land.

- (4) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.
- (5) A person who is entitled to recover an amount under subsection (4) does not cease to be entitled to recover that amount by virtue only of ceasing to be the owner of the land.

5 **58 Registration of notices of discharge of liability for expenses**

- (1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses has been discharged.
- (2) The Scottish Ministers must apply to register a notice (a “notice of discharge of liability for expenses”) specifying—
 - 10 (a) the date of registration of the notice of liability for expenses to which the notice of discharge relates,
 - (b) the action taken under section 51 to which that liability relates,
 - (c) a description of the land in respect of which an owner was liable under section 51, and
 - 15 (d) that the liability for the expenses and interest has been discharged.
- (3) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

Time limit for prosecution

59 Time limit for prosecution

- 20 (1) Proceedings for an offence under section 23, 26, 28, 32, 34, 36, 43, 49 or 49B may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor’s knowledge.
- (2) No such proceedings may be commenced more than 3 years—
 - 25 (a) after the commission of the offence, or
 - (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.
- 30 (4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in subsection (1) came to the prosecutor’s knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).
- 35 (5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it does for those of that section.

CHAPTER 8

APPEALS

60 Appeals against decisions by Scottish Ministers

- (1) A person may appeal against—
- 5 (a) a decision—
- (i) to refuse an application for felling permission,
- (ii) to grant an application for felling permission with conditions,
- (b) a decision to give a felling direction (including any condition imposed on it),
- (c) a decision to give a restocking direction (including any condition imposed on it),
- 10 (d) a decision to refuse to vary or revoke a condition imposed on felling permission,
- (e) a decision to refuse to vary or revoke a felling direction,
- (f) a decision to refuse to vary or revoke a restocking direction,
- (g) a decision to refuse to agree to the variation or discharge of a registered notice to comply,
- 15 (h) a decision to give a remedial notice (including any condition imposed on it),
- (i) a decision to refuse to vary or revoke a remedial notice,
- (j) a decision to refuse to agree to the variation or discharge of a registered remedial notice.
- (2) The Scottish Ministers may by regulations make further provision about appeals under subsection (1).
- 20 (3) Regulations under subsection (2) may, in particular, include provision about—
- (a) who may appeal,
- (b) grounds of appeal,
- (c) the way in which appeals are to be made,
- 25 (d) the information to be provided when making appeals,
- (e) the procedure for determining appeals,
- (f) who may determine appeals,
- (g) how the determination of appeals is to be notified.
- (4) Regulations under subsection (2) may modify any enactment (including this Act).

PART 5

GENERAL POWERS

61 Information, research and education etc.

The Scottish Ministers may, for the purposes of or in connection with the carrying out of their functions under this Act—

- 35 (a) conduct research and inquiries,

- (b) collect data and publish statistics or other information,
- (c) provide education and training,
- (d) encourage or assist other persons to do any of the things mentioned in paragraphs (a) to (c).

5 **62 Power to form companies etc.**

The Scottish Ministers may, for the purposes of or in connection with the carrying out of their functions under this Act—

- (a) form, or participate in the forming of, a body corporate,
- (b) act, or appoint a person to act, as an officer of a body corporate.

10 **63 Financial assistance**

- (1) The Scottish Ministers may, for the purposes of or in connection with the carrying out of their functions under this Act, provide such financial assistance to any person as they consider appropriate.
- (2) In subsection (1), “financial assistance” includes grants, loans, guarantees and indemnities.
- (3) The Scottish Ministers may attach conditions (including conditions as to repayment or the payment of interest) in respect of any financial assistance provided.

15 **64 Charging**

20 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.

25 **64A Chief forester**

- (1) The Scottish Ministers must, for the purposes of assisting and advising them in the carrying out of their functions under this Act, appoint an officer to be known as the chief forester.
- (2) The Scottish Ministers must by regulations prescribe qualifications to be held by the person appointed as chief forester.

PART 6

GENERAL AND FINAL PROVISIONS

30 **65 Regulations**

- (1) Regulations under the following provisions are subject to the negative procedure—
 - (a) section 25(3),
 - (b) section 27(7),
 - (c) section 29(1),
 - (d) section 31(5),

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- (e) section 33(8),
- (ea) section 48(5A),
- (f) section 60(2),
- (fa) section 64A(2),
- (g) subject to subsection (2)(b), section 66(1).

- (2) Regulations under the following provisions are subject to the affirmative procedure—
- (a) section 24(1),
 - (b) section 66(1) (if the regulations add to, replace or omit any part of the text of an Act).
- (3) Any power conferred by this Act on the Scottish Ministers to make regulations includes the power to make—
- (a) different provision for different purposes, and
 - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
- (4) Subsection (3) does not apply to regulations under section 74(2).
- (5) Subsection (3)(b) does not apply to regulations under section 66(1).

66 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).

67 Interpretation

In this Act—

“forestry dedication agreement” has the meaning given by section 5 of the Forestry Act 1967,

“owner”, in relation to any land, means a person who has right to the land whether or not that person has completed title; but if, in relation to the land (or, if the land is held *pro indiviso*, in relation to any *pro indiviso* share in it) more than one person comes within that description of owner, then “owner” means such person as most recently acquired such right.

68 Modifications of enactments and repeals

- (1) Schedule 1 contains modifications of enactments.
- (2) The enactments mentioned in the first column of schedule 2 are repealed to the extent set out in the second column.

69 Saving of existing forestry dedication agreements

The repeal of section 5 and schedule 2 of the Forestry Act 1967 by section 68(2) and schedule 2 does not affect any forestry dedication agreement which is in force immediately before the date on which that repeal has effect.

70 Forestry Commissioners’ functions no longer exercisable in Scotland

The functions of the Forestry Commissioners which are exercisable in or as regards Scotland immediately before the date on which this section comes into force are no longer exercisable in or as regards Scotland.

71 Index of defined expressions

Schedule 3 contains an index of expressions defined or otherwise explained in this Act.

72 Crown application: general

- (1) Nothing in this Act makes the Crown criminally liable.
- (2) But the Court of Session may, on an application by the Lord Advocate, declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (1).
- (3) Subsection (1) does not affect the criminal liability of persons in the service of the Crown.
- (4) Section 73 makes provision about access to Crown land.

73 Crown application: powers of entry

- (1) A power of entry conferred—
 - (a) by section 45, 46, 47 or 51,
 - (b) by regulations made under section 27(7),
 is exercisable in relation to Crown land only with the consent of the appropriate authority.
- (2) The following table determines what is “Crown land” and who the “appropriate authority” is in relation to each kind of Crown land.

<i>Crown land</i>	<i>Appropriate authority</i>
Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown Estate	The Crown Estate Commissioners
Land an interest in which belongs to Her Majesty in right of the Crown and to which section 90B(5) of the Scotland Act 1998 applies	The person having the management of the land
Other land an interest in which belongs to Her Majesty in right of the Crown	The office-holder in the Scottish Administration or the Government department

<i>Crown land</i>	<i>Appropriate authority</i>
	having the management of the land
Land an interest in which belongs to Her Majesty in right of Her private estates	The person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers
Land an interest in which belongs to an office-holder in the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which belongs to a Government department	The relevant Government department
Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration	The relevant office-holder in the Scottish Administration
Land an interest in which is held in trust for Her Majesty for the purposes of a Government department	The relevant Government department

(3) In this section—

(a) references to Her Majesty’s private estates are to be construed in accordance with section 1 of the Crown Private Estates Act 1862,

(b) “Government department” means a department of the Government of the United Kingdom.

(4) It is for the Scottish Ministers to determine any question that arises as to who in accordance with subsection (2) is the appropriate authority in relation to any land (and their decision is final).

74 Commencement

(1) This section and sections 65 to 67, 71 to 73 and 75 come into force on the day after Royal Assent.

(2) The rest of this Act comes into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under this section may appoint different days for different purposes.

(4) Regulations under this section may—

(a) include transitional, transitory or saving provision,

(b) make different provision for different purposes.

75 Short title

The short title of this Act is the Forestry and Land Management (Scotland) Act 2018.

SCHEDULE 1

(introduced by section 68(1))

MODIFICATIONS OF ENACTMENTS

Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

- 5 1 In section 1(1) of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (procedure for compulsory purchase of land etc.), after paragraph (d) insert—
“(da) by the Scottish Ministers under section 16 of the Forestry and Land Management (Scotland) Act 2018;”.

Town and Country Planning (Scotland) Act 1997

- 10 2 In section 160(7) of the Town and Country Planning (Scotland) Act 1997 (power to make tree preservation orders), for paragraph (b) substitute—
“(b) section 30 of the Forestry and Land Management (Scotland) Act 2018 (felling of trees subject to tree preservation orders).”.

SCHEDULE 2

(introduced by section 68(2))

REPEALS

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<i>Enactment</i>	<i>Extent of repeal</i>
Countryside (Scotland) Act 1967	Sections 58 and 59. Section 60(1). In section 60(7), paragraph (h) and the words from “but” to “Act of 1967”. Section 60(8). Section 65(5)(e). In section 74(2)(b), “or under the Forestry Act 1967”.
Forestry Act 1967	The whole Act.
Countryside Act 1968	Section 24.
Agriculture (Miscellaneous Provisions) Act 1972	In section 23(3), “section 46 of the Forestry Act 1967 or under”.
Forestry Act 1979	Section 1.

<i>Enactment</i>	<i>Extent of repeal</i>
Wildlife and Countryside Act 1981	In section 14C(2)(a), “, the Forestry Commissioners”.
	Section 14P(6)(d) and the “or” immediately preceding it.
Electricity Act 1989	In schedule 16, paragraph 1(1)(xvii).
Tribunals and Inquiries Act 1992	In schedule 1, Part 2, paragraph 53.
Gas Act 1995	In schedule 4, paragraph 2(1)(xiii).
Climate Change (Scotland) Act 2009	Section 59.

SCHEDULE 3
(introduced by section 71)

INDEX OF DEFINED EXPRESSIONS

<i>Expression</i>	<i>Interpretation provision</i>
Continuing condition	Section 27(4)(d)
Crown land	Section 73(2)
Felling	Section 22
Felling direction	Section 31(2)
Felling permission	Section 25(1)
Forestry dedication agreement	Section 67
Forested land	Section 10(1)
National forest estate	Section 11
Notice of discharge of liability for expenses	Section 58(2)
Notice of discharge from compliance	Section 38(2)
Notice of liability for expenses	Section 56
Notice of variation	Section 37(2)
Notice to comply	Section 35(2)
Owner	Section 67
Register	Section 39(1)
Registered notice to comply	Section 22

<i>Expression</i>	<i>Interpretation provision</i>
Registered remedial notice	Section 22
Remedial notice	Section 48(2)
Restocking direction	Section 33(2)
Stock	Section 33(3)
Tree preservation order	Section 30(4)

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Forestry and Land Management (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about Scottish Ministers' functions in relation to forestry; to make provision about Scottish Ministers' functions in relation to the management of forested land and other land; and for connected purposes.

Introduced by: Fergus Ewing
On: 10 May 2017
Bill type: Government Bill

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