

# Forestry and Land Management (Scotland) Bill [As Amended at Stage 2]

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## Supplementary Delegated Powers Memorandum

### Introduction

1. This supplementary memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament's Standing Orders, in relation to the Forestry and Land Management (Scotland) Bill. It describes provisions in the Bill conferring powers to make subordinate legislation which were either amended or introduced at Stage 2.

2. The Memorandum has been prepared by the Scottish Government. It does not form part of the Bill and has not been endorsed by the Parliament. It should be read in conjunction with the original Delegated Powers Memorandum published to accompany the Bill as introduced.

### Revised and New Delegated Powers

#### Section 27 – Decisions on applications

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: revised

Parliamentary procedure: negative

#### Provision

3. Section 27 sets out how decisions relating to felling permissions will be taken. Section 27 also enables further provision about decisions on applications to be made in regulations (s.27(7) and (8)).

4. At Stage 2, section 27 was amended in order to put beyond any doubt that conditions could include requests for information in order to

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support the proportionate use of the power to register conditions. A requirement for information could, for example, include a requirement to notify the Scottish Ministers when a sale was being prepared, meaning that registration could be considered at that point rather than all conditions being registered at the point at which a permission was granted. This was in response to the recommendation in the Rural Economy and Connectivity Committee's Stage 1 report that the use of registration be proportionate and cost and resource effective.

### Reason for taking power

5. Section 27(8) was amended in order to include information which continuing conditions may require in the list of topics that regulations could, in particular, make provisions about. This is consistent with the drafting approach taken in the Bill as introduced.

### Choice of procedure

6. Section 65 requires regulations made under section 27 to be subject to negative procedure. In the Delegated Powers Memorandum that accompanied the Bill on introduction it was stated that, given the administrative nature of the regulations, negative procedure is considered appropriate. The addition of 27(8)(ca) does not change that.

### Section 48 – Remedial notices

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: negative

### Provision

7. Section 48 establishes a framework for the Scottish Ministers to issue a remedial notice to a person where it appears to them that the person has failed to comply with: a condition on felling permission; a felling or restocking direction (or any conditions imposed on it); or a registered notice to comply. Remedial notices can require a person to take steps, or stop activity, in order to comply with or otherwise give effect to those conditions, directions or notices.

8. New subsections (5A) and (5B) allow the Scottish Ministers to make further provision about remedial notices, in particular, about the imposition

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of conditions on a remedial notice (which may include steps that must be taken after the notice is complied with).

9. Stage 2 Government amendments added remedial notices to the suite of notices that could be registered in order to bind future owners (section 49A of the Bill as amended). The Rural Economy and Connectivity Committee recommended at Stage 1 that use of powers to register notices should be used proportionately, and the Scottish Ministers consider that setting of conditions will support this proportionate use of the powers. For example a condition might require that the Scottish Ministers are notified if a sale is being prepared, enabling Ministers to consider whether registration may be required to mitigate potential risk of being unable to enforce conditions on a notice. This approach embeds a risk-based system of registration of notices over a presumption that registration should always be carried out at the point of the notice being served. Ensuring that detail relating to what conditions may be set is set out in regulations provides transparency on the types of conditions that may be imposed.

#### Reason for taking power

10. The ability to set out, in regulations, further detail on the conditions that may be imposed on remedial notices provides for clarity to be given to those who may be subject to them. Since remedial notices will only be served subsequent to non-compliance with permissions, directions or their associated registered notices, clarity on the detail of those remedial notices will be given in the same way as that for those permissions or directions, which is via regulations (sections 27(7), 31(5), and 33(8)).

#### Choice of procedure

11. Section 65 requires regulations made under section 48(5A) to be subject to negative procedure. It is intended that setting out detail relating to the imposition of conditions on remedial notices will be subject to a proportionate level of consultation; however, the detail will be largely administrative and therefore negative procedure is considered appropriate.

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## Section 64A – Chief Forester

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: negative

### Provision

12. Section 64A requires Scottish Ministers to appoint an officer to be known as the chief forester. Section 64A(2) requires Ministers to prescribe the qualifications to be held by this officer, in regulations.

### Reason for taking power

13. Setting out the qualifications to be held by the person appointed as chief forester will ensure that those requirements are approved by the Parliament, or that any changes to the requirements are also approved by the Parliament.

### Choice of procedure

14. Section 65 requires regulations made under section 64A(2) to be subject to negative procedure due to the administrative nature of the details that will be contained therein.

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