

## Final Business and Regulatory Impact Assessment (BRIA)

### Title of Proposal

Forestry and Land Management (Scotland) Bill

### Purpose and intended effect

#### Objective

The Forestry and Land Management (Scotland) Bill ('the Bill') is the first of three principal activities required to complete the devolution of forestry. The Bill is the principal vehicle for legislative and regulatory activities; other activities are agreement of cross-border arrangements; and establishment of new organisational structures. Completing devolution will end the uncertainty over arrangements for the management of forestry in Scotland (which has been an issue at least since 2013 when the Welsh Government merged the functions of Forestry Commission Wales into a new Welsh public body and the long-term sustainability of the Forestry Commission as a cross-border body has been increasingly in doubt).

The objectives of the Bill are: to improve accountability by transferring the powers and duties of the Forestry Commissioners, as they relate to Scotland, to the Scottish Ministers such that forestry is fully accountable to the Scottish Ministers and to the Scottish Parliament; to create a new and updated legislative framework to support, develop and regulate forestry by replacing the outdated Forestry Act 1967 in Scotland; and to provide for more effective use of Scotland's public land including greater flexibility to use land on the Scottish Ministers' National Forest Estate for a variety of purposes.

The Bill will be followed by one or more Scotland Act Orders to wind up the Forestry Commissioners as a cross-border public authority and underpin new cross-border arrangements, by secondary legislation in the Scottish Parliament to provide a new forestry regulatory regime, and by the introduction of new organisational arrangements to replace the role of the Forestry Commissioners in Scotland. The organisational arrangements will be established administratively once the Forestry Commissioners' powers and duties have been transferred to the Scottish Ministers.

The purpose of this BRIA is to address the content of the Bill only, not other principal activities which will be required to complete the devolution of forestry. The potential business and regulatory impacts of these other aspects, including secondary legislation on regulation, new organisational structures and future collaborative cross-border arrangements with the UK and Wales, will be given separate consideration in due course.

The package of changes will enable the forestry sector in Scotland to build on recent initiatives, including increased annual planting targets, streamlining of the forestry grant scheme approvals process, increased financial support for the Strategic Timber Transport Scheme and an improved Community Asset Transfer Scheme.

The Bill does not make changes to the detailed policies and strategies relating to

forestry in Scotland such as those contained in the Scottish Forestry Strategy, how the National Forest Estate is managed and how new planting is approved or funded<sup>1</sup>.

We recognise that there may be impacts on businesses and other organisations if or when changes are made to these policies, which will be considered when these are reviewed.

## **Background**

The Scottish forestry sector is worth almost £1 billion annually, supports 25,000 jobs and is at the heart of many rural communities: as such it contributes significantly to the economic growth and wellbeing of Scotland.

Forestry is broadly devolved in Scotland with forestry policy set by the Scottish Ministers. However, management of forestry in Scotland (including of the Scottish Ministers' National Forest Estate (NFE)) has remained with the Forestry Commissioners, a UK Non-Ministerial Department and cross-border public authority. The Forestry Commissioners are not a Scottish public authority and thus are not subject to Scottish Government policies.

The Forestry Commissioners currently have a number of specific statutory functions (i.e. duties and powers) for the most part provided for in the Forestry Act 1967, which set out their overall objectives and provides the tools with which they can meet those objectives. The Bill, together with Scotland Act Orders, will transfer these functions to the Scottish Ministers, ensuring that forestry in Scotland is fully accountable to the Scottish Ministers and the Scottish Parliament and that governance and accountability arrangements are simpler and more transparent. The Bill will also enable a new regulatory framework for forestry in Scotland, creating a regime that is more agile and better able to adapt to changes.

## International context

The Forestry Act 1967, places a duty on the Forestry Commissioners to achieve a 'reasonable balance' between productive forestry and environmental and social benefits of forestry in exercising their functions. The principle of sustainable forest management (SFM) balances these economic, environmental and social benefits and has been developed over a number of years by Forest Europe<sup>2</sup>. Rather than replicate the existing general duty placed on Forestry Commissioners, the Bill will place a modern, updated duty on the Scottish Ministers to promote SFM. The UK Forestry Standard (UKFS) currently provides the framework for delivery of SFM in the UK and it is intended that the UKFS will continue to apply under the new fully devolved arrangements. The Scottish Ministers are already responsible for determining Scottish forestry strategy and policy: the Bill is not intended to change

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<sup>1</sup> Enabling powers in the Bill for grant making will allow the Scottish Ministers to continue to distribute grants in the same manner as FCS and FES currently do. Any future activity relating to this will be a continuation of the activities already being carried out; there will be no change to the level of grant distributed as a result of the Bill's provisions.

<sup>2</sup> Forest Europe (or the Ministerial Conference on the Protection of Forests in Europe) is a voluntary high level political process for dialogue and cooperation on forest policies in Europe. The UK is one of 47 signatories, including the European Union, although forestry is not an area of EU competence.

these.

### Legislative change

The Forestry Act 1967 is a consolidation of all the forestry legislation dating from 1919. It was amended significantly following the Scotland Act 1998 and again in 2013 when Wales completed its forestry devolution and the Forestry Commissioners ceased to be responsible for forestry in Wales. Rather than make further extensive amendments to the 1967 Act, it was considered timely to bring forward a new Forestry Act for Scotland. This new and modernised framework will be designed to better enable the forestry sector to expand its contribution to Scotland's rural economy and to environmental and social outcomes, including maintaining the availability of timber required by the processing sector and meeting planting targets as part of climate change mitigation measures. It will also allow for a more flexible approach to be taken in managing the NFE than is possible under the current legislation.

The Scottish Ministers will replace the Forestry Commissioners as the competent body for other relevant regimes relating to forestry in Scotland, such as Plant Health.

### Organisational change

The Forestry Commissioners exercise their functions in Scotland through Forestry Commission Scotland (FCS; policy, support, grant-giving and regulation) and Forest Enterprise Scotland (FES; management of the NFE for forestry and other purposes) and are funded via the Scottish Budget, approved by the Scottish Parliament.

Following the completion of the devolution of forestry, it is proposed that

- Responsibility for forestry policy, grant-giving, support and regulation functions will be brought into the Scottish Government within a distinct and dedicated Forestry Division in the Environment & Forestry Directorate; and
- a new Scottish Government Executive Agency – Forestry and Land Scotland – will be formed from Forest Enterprise Scotland.

In some respects, these organisational changes will formalise existing arrangements, although they will introduce important governance and accountability changes as well as an opportunity to ensure that there continues to be an appropriate level of focus on the relevant functions.

### **Rationale for Government intervention**

Government has played a pivotal role in forestry since the creation of the Forestry Commission in 1919. The Bill is not changing the principle that there should be state involvement in forestry.

As discussed already, forestry is broadly devolved but the management of the National Forest Estate and the regulation of forestry is undertaken by Forestry Commissioners, a cross-border public authority. The Bill, and the subsequent arrangements, will remove a layer of complication by ending the Forestry Commissioners' role in Scotland and its status as a cross-border public authority and allow a more straightforward approach to regulation of the forestry sector in

Scotland. It will also deliver improved alignment between forestry and other relevant functions held by the Scottish Ministers, for example climate change and biodiversity.

The Bill aligns with the National Performance Framework, contributing to four of the National Outcomes:

- We live in a Scotland that is the most attractive place for doing business in Europe
- We realise our full economic potential with more and better employment opportunities for our people
- We value and enjoy our built and natural environment and protect it and enhance it for future generations
- We reduce the local and global environmental impact of our consumption and production.

## **Consultation**

### **Within Government**

The following areas of Scottish Government were consulted during development of the Bill:

- Marine Scotland
- Agriculture and Rural Economy Directorate
- Wider Natural Resources Division
- People Directorate
- Financial Management Directorate
- Public Bodies and Public Service Reform Division
- Property Division
- Planning and Architecture Division

Proposals have been developed in conjunction with Forestry Commission Scotland and Forest Enterprise Scotland.

We also continue to work closely with the UK and Welsh Governments on future cross-border collaboration and the work required to wind up the Forestry Commissioners as a UK cross-border authority.

### **Public Consultation**

Extensive consultation to develop our proposals has taken place, including: informal consultations with stakeholders as we developed our proposals, followed by a public consultation and summits. We have also engaged with the Trade Unions and with FCS and FES staff.

The 'Future of Forestry in Scotland' public consultation took place between August and November 2016. A total of 604 responses were received, 82% of which were individuals and the remaining 12% were organisations. Non-confidential responses were published on the Scottish Government website in December 2016 and an

independent analysis of the consultation responses was published in February 2017.

All associated documents can be found at <https://consult.scotland.gov.uk/forestry/future-of-forestry/>.

## **Business**

Following the public consultation we contacted businesses, NGOs and local authorities with a view to gathering more information relating to the likely impacts of our proposals.

We will continue to engage with business and other stakeholders in the next stage of the process, following the introduction of the Bill, to address other aspects of the work to complete the devolution of forestry.

## **Options**

### **Option 1 – Do nothing**

A do nothing approach would prolong the uncertainty in the sector and maintain complex governance arrangements. These arrangements are neither fit for purpose nor viable long term, especially as:

- current arrangements in Scotland do not allow the Scottish Ministers or the Scottish Parliament to have control over all aspects of forestry in Scotland
- accountability is complex and therefore not as transparent as it could be
- there has been a direction of travel for forestry increasingly to be managed separately by Scotland, England and Wales and the process of devolution has begun with other devolved administrations (e.g. changes made in Wales in 2013)

### **Option 2 – Transfer powers and duties from the Forestry Commissioners to the Scottish Ministers**

This proposal progresses the devolution of forestry matters, including the management of the NFE. Creating a new legislative framework to support and regulate forestry that replaces the outdated Forestry Act 1967 will bring a modern approach to practices and policies. It will ensure that forestry in Scotland is fully accountable to the Scottish Ministers and the Scottish Parliament and that governance arrangements are simpler and more transparent. In addition, it will be possible for the transition to be made with relatively little disruption as, to a certain extent, it is formalising arrangements currently in place. It will also enable more effective use of Scotland's public land by including greater flexibility in the use of the NFE and by providing an ability for Forestry and Land Scotland to agree arrangements to manage other bodies' land.

The transfer of functions will enable new organisational arrangements to be put in place in Scotland, supported by agreement with the UK and Welsh Governments on appropriate cross-border arrangements.

**Sectors and groups affected**

A number of groups have an interest in the forestry sector and could be affected by changes made to the legislation that underpins the operation of that sector. We know from the consultation that forestry management and wood processing businesses have a direct stake in the how the sector operates, as well as local government and a number of NGOs who either manage land themselves or have an interest in how land in Scotland is managed.

**Benefits**

While the Bill will lead to improved accountability and a more modern legislative framework for the sector as a whole, no direct benefits to businesses specifically from the Bill have been identified.

The introduction of new forestry regulations, allied to measures already in place to streamline forestry planting approvals, herald potential benefits to industry from reduced costs of operation but these activities will be subject to their own assessments.

**Costs**

No direct costs to businesses have been identified resulting from the transfer of powers and duties to the Scottish Ministers.

During the consultation, a number of people did identify costs associated with the proposals, however these tended to be a cost to the public purse (such as the potential cost of rebranding) and were associated with other aspects of the work required to complete devolution of forestry.

The financial implications for the Scottish Administration from the transfer of functions are detailed in the Financial Memorandum which accompanies the Bill.

**Scottish Firms Impact Test**

Views were sought from businesses, NGOs and local government on the impact of our proposals. Key areas for comment were whether the transfer of powers to the Scottish Ministers would have an impact and whether some of the proposed principles for the legislation would have an impact. In each case we sought views on what the likely costs and benefits associated with these would be.

We sent 27 questionnaires and received 1 response, see Annex 1. Additionally, we spoke to three membership organisations (Community Woodlands Association (CWA), Confederation of Forest Industries (UK) Ltd. (Confor) and United Kingdom Forest Products Association (UKFPA)) representing a range of interests across the forestry sector, including small through to large businesses and communities. Those discussions confirmed that the transfer of powers and duties from the Forestry Commissioners to the Scottish Ministers, in itself, is not seen as having any impact on Scottish businesses. Business representatives were generally supportive of the proposals.

Concerns that were raised during these discussions focussed on either policy that will not be changed by the Bill or matters for subsequent legislation.

Consideration was given to the impact on businesses that operate both north and south of the border and who would be required to engage with a different regulatory regime following the transfer of functions and the introduction of modern, streamlined forestry regulation in Scotland. In reality these businesses already have to engage with distinct grant funding regimes north and south of the border and manage other differences, such as working within a sector framed by separate national strategies.

Businesses were not concerned by the proposed changes, however they were keen that common standards such as the UKFS were maintained and that we continue to engage with them in developing or reviewing forestry strategies or future regulation.

### **Competition Assessment**

We uncovered no evidence during the development of proposals or during the public consultation that the transfer of functions to the Scottish Ministers would have an impact on the competitiveness of firms in Scotland. Consultation with business has not indicated otherwise.

### **Test run of business forms**

There are no new business forms associated with this proposal. We do however acknowledge that there will be new business forms associated with future secondary legislation. These are not subject to this BRIA, but will be tested appropriately as the secondary legislation is developed.

### **Legal Aid Impact Test**

The Scottish Government Legal Aid Team have confirmed there are no impacts foreseen for the Legal Aid Fund.

### **Enforcement, sanctions and monitoring**

The Bill will put in place a framework for legislative and regulatory changes. There is no enforcement and there are no sanctions associated with such a framework. However we acknowledge that, as part of the assessment of the secondary legislation made under the new regime, we will need to revisit this question and test the detail of those proposals.

### **Implementation and delivery plan**

The Bill, which sets a framework, is the first of three principal activities required to complete the devolution of forestry the others of which will be taken forward in parallel with the Bill progressing through Parliament. Further delivery will draw from a planned review of the Scottish Forestry Strategy and secondary legislation on regulation and any policy changes resulting from subsequent organisational changes and cross-border arrangements.

## **Summary and recommendation**

The introduction of new forestry legislation for Scotland is an important step in ending the uncertainty over the future arrangements for forestry in Scotland, by transferring Forestry Commissioners' powers and duties to the Scottish Ministers and modernising the legislation that regulates the sector in Scotland. The Bill, which will provide a framework to enable delivery of a package of other policy initiatives, will build on recent measures to increase forestry's contribution to the Scottish Government's economic, environmental and social ambitions, including: increased annual planting targets, streamlining of the forestry grant scheme approvals process, increased financial support for the Strategic Timber Transport Scheme and an improved Community Asset Transfer Scheme.

From consultation so far, including the Scottish Firms Impact Test, we have found broad support for the devolution of forestry and a view that the primary legislation itself will not have an impact on business. We do, however, acknowledge that there are concerns relating to the potential impact of other aspects of the work to complete devolution of forestry that are not the subject of this BRIA (e.g. organisational structures, cross-border arrangements and secondary legislation).

As we complete the devolution of forestry we are committed to continuing to engage with business and wider stakeholders and will assess the impacts of other parts of this wider project at appropriate points.

This Business and Regulatory Impact Assessment concludes that the Bill will have no impact on business, NGOs or local authorities.

This assessment is recommended for Cabinet Secretary clearance and submission in support of the Forestry and Land Management (Scotland) Bill.

## Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

A handwritten signature in black ink that reads "Fergus Ewing". The signature is written in a cursive style with a large loop under the 'F' and 'E'.

Date: 9 May 2017

FERGUS EWING

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## **Annex 1. Questionnaire sent as part of Scottish Firms Impact Test**

### **Forestry Bill**

#### **Business and Regulatory Impact Assessment and Competitive Assessment**

##### Introduction

The recent consultation on the Future of Forestry invited views on a planned approach to completing the devolution of forestry (<https://consult.scotland.gov.uk/forestry/future-of-forestry>).

As indicated in Programme for Government, published on 6th September 2016, the Scottish Government will introduce a Forestry Bill in year 1 to create a new bespoke legislative framework for the governance, management, support and regulation of forestry in Scotland. The Bill is a key vehicle for delivering devolution; however, it is not the only vehicle: we anticipate further legislation will be required at Westminster and the Scottish Parliament which will deal with the detail of matters such as cross-border co-operation, and winding up the Forestry Commissioners as a cross-border public authority. Some elements of devolving forestry and introducing new arrangements for Scotland do not need legislation and will be handled administratively.

The Business Regulatory Impact Assessment (BRIA) and competitive assessments are required to be undertaken by the Scottish Government in relation to preparing our legislative proposals. This exercise relates specifically to the forthcoming Forestry Bill. The result of these assessments will help us to better understand the consequences of these proposals and will be published on the Scottish Government's website after a Bill has been introduced to the Scottish Parliament in the coming months. Further exercises will be undertaken in relation to the additional legislation associated with delivering devolution. The Bill will transfer the functions, powers and duties of the Forestry Commissioners (as they relate to Scotland) to the Scottish Ministers. This will mean that:

- The policy, support and regulatory role of the Forestry Commissioners will transfer to the Scottish Ministers.
- Responsibility for management of the National Forest Estate will transfer to the Scottish Ministers.

As noted in our consultation paper, we intend that the staff of Forestry Commission Scotland and Forest Enterprise Scotland will transfer to the Scottish Government to provide the resource and skills to enable the Scottish Ministers to fulfil their new role. Businesses should have continuity in engaging with the same staff that they do currently on forestry matters.

Chapter 3 of the consultation paper set out a number of proposed principles that could be included in the new legislative framework:

- A general duty on the Scottish Ministers to promote forestry
- Sustainable forestry management
- Ensuring felling is carried out according to defined standards of good forestry
- Providing flexibility to use National Forest Estate land for a variety of purposes in line with Ministerial objectives.

We are interested in further views you may have on the likely costs, benefits and associated risks the above proposals might have on the public, private or third sector. To help us assess these costs/and or benefits to different sized businesses, please answer the following questions.

### Questions about you

- 1) Name, contact details
- 2) Business/organisation size (anything indicative such as turnover, staff numbers or area of forestry managed)
- 3) Brief description of business/involvement in forestry in Scotland
- 4) As we modernise the legislation we may find that some of the detail currently set out in the Forestry Act 1967 is, in future, set out in secondary legislation. Would you be willing to be contacted about further impact assessments on this subject?

### Costs and benefits: Legislation and regulation

- 5) Will transferring the powers and functions of the Forestry Commissioners to the Scottish Ministers have an impact on your organisation? If yes, what costs or benefits would you anticipate?
- 6) Would you anticipate this change affecting any particular aspect of the sector you operate in?

In particular:

- a) Would there be different impacts for those that operate in Scotland only and those that operate across different parts of the UK?
  - b) Would this change have any impact on those starting out in your sector (for example new organisations or existing organisations looking to move into forestry or forest management)?
  - c) Would the change have differing impacts for large or small organisations?
- 7) Of the principles identified at Chapter 3 of the consultation which are of particular importance to your organisation?

a) What would the costs or benefits of including these principles in the legislative framework for forestry be for you? Please give details for each principle of importance that you have identified.

b) What impact would including such a principle in the legislative framework for forestry have on any particular aspect of the sector you operate in?

In particular:

i) Would there be different impacts for those that operate in Scotland only and those that operate across different parts of the UK?

ii) Would this change have any impact on those starting out in your sector (for example new organisations or existing organisations looking to move into forestry or forest management)?

iii) Would the change have differing impacts for large or small organisations?

#### Competition assessment questions

8) Will the proposals directly or indirectly limit the number or range of suppliers?

9) Will the proposals limit the ability of suppliers to compete?

10) Will the proposals limit suppliers' incentives to compete vigorously?

11) Will the proposals limit the choices and information available to consumers?