

**A report setting out the administrative arrangements that the Scottish Ministers intend to make for the carrying out of their functions under the Forestry and Land Management (Scotland) Act 2018**



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## Introduction

The devolution of forestry to Scotland will be completed on commencement of the [Forestry and Land Management \(Scotland\) Act 2018](#) (“the 2018 Act”) on 1 April 2019. Following this, the Forestry Commissioners, a UK Non-Ministerial Department, will no longer be responsible for managing forestry in Scotland.

Two parts of the Forestry Commission – Forestry Commission Scotland (FCS) and Forest Enterprise Scotland (FES) – operate solely in Scotland. In accordance with the 2018 Act, FCS and FES will be replaced by two Scottish Government executive agencies, which will be responsible for carrying out the Scottish Ministers’ functions under that Act. The Scottish Ministers will establish the agencies at the same time as commencing the 2018 Act.

This report sets out these new administrative arrangements. It covers the specific arrangements required under section 85 of the 2018 Act, namely:

- (a) the establishment of any agency or similar body,
- (b) the governance of any such agency or body,
- (c) the roles and responsibilities of senior officers of any such agency or body,
- (d) the financial reporting and accountability of any such agency or body,
- (e) the establishment of any advisory groups to assist them in carrying out their functions,
- (f) the exercise of the powers in section 70 (power to form companies etc.).

### **Establishment of two agencies: Scottish Forestry and Forestry and Land Scotland**

**Scottish Forestry** (SF) and **Forestry and Land Scotland** (FLS) are the two agencies that the Scottish Ministers are creating to deliver their forestry and land management functions.

Executive agencies are an integral part of the Scottish Government and a well-established part of the public bodies’ landscape.<sup>1</sup> SF and FLS are being set up in line with the guidance for the establishment of such bodies, through projects that are part of the Scottish Government’s Forestry Devolution Programme.<sup>2</sup>

SF and FLS will set out their programme of work in corporate plans, which will be subject to public consultation.

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<sup>1</sup>See the Scottish Government’s guide to public bodies in Scotland at <https://www.gov.scot/publications/public-bodies-in-scotland-guide/>.

<sup>2</sup>More information on the Forestry Devolution Programme can be found at <https://www.gov.scot/policies/forestry/>.

The new agencies will have their own brands, making clear their distinct roles and identities within the overall Scottish Government family.

## **Scottish Forestry**

SF will have responsibility for the policy, regulatory and support functions currently undertaken by FCS. SF's functions will also include the new cross-border arrangements that the Scottish Government will be taking the lead for co-ordinating, on behalf of Scotland, England and Wales. These arrangements cover management of the UK Forestry Standard and the Woodland Carbon Code as well as the provision of economic advice on forestry.<sup>3</sup>

Greater policy alignment and a stronger voice for forestry in government were two of the objectives in completing devolution to Scotland. To ensure that its policy functions are delivered as an integral part of wider Scottish Government policy-making, SF will have a 'close-in' relationship to other parts of the Scottish Government and with Ministers, whereby SF forestry policy officials will work very closely with relevant policy colleagues elsewhere in the core Scottish Government.

The current Head of FCS, Jo O'Hara, will become the Chief Executive of SF. The national office of the new agency will continue to be in Edinburgh. SF will also be retaining regional offices, which will continue to be known as 'conservancies'. The senior manager of each regional office will retain the title of 'conservator'.

## **Forestry and Land Scotland**

FLS will be responsible for managing the Scottish Ministers' land known as the national forest estate, a function currently undertaken by FES. The estate covers 640,000ha, roughly 8% of Scotland's land area. It is two-thirds forested and one-third open habitat and agricultural land. The land management provisions of the 2018 Act also provide the potential for the expertise within FLS to be used, by agreement, to manage forested and non-forested land owned by other people. As a forest manager, FLS will be regulated by SF.

As an operationally-focused organisation involved in commercial trading activities (e.g. the sale and supply of timber), FLS will be – as was its predecessor, FES – more at arms-length from the core Scottish Government, retaining a degree of autonomy in the delivery of its day-to-day operational objectives.

The first Chief Executive of FLS will be Simon Hodgson, previously Chief Executive of Forest Enterprise England. Mr Hodgson took up post in January 2019 and is on secondment from the Scottish Government to the Forestry Commission as Chief Executive of FES until April 2019, to facilitate a smooth transition to FLS.

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<sup>3</sup> The UK and Welsh Governments will lead on other cross-border arrangements, including research commissioning and some plant health (forestry) functions (<https://www.gov.scot/policies/forestry/cross-border-forestry-arrangements/>).

Like FES, FLS's registered office will be in Inverness. The Inverness and Edinburgh offices will continue to be the main hubs for national and support functions. Like SF, FLS will maintain a network of local offices and facilities.

### **Transfer of staff**

There are approximately 1,000 staff in FCS and FES. They are civil servants and will continue to be civil servants when they transfer employer from the Forestry Commissioners to the Scottish Government on 1 April 2019. The transfer is being managed under the 'Cabinet Office Statement of Practice – Staff Transfers in the Public Sector' (known as 'COSoP'). Negotiations between the Scottish Government and the Forestry Commission Trade Unions have progressed well and an agreed offer on a package of terms and conditions for SF and FLS is being made to all staff.

From 1 April 2019, staff will be removed from UK Government Public Sector Pay Policy and will be brought under the remit of the Scottish Government's Public Sector Pay Policy.

An induction and training plan, running mainly from January to June 2019, is supporting FCS and FES staff in the transition into the Scottish Government.

### **Skills development**

Each Chief Executive will have responsibility for the management and development of their staff, ensuring they have the tools, expertise and resources required to deliver successfully across a broad range of activities. Learning and development services will be provided to both agencies from within FLS, supplemented by sources from within the Scottish Government or developed in conjunction with other partners.

A **Chief Forester** will be appointed by the Scottish Ministers to assist and advise them in carrying out their functions (section 73 of the 2018 Act). Scottish Ministers have determined that the initial focus for the Chief Forester will be as the Scottish Government's 'Head of Profession' for forestry, in response to stakeholder concerns that professional forestry standards be maintained during the transition from FCS and FES to SF and FLS. As announced in February 2018, the SF Chief Executive will be Scotland's first Chief Forester. The Chief Forester will have responsibility for the development, communication and promotion of professional standards amongst forestry staff in SF and FLS and will also explore skills developments and opportunities with the wider forestry profession and other relevant sectors.

## Governance of agencies, including roles and responsibilities of senior officers

The governance of SF and FLS will be in accordance with established arrangements for Scottish Government agencies, which ensure a clear and direct line for decision-making between the Chief Executive and the Scottish Ministers and the Scottish Government.

Each agency will have a framework document, approved by the Scottish Ministers, which will define key roles and responsibilities between the agency and the Scottish Government.<sup>4</sup> A summary of the governance arrangements is set out below.

In the same way as **the Scottish Ministers** have been responsible since devolution for determining forestry policy and resources in Scotland, they will be responsible for the overall framework within which FLS and SF will operate.

The **Chief Executive** of each agency will be directly accountable to the Scottish Ministers for delivering the agency's strategic policy aims and objectives.

SF and FLS will each have the following key internal governance structures:

- An **executive team** (the Chief Executive and the most senior staff of the agency) to oversee financial and workforce planning and to monitor delivery against organisational targets.
- An **agency advisory body**, which will provide advice and support to the Chief Executive. The body will be chaired by the Chief Executive and will be composed of members of the executive team alongside three non-executive advisers. The non-executive advisers will be appointed following an open, competitive process and will perform an important role in offering constructive challenge and advice to the Chief Executive on the management of risk and delivery of core functions and priorities.
- An **audit and assurance committee**, comprised of the three non-executive advisers, will provide an independent and objective view of the agency's activity in line with the Scottish Government's guidance to such committees.<sup>5</sup>

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<sup>4</sup>For a model framework document for Scottish Government agencies and Non-Departmental Public Bodies, see <https://www.gov.scot/publications/scottish-public-finance-manual/accountability/annex-3-model-framework-document-for-executive-ndpbs/>.

<sup>5</sup>Scottish Government guidance on audit and assurance committees is at <https://www.gov.scot/publications/audit-assurance-committee-handbook/>.

## Financial reporting and accountability

The financial accountability arrangements for SF and FLS will remain very similar to those currently operating for FCS and FES and will be in line with the arrangements set out in the Scottish Public Finance Manual.<sup>6</sup>

FCS and FES already receive all of their public sector funding from the Scottish Government and this will continue for SF and FLS. Spending levels on forestry will be visible and scrutinised through the Scottish Government Budget process.<sup>7</sup>

The majority of FLS's annual income will be derived from commercial trading activities, such as the sale of timber. This will allow it, like FES, to be classified as a public corporation, for the purposes of its accounts, by the Office of National Statistics. This classification gives the agency flexibility across financial years and the ability to build up reserves, both of which are essential in managing the dynamic of commercial activity in the forestry sector. Levels of income will be stated in the agency's annual accounts.

The Chief Executive of each agency will be designated as an Accountable Officer by the Scottish Government's Principal Accountable Officer, under section 15 of the Public Finance and Accountability (Scotland) Act 2000. They will be financially accountable to the Scottish Ministers and will lay separate accounts before the Scottish Parliament.

The financial authority delegated to the Chief Executive and to individual managers will be set out in the framework document for each agency.

Advice and challenge to each Chief Executive in discharging his/her responsibilities for risk management, control, governance and assurance to support end-year accountability and reporting will be provided by the audit and assurance committee mentioned above and internal audit officials. Audit Scotland will provide external scrutiny.

## Stakeholder advisory groups

Active engagement with stakeholders at the national and local level will be an important feature of how SF and FLS discharge their functions.

The Scottish Ministers, through SF, will establish a **Forestry Strategy national stakeholder group**. This group will help advise the Scottish Government on, and support the implementation of, the Forestry Strategy, building on the constructive approach of the Forestry Strategy Reference Group, which provided input to the drafting of [Scotland's Forestry Strategy 2019-2029](#) during 2018.

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<sup>6</sup><https://www.gov.scot/publications/scottish-public-finance-manual/>.

<sup>7</sup> See, for example, pages 172-3 of the 2019-20 Scottish Budget, published in December 2018 (<https://www.gov.scot/publications/scottish-budget-2019-20/>).



In addition, the Scottish Ministers will establish, through FLS, a national **stakeholder panel** to provide a structured basis for FLS to engage with, and seek advice and feedback from, its stakeholders and customers.

Other stakeholder arrangements will be developed after the new administrative arrangements, in particular the new agencies and their non-executive advisers, have had time to settle.

### **Exercise of section 70 powers (power to form companies)**

Part 5 of the 2018 Act provides general powers to support the Scottish Ministers in connection with carrying out their forestry and land management functions: section 70 in particular enables the Scottish Ministers to form companies.

This provision replicates the incidental powers that already exist for the Forestry Commissioners in section 7A of the Forestry Act 1967.<sup>8</sup>

The Scottish Ministers intend to exercise the powers in two ways, as part of developing the national forest estate under the 2018 Act.

First, the powers allow the Scottish Ministers through FLS to retain an interest in two recreation joint ventures that already operate on the estate, namely Forest Holidays and Camping in the Forest.

Secondly, the powers may be used to help deliver the Scottish Government's climate change objectives by enabling FLS to enter into joint ventures for the development of renewable energy on the estate in the future.

### **Conclusion**

The Scottish Ministers are setting up two agencies, Scottish Forestry and Forestry and Land Scotland, to undertake the functions set out in the Forestry and Land Management (Scotland) Act 2018. The agencies are being set up according to the usual arrangements for establishing Scottish Government agencies. The Scottish Ministers intend to establish them on 1 April 2019.

The Scottish Ministers will provide a further report on the operation of the administrative arrangements within five years of commencement (section 75 of the 2018 Act). They will also notify the Scottish Parliament and consult appropriate persons should there be any significant changes to the arrangements contained in this report in the future (section 85(6) of the 2018 Act).

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<sup>8</sup>Under section 7A(1)(a) of the Forestry Act 1967, the Forestry Commissioners may form, or participate in the forming of, a body corporate.