

FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Part 3 - Management of land by Scottish Ministers

Sections 18, 19 and 20 - Acquisition and disposal of land

29. **Section 18** confers powers on the Scottish Ministers to acquire land—
- (a) for the purpose of managing that land in a way that promotes SFM; or
 - (b) for that land to be managed for the purpose of furthering the achievement of sustainable development.
30. **Section 18** enables the Scottish Ministers to acquire land by agreement where they consider it appropriate to do so, and provides that the power includes the power (a) to purchase, or enter into a lease for, land; (b) to accept land as a gift; and (c) to acquire any interest or right in or over land.
31. Section 19(1) provides the Scottish Ministers with powers to compulsorily acquire land for the purpose of managing that land in a way that promotes SFM. Section 19(3) provides that the power of compulsory purchase includes the power to acquire any right or interest in or over the land, or to acquire a servitude or other right in or over the land by the creation of a new right.
32. By virtue of paragraph 1 of schedule 1, the provisions of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 concerning the making and confirming of compulsory purchase orders will apply to the compulsory acquisition of land under section 19(1) similar to the exercise of powers to compulsorily acquire land by the Scottish Ministers or other public bodies under other enactments.
33. However, the power of compulsory acquisition at section 19(1) does not allow the Scottish Ministers to acquire land that they manage by virtue of an arrangement under section 17(1). Nor does it apply to land that is subject to a forestry dedication agreement (as defined in section 78 by reference to section 5 of the Forestry Act 1967) and which is being managed in accordance with a plan of operations approved by the Scottish Ministers for the purposes of that agreement.
34. Forestry dedication agreements (FDA) were used by the Forestry Commissioners prior to 1981 as a means of promoting forestry. An FDA is a binding legal agreement between the Forestry Commissioners and a land owner which makes a charge on the land it covers to use that land for the growing of timber. It also binds the owner to good forestry practice (in practice, through a plan of operations approved in relation to the FDA). Agreements are recorded in the General Register of Sasines. Despite the general repeal of the Forestry Act 1967 by section 79(2) and schedule 2 of the Act, section 80 provides that this does not affect any forestry dedication agreement which is in force prior to the

*These notes relate to the Forestry and Land Management (Scotland)
Act 2018 (asp 8) which received Royal Assent on 1 May 2018*

date on which that repeal has effect. Responsibility for FDAs and the approval of plans of operations will transfer from the Forestry Commissioners to the Scottish Ministers and existing plans of operations will be saved by virtue of an order under section 90 of the Scotland Act 1998 and regulations made under section 77(1) of the Act.

35. Finally, the power in section 19(1) does not apply to land held or used by a Minister of the Crown or a department of the Government of the United Kingdom given the reservation in paragraph 1(a) and paragraph 3(3)(c) of schedule 5 of the Scotland Act 1998.
36. Section 20(1) enables the Scottish Ministers, where they consider it appropriate to do so, to dispose of land specified in subsection (2). This land is: land in the national forest estate (as defined in section 13), other forested land they own, and land they have acquired for the purposes of furthering the achievement of sustainable development. The definition of “dispose of land” in subsection (2) includes the sale, gift or lease of land or the grant of any interest or right in or over the land. Section 6(e) provides that the Scottish Ministers must have regard to the forestry strategy when exercising the power to dispose of forested land.
37. Section 20(3) requires the Scottish Ministers to record separately funds received by them from disposal of land under section 20(1) and to use them solely for the purposes of or in connection with the carrying out of functions under the Act.