

EXPLANATORY MEMORANDUM TO
THE FORESTRY COMMISSIONERS (CLIMATE CHANGE FUNCTIONS)
(SCOTLAND) ORDER 2012 (CONSEQUENTIAL MODIFICATIONS) ORDER 2012

2012 No. [XXXX]

1. 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order amends the Forestry Act 1967 in order to give the Forestry Commissioners express powers to use the land they manage in Scotland for the purposes of generating and selling electricity from renewable energy sources.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(2), (4), (5) and (7) of the Scotland Act 1998 (“the 1998 Act”). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament.

3.2 This Order is necessary or expedient in consequence of the Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (“the 2012 Order”) which was made under the Climate Change (Scotland) Act 2009 (“the 2009 Act”). The 2012 Order modified the Commissioners’ functions under the Forestry Act 1967 so that they have a duty to use land placed at their disposal by Scottish Ministers to contribute to achieving the Scottish climate change targets which are set in or under the 2009 Act.

3.3 This Order is subject to affirmative resolution in the UK Parliament.

4. Legislative Context

4.1 At present, the Forestry Commissioners do not have powers to undertake renewable energy projects on the land put at their disposal by Scottish Ministers. Section 59 of the 2009 Act gave Scottish Ministers the power, by order, to modify the functions of the Forestry Commissioners where necessary or expedient for climate change. The 2012 Order, made by Scottish Ministers under section 59 of the 2009 Act, modified the

Commissioners' functions under the Forestry Act 1967 so that the Commissioners have a duty to use land placed at their disposal by Scottish Ministers to contribute to achieving the Scottish climate change targets. In consequence of this, it is necessary or expedient for this Order to modify the functions of the Commissioners further to allow them to generate, transmit, distribute, supply and use electricity from renewable sources where that helps achieve the climate change targets. This Order will not in any way affect the separate requirements of Part 1 of the Electricity Act 1989.

5. Territorial Extent and Application

5.1 This instrument extends to Scotland only.

6. European Convention on Human Rights

The Secretary of State for Scotland has made the following statement regarding Human Rights:

'In my view the provisions of the Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (Consequential Modifications) Order 2012 are compatible with the Convention rights.'

7. Policy background

7.1 The Scottish Ministers have indicated that they would like to make full use of the national forest estate in Scotland for generating renewable energy. The national forest estate is land owned by the Scottish Ministers but put at the disposal of the Forestry Commissioners. The Scottish Government anticipate that some 2 gigawatts of capacity could be installed by the year 2020 through the development of windfarms and hydro-electric schemes. Joint venture arrangements with commercial developers have considerable potential to increase returns to the taxpayer and to serve as a vehicle for stronger community engagement. In addition, there is scope for self-development by the Commissioners of at least two small scale hydro schemes. While the Forestry Commissioners have powers to enter into joint ventures in Scotland for the purpose of exercising their powers under the Forestry Act 1967, these functions do not expressly include the development of the renewable potential of the land put at their disposal by Scottish Ministers. The powers provided for by this Order, which is made in consequence of the 2012 Order would give the Forestry Commissioners express powers to develop the renewable energy potential of the land put at their disposal by Scottish Ministers.

Consolidation

7.2 This does not apply in relation to this order because there is nothing with which to consolidate the Order.

8. Consultation outcome

8.1 There was a 12 week public consultation on the provisions in the Climate Change (Scotland) Bill relating to powers for Scottish Ministers, by order, to modify the functions of the Forestry Commissioners where necessary or expedient for climate change. The consultation document explained that this provision would facilitate the development of the renewable energy potential of the land in Scotland put at the disposal of the Forestry Commissioners by Scottish Ministers. The consultation was launched on 4 November 2008 and closed on 27 January 2009. An analysis of the responses is available at [http://www.forestry.gov.uk/pdf/ccbillconsultationanalysis.pdf/\\$FILE/ccbillconsultationanalysis.pdf](http://www.forestry.gov.uk/pdf/ccbillconsultationanalysis.pdf/$FILE/ccbillconsultationanalysis.pdf). There were 368 responses to the question “what are your views on allowing the Forestry Commissioners to enter into joint ventures, with the intention of participating in renewable energy programmes on the national forest estate?” 70% of respondents expressed positive views on this option, although a number added caveats; 15% expressed negative views; the remainder appeared to be neutral or undecided. A number of the concerns that were expressed have since been addressed by establishing a forest renewables business unit within Forestry Commission Scotland, with dedicated expertise to take forward developments and offering a clear separation of functions from those parts of Forestry Commission Scotland responsible for regulatory activities in respect of renewables developments.

9. Guidance

9.1 There is relevant guidance relating to the generation and sale of electricity with which the Forestry Commissioners should comply when exercising the functions which are modified by this Order. No further guidance is considered necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 The impact on the public sector is insignificant, other than providing the Forestry Commissioners with greater flexibility to take forward renewable energy developments

10.3 A full impact assessment has not been produced for this instrument.

11. Regulating small business

11.1 The legislation does not apply to the regulation of small business.

12. Monitoring & review

12.1 Forestry Commission Scotland publishes an Annual Report and Accounts which is laid before the Scottish Parliament and will include details of renewables developments.

13. Contact

Emma Lopinska at the Scotland Office (tel: 0131 244 9026 or email: Emma.Lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.