

COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Delegation of Forestry Commissioners' functions

353. Section 7B of the Forestry Act 1967 (“the 1967 Act”), inserted by the Public Services Reform (Scotland) Act 2010, allows the Forestry Commissioners to delegate their functions (to such extent and subject to such conditions as they think appropriate) to community bodies, in relation to land in Scotland which is let to the community body.
354. Section 7C of the 1967 Act sets out the requirements that a body must meet to be a community body under section 7B of the 1967 Act. It must be a company limited by guarantee, the articles of association of which include a definition of the community to which the company relates. The community must be defined by reference to postcode units. The company must also have no fewer than 20 members; the majority of the members of the company must consist of members of the community, and those members must have control of the company; and there must be provision for proper financial management of the company and the auditing of its accounts.
355. The Forestry Commissioners manage land which is owned by the Scottish Ministers and placed at their disposal for the exercise of their functions, under section 3 of the 1967 Act. Since the Scottish Ministers are listed in schedule 3 to the Act as a relevant authority, a community transfer body may make an asset transfer request under Part 5 to lease such land, and may seek to have forestry functions delegated to it in relation to that land. Part 6 of the Act amends section 7C of the 1967 Act, to make the requirements for a community body in that section closer, but not identical, to the requirements for a community controlled body under section 19 of the Act, which may be a community transfer body under section 77.
356. Subsection (2)(a) of section 98 of the Act removes the requirement for a community body to be a company limited by guarantee and allows it instead to be any form of body corporate, with a requirement that certain provisions are set out in a written constitution rather than having to be in articles of association. Subsection (2)(c) adds a requirement that membership of the body must be open to any member of its defined community, and that its aims and purposes must include the promotion of a benefit for that community. Subsection (2)(d) removes the requirement in relation to auditing of the accounts (although the requirement for ensuring proper arrangements of the financial management of the body remains), but adds a provision that any surplus funds or assets of the body must be applied for the benefit of the community. Subsection (4) removes the requirement for the community to be defined by postcode units, allowing for communities of interest to be included as well as those defined by geographical boundaries.