

FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Part 3 - Management of land by Scottish Ministers

15. **Part 3** makes provision for the Scottish Ministers to manage land for the purpose of promoting SFM (section 11) (in relation to forested land) or furthering the achievement of sustainable development (section 15) (in relation to certain other non-forested land), and provides a framework of powers for managing land for those purposes.

Sections 11, 12 and 13 - Management of forested land

16. Section 11(1) places a duty on the Scottish Ministers to manage forested land (as defined in section 12 as read with section 13) in a way that promotes SFM. This includes, as set out in section 11(2), the use of forested land for economic development, the conservation and enhancement of the environment and the realisation of the social benefits of forestry (which links back to certain of the requirements included in the forestry strategy under section 3(3)).
17. Section 11(3) qualifies the application of that section in the case where Scottish Ministers have entered into arrangements with other persons for the management of forested land, in accordance with the power in section 17(1). Section 17(4) provides for the application of section 11 in relation to that land to be subject to the terms of those arrangements.
18. **Section 12** defines “forested land” for the purposes of the Act. Subsection (2) provides that “forested” includes undergoing afforestation.
19. Subsection (1)(a) of that definition refers to land in the national forest estate that is forested. The national forest estate is defined in section 13 as land in Scotland that was at the disposal of the Forestry Commissioners under the Forestry Act 1967 immediately before the date on which the section comes into force, and that is, for the time being, owned by the Scottish Ministers. The definition of the national forest estate also has relevance for section 20 (power to dispose of land).
20. Subsection (1)(b) of the definition of forested land refers to other forested land which is either owned by the Scottish Ministers or managed by them on behalf of another person. This provision is intended to capture forested land owned by the Scottish Ministers that is not part of the national forest estate, and forested land belonging to another person that the Scottish Ministers manage, for example, in accordance with arrangements under section 17(1).

Section 14 – Forestry information

21. **Section 14** introduces a duty on the Scottish Ministers to publish information on forestry. Subsections (1) and (2) provide that information on forest holdings in Scotland

that do not fall within the meaning of forested land at section 12 must be gathered and published by the Scottish Ministers in such a manner as they consider appropriate, and that the information must include in particular information on the area and proprietorship of the forest holdings. Subsection (5) sets timescales for the publication of information under section 14.

22. Subsections (3) and (4) enable the Scottish Ministers to make regulations to make further provision about the information to be gathered for the purposes of section 14, and provide that the regulations may make provision about the form of information to be gathered. Section 76(1)(a) provides that regulations under section 14(3) are subject to negative procedure.

Section 15 - Management of land to further sustainable development

23. Section 15(1) requires the Scottish Ministers to manage the land specified in subsection (2) for the purpose of furthering the achievement of sustainable development. This applies to (a) land in the national forest estate (defined at section 13) that is not forested; and (b) other land that is not forested that is (i) owned by the Scottish Ministers having been acquired under section 18(1) or section 19(1); (ii) managed by the Scottish Ministers having been acquired under section 18(1) or 19(1); or (iii) managed by the Scottish Ministers in accordance with arrangements entered into under section 17(1) for the purpose of the duty in subsection (1).
24. Section 15(3) qualifies the application of section 15 in the case where the Scottish Ministers have entered into arrangements with other persons for the management of land in accordance with section 17(1). Section 17(4) provides for the application of section 15 in relation to that land to be subject to the terms of those arrangements.

Section 16 - Duty to publish map of land managed by the Scottish Ministers

25. [Section 16](#) requires the Scottish Ministers to publish a map of land that they are, for the time being, managing as forested land (under the section 11 duty and as defined in section 12), or for the purposes of furthering sustainable development (under the section 15 duty and as specified in section 15(2)).

Section 17 - Power to enter into arrangements

26. Section 17(1) and (2) respectively provide that the Scottish Ministers may, for the purposes of managing land under section 11 or 15 enter into arrangements with any person for the management of land or for the provision of advice or assistance in relation to the management of land. These arrangements can be with any person, whether a natural or legal person, including private and public bodies.
27. Arrangements allowing Scottish Ministers to manage land (reached under section 17(1)) must be for the purposes of section 11 (management of forested land to promote SFM) or 15 (management of land to further the achievement of sustainable development). The precise scope and terms of such arrangements will be a matter for agreement between the Scottish Ministers and the relevant person.
28. Further to paragraphs 18 and 25, although the Scottish Ministers' duties are subject to the terms of any arrangement agreed it is not possible for the terms of an arrangement to oust the duties to manage the land to promote SFM (section 11) or to further the achievement of sustainable development (section 15).

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 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.