



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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Forestry and Land Management (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 30 May 2017 and seeks an explanation of the following matters:

Section 24 – Unauthorised felling: exemptions

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	affirmative

As the Government acknowledges in its Delegated Powers Memorandum, the exemptions under section 24 are key to determining which situations will be caught by the forestry regulatory regime in the Bill. This in turn will establish when the act of felling may amount to an offence under the Bill.

Please explain why it is considered that the power in section 24 strikes an appropriate balance between primary and secondary legislation. Why is it considered appropriate in section 24 to take a power to create exemptions from the offence of unauthorised felling under section 23, rather than making provision for such exemptions on the face of the Bill? Does the Scottish Government consider that setting out initial exemptions on the face of the Bill, together with a power to amend those exemptions by regulations, could strike a more appropriate balance?

Section 27 – Decisions on applications

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	negative

The Delegated Powers Memorandum refers to the administrative nature of the regulation making power in section 27(7) of the Bill, and concludes that for this reason the negative procedure provides an appropriate level of scrutiny.

It is not immediately clear (despite the non-exhaustive list provided in that section) whether the exercise of this power would be limited to matters of purely administrative detail, or whether the power could be used to make provision in relation to the way in which such decisions should be taken by the Scottish Ministers. If the latter, this would appear to go beyond purely administrative provision, and could have a significant effect on those applying for permission. Please provide further clarification as to how it is intended that this power should be exercised.

Section 29 – Compensation for refusal of felling permission

Power conferred on:	the Scottish Ministers
Power exercisable by:	regulations
Parliamentary procedure:	negative

The Delegated Powers Memorandum refers to the administrative nature of the regulation making power in section 29(2) of the Bill, and concludes that for this reason the negative procedure provides an appropriate level of scrutiny. Section 29(2) provides that regulations made under that section may include (amongst other things) provision about persons who are entitled to compensation. To the extent that this could extend to provision setting out in what circumstances persons may, or may not, be entitled to compensation, thereby affecting the scope of the compensation provision made by section 29(1), this would appear to go beyond purely administrative provision, and could have a significant effect on those persons who suffer loss as a result of a refusal by the Scottish Ministers to grant felling permission.

Please therefore provide further clarification as to how it is intended that this power should be exercised. Please explain, in particular, the policy intention underlying the taking of a power to make provision about persons who are entitled to compensation, and how it is intended that this will interact with the provision in section 29(1), that a person suffering loss as a result of the Scottish Ministers' decision to refuse an application for felling permission *is entitled* to compensation in accordance with regulations made under subsection (2).

Section 64 – Charging

Power conferred on:	the Scottish Ministers
Power exercisable by:	administrative action
Parliamentary procedure:	none

Please explain the policy intention behind the taking of the power, in section 64 of the Bill, for the Scottish Ministers to impose charges of such amounts as they consider appropriate, for the purposes of or in connection with the carrying out of their functions under the Bill.

In particular, please explain the circumstances in which this power might be exercised and the types and level of fees which might be imposed under this section. Why does the Scottish Government consider that taking a power to impose such charges by way of executive action is appropriate, as opposed (for example) to a power to set and amend charges by way of subordinate legislation?

Please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Monday 12 June 2017.

Thank you.

Lynn Russell
Assistant Clerk to the Delegated Powers and Law Reform Committee