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Reform Committee
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Dear Lynn

Forestry and Land Management (Scotland) Bill at Stage 1

Thank you for your letter of 30 May setting out the questions raised by the Delegated Powers and Law Reform Committee during their consideration of the delegated powers contained the Forestry and Land Management (Scotland) Bill. I have addressed each point in turn below.

Section 24 - unauthorised felling: exemptions

1. 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?

The Scottish Government is grateful for the opportunity to describe in more detail the rationale for proposing that the exemptions under section 24 be set out in Regulations. It is true that setting out initial exemptions on the face of the Bill, together with a power to amend those exemptions by regulations, would provide the same intended flexibility in the long term.

It would however remove the opportunity to enter into open and detailed discussions on exemptions with interested parties, with all those involved fully informed of the detail of the proposed primary legislation now that the Bill has begun its Parliamentary scrutiny, in order to draft them. Those discussions are intended to review the current exemptions, determine whether changes are required and, if necessary, make those changes as the new

Regulations are developed – with critical input from FC staff, the forestry sector and NGOs with an interest. These discussions would have been difficult to have prior to the publication of the Bill but the Scottish Government feels that the opportunity should be taken to review the exemptions, in particular given that the exemptions have not been amended for some time.

Section 27: decisions on applications

2. 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.

The Scottish Government has proposed a framework in this Bill that ties decision making to sustainable forest management (SFM). In relation to decisions on applications, section 27(2) *requires* Ministers to have regard to SFM in making decisions – we therefore require the powers in Section 27(8) not to set the principles on which decisions are made but to set out, in order to provide clarity to applicants, how the process of decision taking will work. This could cover a broad range of detail such as how site visits to assess an application would be conducted, what communication the applicant can expect from the regulator and the period of time that must elapse before an application can be made again after permission is refused. Those details are, of course, crucial to potential applicants but the Scottish Government considers negative procedure strikes the correct balance between the need for flexibility in the system and the need to make proper use of Parliamentary time while ensuring suitable scrutiny.

Section 29: compensation for refusal of felling permission

3. 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).

The entitlement to compensation is tied to a person having suffered a loss as a result of permission being refused. While the principle is clear, the power at section 29(2) is required in order to specify what the boundaries are. In the simplest circumstances, for example



Yours sincerely



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