EXPLANATORY MEMORANDUM TO

THE FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018 (CONSEQUENTIAL PROVISIONS AND MODIFICATIONS) ORDER 2019

2019 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This Order makes provision in consequence of the Forestry and Land Management (Scotland) Act 2018 ("the 2018 Act"). Specifically, it makes provision enabling the establishment of cross-border arrangements; confers functions relating to renewable energy installations; and makes consequential modifications to primary and secondary legislation to reflect the removal of the Forestry Commissioners' functions in or as regards Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the UK however Article 5 extends to Scotland only. Modifications to primary or secondary legislation made by the Order have the same extent as the legislation being modified.

4.2 The territorial application of this instrument follows its extent.

5. European Convention on Human Rights

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

"In my view the provisions of The Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 104 of the Scotland Act 1998 allows provision to be made which is necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament.

6.2 The 2018 Act introduces a new legislative framework for the regulation, support and development of forestry in Scotland. The Act confers on the Scottish Ministers powers and duties regarding the management of forestry in Scotland, and provides that the Forestry Commissioners' functions are no longer exercisable in or as regards Scotland. The 2018 Act also repeals the Forestry Act 1967 as it applies to Scotland.

6.3 This Order is made in addition to an Order under sections 90 and 93 of the Scotland Act 1998 - the Scotland Act 1998 (Agency Arrangements) (Specification) (Transfer of Property, Rights and Liabilities) Order 2019 ("the section 90 Order"). This Explanatory Memorandum should accordingly be read in conjunction with the Explanatory Memorandum to that instrument.

7. Policy background

What is being done and why?

7.1 Over the last decade, responsibility for forestry has been increasingly managed separately by England, Scotland and Wales. In 2013 the functions undertaken by the Forestry Commissioners in Wales were transferred to the Welsh Ministers and Natural Resources Wales. While forestry policy is a devolved matter in Scotland, the management of forestry, including of Scotland's National Forest Estate ("NFE"), has to date been undertaken by the Forestry Commissioners, who were designated as a cross-border public authority on devolution in 1999. Selected functions continue to operate across Great Britain including functions relating to forestry science and research, tree health and common codes and standards.

7.2 This Order, together with the section 90 Order, forms part of the programme of work to complete the devolution of forestry to Scotland, following the passing of the 2018 Act. Once the Orders and the 2018 Act come into force, the Forestry Commissioners will no longer have responsibility for the management of forestry in Scotland, which will instead be undertaken by the Scottish Ministers.

7.3 Articles 3 and 4 of the Order enable cross-border arrangements to be entered into between the Scottish Ministers, the Forestry Commissioners and various other bodies. While forestry functions and management of the NFE will be fully devolved, the Order will enable the Scottish Ministers to enter into arrangements with other bodies so that each may deliver certain functions on the others' behalf. This is to avoid duplication of effort by replicating the same functions unnecessarily in more than one jurisdiction; to maintain a coordinated approach to issues such as the management of plant-based pests and diseases; and to ensure effective and sustainable arrangements that suit each administration and which are funded proportionately.

7.4 Provision is also being made by the section 90 Order for similar arrangements to be made between the Scottish Ministers and Secretary of State.

7.5 Article 5 of the Order confers power upon the Scottish Ministers to promote, develop, construct and operate installations for or in connection with the generation, transmission, distribution and supply of electricity produced from renewable sources; and to use electricity produced by virtue of those powers. These functions are currently exercisable for Scotland by the Forestry Commissioners, however given the repeal of the Forestry Act 1967 for Scotland by the 2018 Act, the functions are to be transferred to the Scottish Ministers.

7.6 The 2018 Act repeals the Forestry Act 1967 as it applies to Scotland. Part 1 of the Schedule to the Order accordingly makes a number of consequential amendments to the 1967 Act and to other primary legislation to reflect the removal of the Forestry Commissioners' functions in or as regards Scotland. Part 2 of the Schedule to the Order makes consequential modifications to various pieces of secondary legislation, again to reflect the new arrangements regarding the management of forestry in Scotland, put in place by the 2018 Act.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 While the Order makes modifications of primary and secondary legislation, these are minor and intended purely to clarify the legislation following the removal of the Forestry Commissioners' functions in or as regards Scotland.

10. Consultation outcome

10.1 No public consultation is required prior to the Order being laid.

10.2 Proposals for the new legislative framework, and continuing cross-border arrangements and collaboration, were subject to public consultation by the Scottish Government in 2016 as part of the policy development process for the 2018 Act. This consultation included individual meetings with stakeholders and partners before, during and after a formal public consultation period; sector-wide summits; and engagement with Forestry Commission staff and with the Trade Unions.

10.3 The formal public consultation on the Future of Forestry in Scotland was launched on 31 August 2016 and ran until 9 November. A total of 604 responses were received from public, private and third sector organisations and from individuals. Non-confidential consultation responses were published in December 2016 on the Scottish Government website. An independent analysis of the consultation responses was published on 13 February 2017.

10.4 Overall, the responses to the consultation suggested support for completing the devolution of forestry. In relation to continuing cross border collaboration, most respondents either agreed with the priorities set out in the consultation or proposed additional areas for consideration which have been taken into account during discussions between the Scottish, Welsh and UK Governments on the detail of the cross-border collaboration that will take place[1].

11. Guidance

11.1 This Order stands alone, and guidance is not necessary.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

[1] The consultation, published responses and analysis are available at https://consult.scotland.gov.uk/forestry/futureof-forestry/

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no impact on business is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Order is consequential upon the 2018 Act. No formal monitoring or review is considered necessary.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State for Scotland has made the following statement:

14.3 "There is no need for review or monitoring as the Order does not regulate businesses."

15. Contact

15.1 Eleanor Tankard at the Office of the Secretary of State for Scotland. Telephone: 0207 270 6765 or email: eleanor.tankard@scotlandoffice.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachel Irvine or Alison Evans (job share), Deputy Director for Constitutional Policy, at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for Scotland at the Office of the Secretary of State for Scotland can confirm that this Explanatory Memorandum meets the required standard.