EXECUTIVE NOTE

THE FORESTRY COMMISSIONERS (CLIMATE CHANGE FUNCTIONS) (SCOTLAND) ORDER 2012

S.S.I 2012/DRAFT

Introduction

The Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 is laid in exercise of the powers conferred by section 59(1) of the Climate Change (Scotland) Act 2009 ("2009 Act")**.** The instrument is subject to affirmative procedure.

Purpose of the Instrument

The purpose of this instrument is to amend the Forestry Act 1967 in order to modify the functions of the Forestry Commissioners in Scotland by inserting a new sub-section (2A) into section 1 of the Forestry Act 1967. The new sub-section provides that the Commissioners also have the general duty of using land in Scotland placed at their disposal by the Scottish Ministers in the way best calculated to contribute to the delivery of the targets set under Part 1 of the 2009 Act.

Policy Background

Most public bodies in Scotland are under a duty, when exercising their functions, to act in the way best calculated to contribute to the delivery of the climate change targets set in or under Part 1 of the 2009 Act. The Forestry Commissioners do not fall under the definition of "public body" in the 2009 Act and therefore they are not currently subject to this duty. However, the Forestry Commissioners voluntarily undertake forest management operations in a way best calculated to contribute to the delivery of the climate change targets and would be expected to have regard to the most up to date guidance on how best to achieve this; currently this is available in the *Forestry and Climate Change Guidelines*, published in 2011 as part of the *UK Forestry Standard*[1].

The Forestry Commissioners manage a large estate (of over 650,000 hectares) on behalf of Scottish Ministers and the Scottish Ministers consider it expedient to subject the Forestry Commissioners to the same duty of contributing to climate change targets not only in relation to forest management, but the Scottish Ministers also wish the Forestry Commissioners to make full use of the national forest estate in Scotland for generating renewable energy. It is anticipated that some 2 gigawatts of capacity could be installed by the year 2020 through the development of windfarms and hydro-electric schemes. While leasing is the traditional approach, joint venture arrangements with commercial developers have considerable potential to increase returns to the taxpayer and to serve as a vehicle for stronger community engagement; in addition, there could be potential for self-development by the Commission of small scale schemes.

[1] http://www.forestry.gov.uk/ukfs

Legislative Context

Section 59 of the Climate Change (Scotland) Act 2009 gives Scottish Ministers powers, by order, to modify the functions of the Forestry Commissioners where necessary or expedient in relation to climate change. While section 44 (1)(a) of the 2009 Act places a duty on public bodies to act, in exercising their functions, in the way best calculated to contribute to the delivery of the climate change targets set in or under Part 1 of the 2009 Act, section 44 (2) defines "public bodies" in a way that does not include the Forestry Commissioners. This instrument will place upon Commissioners the general duty of using land in Scotland placed at their disposal by the Scottish Ministers in the way best calculated to contribute to the delivery of climate change targets. In addition, while the Forestry Commissioners have powers to enter into joint ventures in Scotland for the purpose of exercising their powers under the Forestry Act 1967, these functions do not expressly include the development of the renewable potential of the land put at their disposal by Scottish Ministers. In order to avoid anything in an order under section 59 of the 2009 Act which might be construed that it relates to reserved matters concerning the generation, transmission, distribution and supply of electricity, the intention is that an order under section 104 of the Scotland Act 1998 will be laid at Westminster, in consequence of this instrument, with the purpose of giving the Forestry Commissioners powers to use land at their disposal in Scotland to generate, transmit, distribute and supply electricity from renewable sources where that would help the Scottish Ministers in achieving their climate change targets.

Territorial Extent and Application

This instrument extends to Scotland.

Consultation

There was a 12 week public consultation on the provisions in the Climate Change (Scotland) Bill relating to powers for Scottish Ministers, by order, to modify the functions of the Forestry Commissioners where necessary or expedient for climate change. The consultation was launched on 4 November 2008 and closed on 27 January 2009. An analysis of the responses is available at http://www.forestry.gov.uk/pdf/ccbillconsultationanalysis.pdf/$FILE/ccbillconsultationanalysis.pdf. There were 368 responses to the question "what are your views on allowing the Forestry Commissioners to enter into joint ventures, with the intention of participating in renewable energy programmes on the national forest estate?" 70% of respondents expressed positive views on this option, although a number added caveats; 15% expressed negative views; the remainder appeared to be neutral or undecided. A number of the concerns that were expressed have since been addressed by establishing a specialist forest renewables business unit within Forestry Commission Scotland, with dedicated expertise to take forward developments and offering a clear separation of functions from those parts of Forestry Commission Scotland responsible for regulatory activities in respect of renewables developments.

Scottish Government officials have worked closely with officials working for the UK Governments with a view to ensuring that this instrument and the proposed order under section 104 of the Scotland Act 1998 form a coherent legislative package.

Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared for this instrument as it does not impose or reduce costs on business, charities or voluntary bodies. The impact on the public sector is insignificant, other than providing the Forestry Commissioners with greater flexibility to take forward renewable energy developments.

Financial effects

There will be no financial effects arising from this Order, other than those arising from the Forestry Commissioners having greater flexibility to take forward renewable energy developments.

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