

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTLAND ACT 1998 (SPECIFICATION OF FUNCTIONS AND TRANSFER**  
**OF PROPERTY ETC.) ORDER 2019**

**2019 No. 183**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Office for the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The instrument forms part of a programme of work to complete the devolution of forestry to Scotland, following the enactment of the Forestry and Land Management (Scotland) Act 2018 (“the 2018 Act”). The purpose of the Order is to transfer to the Scottish Ministers the property and liabilities of the Forestry Commissioners held or used by the Forestry Commissioners in connection with the exercise of their functions in or as regards Scotland. The Order also specifies certain functions of the Scottish Ministers for the purposes of section 93 of the Scotland Act 1998 (“the 1998 Act”). The effect of specification is that the Scottish Ministers and the Secretary of State may enter into arrangements whereby the Secretary of State may exercise the specified functions on behalf of the Scottish Ministers.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This Order represents the first use of the power in section 90 of the 1998 Act. Section 90 applies if an Act of the Scottish Parliament provides for any functions of a cross-border public authority to be no longer exercisable in or as regards Scotland. The Forestry Commissioners were designated as a cross-border public authority by the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1998 (S.I. 1998/1319). Section 81 of the 2018 Act provides that the functions of the Forestry Commissioners which are exercisable in or as regards Scotland immediately before the date on which that section comes into force are no longer exercisable in or as regards Scotland.

*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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application.**

- 4.1 The territorial extent of this instrument is the whole of the UK.

4.2 The territorial application of this instrument is Scotland, only with the exception of Article 3 which applies in Scotland and England.

## **5. European Convention on Human Rights**

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **6. Legislative Context**

6.1 The 2018 Act introduces a new legislative framework for the regulation, support and development of forestry in Scotland. The 2018 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.

6.2 This Order transfers to the Scottish Ministers the property and liabilities of the Forestry Commissioners in connection with the exercise of their functions in or as regards Scotland. As of the date section 81 of the 2018 Act comes into force, all property and liabilities held by the Forestry Commissioners wholly or mainly for or in connection with their operations in Scotland will be transferred to the Scottish Ministers, subject to a limited number of exceptions.

6.3 The Order also specifies certain functions which are exercisable by the Scottish Ministers. The effect of specification is that those functions may be the subject of an agency arrangement, and exercised on the Scottish Ministers' behalf by a Minister of the Crown.

6.4 The Order is made alongside an Order under section 104 of the Scotland Act 1998 - the Forestry and Land Management (Scotland) Act (Consequential Provisions and Modifications) Order 2019 ("the section 104 Order") which makes provision consequential upon the 2018 Act. 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, 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, and the section 104 Order which accompanies it, 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 Article 3 enables agency arrangements to be entered into between the Scottish Ministers and Secretary of State. While forestry functions and management of the NFE will be fully devolved, the Order will enable the Scottish Ministers to enter into arrangements with the Secretary of State so that the Secretary of State may exercise the specified functions on the Scottish Ministers' 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. Provision is also being made by the section 104 Order for similar arrangements to be made between the Scottish Ministers and the Welsh Ministers, Natural Resources Wales and the Forestry Commissioners.
- 7.4 The Forestry Commissioners currently hold property and liabilities which should be transferred to Scottish Ministers as a consequence of the 2018 Act. The Order accordingly provides for the transfer of all property and liabilities held by the Forestry Commissioners wholly or mainly for or in connection with the exercise of their functions immediately before the date on which section 81 of the 2018 Act comes into force. Some property is excepted from the transfer, and this is set out in the Schedule to the Order.
- 7.5 It has been agreed between the Scottish Government and the Department for Environment, Food and Rural Affairs that all property, rights, liabilities and interests managed by Forest Enterprise Scotland and Forestry Commission Scotland, the two parts of the Forestry Commission operating solely in Scotland at the point of transfer, will transfer to the Scottish Ministers. It has also been agreed that the Forestry Commissioners will retain all property, rights, liabilities and interests managed by all other parts of the Forestry Commission, including the Forest Research agency, even where they are physically located in Scotland. The Forestry Commissioners will also retain the excepted property listed in the Schedule to the Order.
- 7.6 The Order also makes consequential and supplementary provision, as well as transitional and savings arrangements.
- 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 This Order stands alone.
- 10. Consultation outcome**
- 10.1 No public consultation is required prior to Order being laid.
- 10.2 Proposals for the new legislative framework 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<sup>1</sup>.
- 10.5 The Forestry Commissioners were consulted on the contents of the Order.

## **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.
- 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.

## **12.4 Regulating small business**

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

## **13. Monitoring & review**

- 13.1 No monitoring or review of the effects of the Order are deemed to be required.
- 13.2 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:
- 13.3 “There is no need for review or monitoring as the Order does not regulate businesses.”

## **14. Contact**

- 14.1 Eleanor Tankard at the Office of the Secretary of State for Scotland. Telephone: 0207 270 6765 or email: [eleanor.tankard@scotlandoffice.gsi.gov.uk](mailto:eleanor.tankard@scotlandoffice.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 14.2 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.
- 14.3 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.

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