
STATUTORY INSTRUMENTS

2019 No. 734

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
FORESTRY**

**The Forestry and Land Management (Scotland) Act 2018
(Consequential Provisions and Modifications) Order 2019**

Made - - - - 28th March 2019

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998⁽¹⁾.

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019.

(2) This Order comes into force on the day on which section 81 of the Forestry and Land Management (Scotland) Act 2018⁽²⁾ comes into force.

(3) Article 5 extends to Scotland only.

(4) Any modification made by the Schedule has the same extent as the provision being modified.

Interpretation

2. In this Order—

“the 2018 Act” means the Forestry and Land Management (Scotland) Act 2018,

“the 1967 Act” means the Plant Health Act 1967⁽³⁾,

(1) 1998 c.46.
(2) 2018 asp 8.
(3) 1967 c.8.

“the 2002 Regulations” means the Forest Reproductive Material (Great Britain) Regulations 2002(4),

“the 2015 Regulations” means the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(5),

“the Forestry Commissioners” means the Forestry Commissioners referred to in section 1(1) of the Forestry Act 1967(6).

Cross-border arrangements: Scottish Ministers

3.—(1) The Scottish Ministers may, for the purposes of carrying out the functions specified in paragraph (3), enter into arrangements with any of the persons or bodies mentioned in paragraph (2) for those functions to be exercised by that person or body on behalf of the Scottish Ministers.

(2) The persons or bodies are—

- (a) the Forestry Commissioners,
- (b) the Natural Resources Body for Wales(7), and
- (c) the Welsh Ministers.

(3) The functions are—

- (a) the Scottish Ministers’ functions under the 2018 Act,
- (b) the Scottish Ministers’ functions exercisable by or under any order made under the 1967 Act,
- (c) the Scottish Ministers’ functions referred to in Article 5(2)(a),
- (d) the Scottish Ministers’ functions under the 2002 Regulations, and
- (e) the Scottish Ministers’ functions under the 2015 Regulations.

(4) An arrangement entered into by virtue of paragraph (1) does not affect the Scottish Ministers’ responsibility for the exercise of their functions specified in paragraph (3).

(5) The functions in paragraph (3) do not include functions of making, confirming or approving subordinate legislation.

Cross-border arrangements: Forestry Commissioners

4.—(1) The Forestry Commissioners may, for the purposes of carrying out the functions specified in paragraph (2), enter into arrangements with the Scottish Ministers for those functions to be exercised by the Scottish Ministers on behalf of the Forestry Commissioners.

(2) The functions are—

- (a) the Forestry Commissioners’ functions under the Forestry Act 1967,
- (b) the Forestry Commissioners’ functions under the Forestry Act 1979(8),
- (c) the Forestry Commissioners’ functions exercisable by or under any order made under the 1967 Act,
- (d) the Forestry Commissioners’ functions under the 2002 Regulations, and
- (e) the Forestry Commissioners’ functions under the 2015 Regulations.

(4) S.I. 2002/3026.

(5) S.I. 2015/350.

(6) 1967 c.10.

(7) The Natural Resources Body for Wales is established by S.I. 2012/1903.

(8) 1979 c.21.

(3) An arrangement entered into by virtue of paragraph (1) does not affect the Forestry Commissioners' responsibility for the exercise of their functions specified in paragraph (2).

(4) The functions in paragraph (2) do not include functions of making, confirming or approving subordinate legislation.

Renewable energy installations

5.—(1) The Scottish Ministers may, for the purposes of, and in connection with, the carrying out of the functions specified in paragraph (2)—

- (a) promote, develop, construct and operate installations for or in connection with the generation, transmission, distribution and supply of electricity produced from renewable sources, and
- (b) use electricity produced by virtue of the powers conferred by sub-paragraph (a).

(2) The functions are —

- (a) the Scottish Ministers' functions under section 44 of the Climate Change (Scotland) Act 2009 (duties of public bodies relating to climate change)⁽⁹⁾,
- (b) the Scottish Ministers' functions under section 11 of the 2018 Act (management of forested land),
- (c) the Scottish Ministers' functions under section 15 of the 2018 Act (management of land further to sustainable development).

(3) In paragraph (1), “renewable sources” means sources other than—

- (a) fossil fuel,
- (b) energy derived from fossil fuel, and
- (c) nuclear fuel.

(4) In paragraph (3), “fossil fuel” means—

- (a) coal,
- (b) lignite,
- (c) peat,
- (d) natural gas (within the meaning of the Energy Act 1976)⁽¹⁰⁾,
- (e) crude liquid petroleum,
- (f) petroleum products (within the meaning of the Energy Act 1976), and
- (g) any substance produced directly or indirectly from a substance mentioned in any of sub-paragraphs (a) to (f).

(5) Nothing in this article is to be construed as exempting the Scottish Ministers from the requirements of Part 1 of the Electricity Act 1989⁽¹¹⁾.

Consequential modifications

6. The modifications in the Schedule have effect.

⁽⁹⁾ 2009 asp 12.

⁽¹⁰⁾ 1976 c.76.

⁽¹¹⁾ 1989 c.29.

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Dover House London
28th March 2019

David Mundell
Secretary of State
Office of the Secretary of State for Scotland

SCHEDULE

Article 6

PART 1

MODIFICATIONS OF PRIMARY LEGISLATION

New Forest Act 1964

1. The New Forest Act 1964⁽¹²⁾ is amended as follows.
2. In section 14(3) (expenses), omit “or in Scotland”.

Forestry Act 1967

3. The Forestry Act 1967⁽¹³⁾ is amended as follows.
4. In section 1 (Forestry Commission)—
 - (a) in subsection (1A)(a), omit “and Scotland”,
 - (b) in subsection (2), omit “in Scotland,”,
 - (c) omit subsection (2A),
 - (d) in subsection (3), omit “in Scotland,”,
 - (e) in subsection (3A)(a), omit “and, in Scotland, the delivery of the climate change targets”,
 - (f) in subsection (4), omit paragraph (b) (and the word “and” immediately preceding it),
 - (g) omit subsection (6).
5. In section 2 (constitution, administration, etc., of Commission)—
 - (a) in subsection (3), for “committees for England and Scotland respectively” substitute “a committee for England”,
 - (b) in subsection (4), for “committees” substitute “committee”.
6. In section 3 (management of forestry land)—
 - (a) in subsection (1), omit “in Scotland placed at their disposal by the Scottish Ministers under this Act or”,
 - (b) in subsection (2), omit “or a relevant person”.
7. In section 5 (forestry dedication covenants and agreements)—
 - (a) in the title, omit “and agreements”,
 - (b) in subsection (1), omit “and the Scottish Ministers as regards Scotland”,
 - (c) omit subsection (1)(b) (and the word “and” immediately preceding it),
 - (d) omit subsection (3).
8. In section 6 (requirements for haulage facilities)—
 - (a) omit subsection (4)(b) (and the word “and” immediately preceding it),
 - (b) in subsection (5)—
 - (i) omit “as follows that is to say”,
 - (ii) omit paragraph (b) (and the word “and” immediately preceding it).

⁽¹²⁾ 1964 c.83.

⁽¹³⁾ 1967 c.10.

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9. In section 7A(1) (incidental powers of Commissioners), omit “land in Scotland or”.
10. In section 8(1)(c) (miscellaneous powers of Commissioners), omit “in Scotland,”.
11. In section 8A (general duty of Ministers), omit from the second “and” to the end.
12. In section 9 (requirement of licence for felling)—
 - (a) in subsection (4)(d), omit “, or under the Town and Country Planning (Scotland) Act 1997”, and
 - (b) in subsection (6), in paragraph (a) of the definition of “relevant territory”—
 - (i) omit “and Scotland”,
 - (ii) omit “or Scotland”.
13. In section 10 (application for felling licence and decision of appropriate forestry authority thereon)—
 - (a) in subsection (4)(b), omit “, and the Scottish Ministers as regards land in Scotland”,
 - (b) in subsection (7), omit “or agreement” in both places where it occurs.
14. In section 12(2) (conditional licences), omit “or agreement” in both places where it occurs.
15. In section 14 (tree-felling in accordance with approved working plan etc.)—
 - (a) in subsection (1), omit “or agreement”,
 - (b) in subsection (2), omit “, and the Scottish Ministers as regards the felling of trees in Scotland certify”,
 - (c) in subsection (5), omit “or agreement”.
16. In section 15 (trees subject to preservation order under Planning Acts)—
 - (a) in subsection (1A), omit paragraph (b),
 - (b) in subsection (5A), omit paragraph (b).
17. In section 16 (review of refusal or conditions of licence)—
 - (a) in subsection (2), omit “, and the Scottish Ministers where the application was to fell trees in Scotland”,
 - (b) in subsection (2)(a)—
 - (i) omit “or, as the case may be, the Scottish Ministers”,
 - (ii) omit “or they are”,
 - (c) in subsection (2)(b), omit “or, as the case may be, the Scottish Ministers”,
 - (d) in subsection (3), omit “or, as the case may be, the Scottish Ministers”.
18. In section 17A (power of appropriate forestry authority to require restocking after unauthorised felling)—
 - (a) in subsection (1)—
 - (i) omit paragraph (b) (and the word “or” immediately preceding it),
 - (ii) in the text immediately following that paragraph, omit “(in either case)”,
 - (b) omit subsection (2).
19. In section 17B (appeal against restocking notice)—
 - (a) in subsection (1), omit “, and the Scottish Ministers where the restocking notice relates to land in Scotland”,
 - (b) in subsection (1)(a)—

- (i) omit “or, as the case may be, the Scottish Ministers”,
 - (ii) omit “or they are”,
 - (c) in subsection (1)(b), omit “or, as the case may be, the Scottish Ministers”,
 - (d) in subsection (2), omit “or, as the case may be, the Scottish Ministers” in both places where it occurs.
- 20.** In section 18(5) (felling directions), omit paragraph (b).
- 21.** In section 19 (restrictions on appropriate forestry authority’s power under s. 18)—
- (a) in subsection (1)(b), omit “or agreement”,
 - (b) in subsection (1)(c), omit “or agreement”,
 - (c) in subsection (3), omit “, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland”.
- 22.** In section 20(1) (review of felling directions)—
- (a) omit “, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland”,
 - (b) omit “or, as the case may be, the Scottish Ministers”,
 - (c) omit “or they are”.
- 23.** In section 21 (courses open to person adversely affected by felling directions)—
- (a) in subsection (2), omit “, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland”,
 - (b) in subsection (2)(b), omit “or, as the case may be, the Scottish Ministers”,
 - (c) in the words following paragraph (b) of subsection (2), omit “or, as the case may be, the Scottish Ministers” in each place where it occurs,
 - (d) in subsection (3), omit “or, as the case may be, the Scottish Ministers”,
 - (e) in subsection (4), omit “or, as the case may be, the Scottish Ministers”,
 - (f) in subsection (5)—
 - (i) omit “or, as the case may be, the Scottish Ministers”,
 - (ii) omit “or they think”,
 - (g) in subsection (6), omit “or, as the case may be, the Scottish Ministers”,
 - (h) in subsection (7), omit “a tree preservation order, or under”.
- 24.** In section 22 (consequences of acceptance by Minister of notice under section 21)—
- (a) in subsection (1), omit “or, as the case may be, the Scottish Ministers”,
 - (b) in subsection (4), omit “or, as the case may be, the Scottish Ministers”,
 - (c) in subsection (4)(a), omit “or, as the case may be, the Scottish Ministers”,
 - (d) in subsection (5), omit “or section 39(1) of the Land Compensation (Scotland) Act 1963”.
- 25.** In section 24(2A) (notice to require compliance with conditions or directions), omit paragraph (b).
- 26.** In section 25 (appeal against notice under s. 24)—
- (a) in subsection (1)—
 - (i) omit “and the Scottish Ministers where the notice is given in respect of land or trees in Scotland”,

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- (ii) omit “or, as the case may be, the Scottish Ministers”,
 - (b) in subsection (2), omit “or the Scottish Ministers”,
 - (c) in subsection (3), omit “or, as the case may be, the Scottish Ministers”,
 - (d) in subsection (4), for “or, as the case may be, the Scottish Ministers and he or they” substitute “and who”.
- 27.** In section 27 (committees of reference for purposes of sections 16, 17B, 20, 21 and 25)—
- (a) in subsection (1)—
 - (i) in paragraph (a), omit “, and the Scottish Ministers in relation to cases where the trees are, or the land is, in Scotland”,
 - (ii) in paragraph (b), omit “or, as the case may be, the Scottish Ministers”,
 - (b) in subsection (1A), omit “or Scotland”,
 - (c) in subsection (2)(b), omit “or, as the case may be, the Scottish Ministers”,
 - (d) in the words following subsection (3)(c), omit “or, as the case may be, the Scottish Ministers”,
 - (e) omit subsection (4A).
- 28.** In section 29 (provisions relating to mortgages, heritable securities and settled land)—
- (a) in the title, omit “, heritable securities”,
 - (b) omit subsection (2).
- 29.** In section 31 (determination of matters arising under sections 11, 14, 21 and 22)—
- (a) in subsection (1), omit paragraph (b) (and the word “and” immediately preceding it),
 - (b) omit subsection (2).
- 30.** In section 32 (regulations)—
- (a) in subsection (3), omit “, or as regards Scotland (but not both)”,
 - (b) omit subsection (5),
 - (c) omit subsection (6).
- 31.** In section 33 (application of Part 2 to Crown land)—
- (a) in subsection (4), omit “and the Scottish Ministers”,
 - (b) in subsection (5)(a), omit “or the relevant person”.
- 32.** In section 34 (meaning of “owner” in Part 2), omit subsection (3).
- 33.** In section 35 (interpretation of other expressions in Part 2)—
- (a) in the definition of “conservancy”, for “Great Britain” substitute “England and Wales”,
 - (b) for the definition of “mortgage” and “heritable security” substitute “mortgage” includes any charge for securing money or money’s worth, and references to a mortgagee are to be construed accordingly”,
 - (c) in the definition of “tree preservation order”, omit “or section 160 of the Town and Country Planning (Scotland) Act 1997”.
- 34.** In section 37(1)(b) (advisory committees), for “Great Britain” substitute “England and Wales”.
- 35.** In section 38 (composition etc. of advisory committees), omit subsection (5).
- 36.** In section 39 (power of minister to acquire and dispose of land)—

- (a) in subsection (1)—
 - (i) omit “, and the Scottish Ministers as regards Scotland”,
 - (ii) omit “or their”,
 - (iii) omit “or them”,
 - (b) in subsection (2)—
 - (i) omit “and the Scottish Ministers”,
 - (ii) omit “or them”,
 - (c) in subsection (3)—
 - (i) omit “and the Scottish Ministers”,
 - (ii) omit “or them”,
 - (iii) in paragraph (a), omit “or they think”,
 - (d) omit subsection (5),
 - (e) in subsection (6), omit “or the Scottish Ministers acquire”.
- 37.** In section 40 (compulsory purchase of land)—
- (a) in subsection (1), omit “and the Scottish Ministers”,
 - (b) in subsection (2)(c), omit sub-paragraph (ii) (and the word “and” immediately preceding it),
 - (c) in subsection (3), omit “or agreement”,
 - (d) in subsection (3)(a), omit sub-paragraph (ii) (and the word “and” immediately preceding it),
 - (e) in subsection (5), omit “and the Scottish Ministers”.
- 38.** In section 41 (Forestry Fund)—
- (a) omit subsection (4),
 - (b) in subsection (6), for “subsections (8) and (10)” substitute “subsection (8)”,
 - (c) omit subsections (10) and (11).
- 39.** In section 45 (annual report by commissioners)—
- (a) omit subsections (1), (2) and (4),
 - (b) in subsection (3), omit “other than such proceedings as regards Scotland”.
- 40.** In section 46 (appropriate legislative authority’s power to make byelaws), omit subsections (4A) and (4B).
- 41.** In section 49(1) (interpretation)—
- (a) in the definition of “the appropriate legislative authority” omit “and Scotland”,
 - (b) for the definition of “forestry dedication covenant” and “forestry dedication agreement” substitute ““forestry dedication covenant” has the meaning assigned to it by section 5,” and
 - (c) omit the definition of “relevant person”.
- 42.** In Schedule 1 (the Forestry Commission and its staff), in paragraph 7, omit sub-paragraph (3).
- 43.** In Schedule 2 (conveyancing and other provisions connected with forestry dedication), omit paragraph 4.

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44. In Schedule 3 (proceedings under Town and Country Planning Acts in relation to tree preservation orders), omit paragraphs 2 and 3.
45. In Schedule 4 (procedure for acquisition of land under s. 39 by agreement), omit paragraph 2.
46. In Schedule 5 (compulsory purchase)—
- (a) in paragraph 2—
 - (i) in sub-paragraph (1), omit “or, as the case may be, the Scottish Ministers”,
 - (ii) omit sub-paragraphs (1A) to (1C),
 - (b) in paragraph 3—
 - (i) in sub-paragraph (1), omit “or, as the case may be, the Scottish Ministers”,
 - (ii) in sub-paragraph (1), omit “and the Scottish Ministers may if they think fit”,
 - (iii) in sub-paragraph (2), omit “or the Scottish Ministers”,
 - (iv) in sub-paragraph (3), omit “or the Scottish Ministers”,
 - (c) in paragraph 4, for the words “paragraphs 5 and 6B”, substitute “paragraph 5”,
 - (d) in paragraph 5, omit “or, as the case may be, the Scottish Ministers” in both places where it occurs,
 - (e) omit paragraphs 6 to 6D,
 - (f) in paragraph 8, in sub-paragraph (3)—
 - (i) in the definition of “confirmed by Act”, omit “or (in relation to Scotland) that section and section 2(4) of the Act as read with section 10 thereof”,
 - (ii) in the definition of “the court”, omit “and, in relation to Scotland, the Court of Session”,
 - (g) omit paragraphs 13 and 14.

Agriculture Act 1967

47. The Agriculture Act 1967(14) is amended as follows.

48. In section 57(1) (interpretation of Part 3), in the definition of “the appropriate forestry authority”, omit “and Scotland”.

New Forest Act 1970

49. The New Forest Act 1970(15) is amended as follows.

50. In section 5(3) (expenses), omit “or in Scotland”.

House of Commons Disqualification Act 1975

51. The House of Commons (Disqualification) Act 1975(16) is amended as follows.

52. In Part 3 of Schedule 1 (other disqualifying offices), in the entry beginning with “Member, not being also a Forestry Commissioner or officer of the Forestry Commissioners”, omit “, Scotland”.

(14) 1967 c.2.

(15) 1970 c.21.

(16) 1975 c.24.

Forestry Act 1979

53. The Forestry Act 1979(17) is amended as follows.

54. In section 1 (finance for forestry)—

(a) in subsection (1)—

(i) omit “and the approval of the Scottish Ministers as regards Scotland,”,

(ii) omit “and Scotland”,

(b) omit subsection (3).

Environment Act 1995

55. The Environment Act 1995(18) is amended as follows.

56. In section 113(1) (disclosure of information), in paragraph (d), after “Commissioners” insert “or the Scottish Ministers”.

PART 2

MODIFICATIONS OF SUBORDINATE LEGISLATION

The Plant Varieties and Seeds Tribunal Rules 1974

57.—(1) The Plant Varieties and Seeds Tribunal Rules 1974(19) are amended as follows.

(2) In rule 2 (interpretation), in the definition of “respondent authority” after sub-paragraph (a) (ii) insert—

“(iii) the Scottish Ministers, where the appeal is made against their decision.”.

(3) In Schedule 1, in the introductory words to Form 8, after “[Forestry Commissioners]” insert “[Scottish Ministers]”.

(4) In paragraph 1(c) of Form 8, after “[Forestry Commissioners]” insert “[the Scottish Ministers]”.

The Road Vehicles (Construction and Use) Regulations 1986

58.—(1) Regulation 37 (audible warning instruments) of the Road Vehicles (Construction and Use) Regulations 1986(20) is amended as follows.

(2) After paragraph (5)(c) insert—

“(ca) owned by the Scottish Ministers for the purposes of their functions under the Forestry and Land Management (Scotland) Act 2018 and used from time to time for the purposes of fighting fires,”.

The Road Vehicles Lighting Regulations 1989

59.—(1) Regulation 3(2) (interpretation) of the Road Vehicles Lighting Regulations 1989(21) is amended as follows.

(17) 1979 c.21.

(18) 1995 c.25.

(19) S.I. 1974/1136, to which there are amendments not relevant to this Order.

(20) S.I. 1986/1078, to which there are amendments not relevant to this Order.

(21) S.I. 1989/1796, to which there are amendments not relevant to this Order.

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(2) In the table, in the definition of “Emergency vehicle”, in column 2, after paragraph (da) insert

—
“(db) a vehicle owned by the Scottish Ministers for the purposes of their functions under the Forestry and Land Management (Scotland) Act 2018 and used from time to time for the purposes of fighting fires.”.

The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999

60.—(1) The Schedule to the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(**22**) is amended as follows.

(2) In the table, omit the entries in columns 1 and 2 for the Forestry Commissioners.

The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999

61.—(1) The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999(**23**) is amended as follows.

(2) In Schedule 1 (cross-border public authorities) omit “Forestry Commissioners”.

(3) Schedule 12 (Forestry Commissioners) is revoked.

The Scotland Act 1998 (Cross-Border Public Authorities) (Forestry Commissioners) Order 2000

62. The Scotland Act 1998 (Cross-Border Public Authorities) (Forestry Commissioners) Order 2000(**24**) is revoked.

The Forest Reproductive Material (Great Britain) Regulations 2002

63.—(1) The Forest Reproductive Material (Great Britain) Regulations 2002(**25**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in the definition of “authorised officer”—

(i) in sub-paragraph (a) after “Regulations;”, omit “and”,

(ii) after sub-paragraph (a) insert—

“(aa) a person authorised by the Scottish Ministers to exercise their powers and execute their functions under these Regulations, and”.

(b) in the definition of “Master Certificate”—

(i) in sub-paragraph (d), after “regulation 25(5) and (6)”, insert “, a Master Certificate issued by the Scottish Ministers in accordance with regulation 25A(5) and (6),”,

(ii) in sub-paragraph (e) after “regulation 25(5),” insert “a Master Certificate issued by the Scottish Ministers in accordance with regulation 25A(5),”,

(c) in the definition of “region of provenance” after “the Commissioners” insert “, the Scottish Ministers,”.

(d) in the definition of “relevant territory”—

(22) [S.I. 1999/1319](#), to which there are amendments not relevant to this Order.

(23) [S.I. 1999/1747](#), to which there are amendments not relevant to this Order.

(24) [S.I. 2000/746](#), to which there are amendments not relevant to this Order.

(25) [S.I. 2002/3026](#). The definition of “authorised officer” in regulation 2 was substituted by [S.I. 2013/755](#).

- (i) in sub-paragraph (a) omit “and Scotland, and”,
 - (ii) after sub-paragraph (a) insert—
 - “(aa) Scotland, and”,
 - (e) in paragraph (6) after “the Commissioners” insert “, the Scottish Ministers”.
- (3) In regulation 5 (demarcation of regions of provenance in respect of certain basic material)—
- (a) in paragraph (1) omit “and Scotland” in each case where the words occur,
 - (b) after paragraph (1A) insert—
 - “(1AA) The Scottish Ministers shall demarcate regions of provenance in Scotland in respect of each of the species listed in Schedule 1 which exist in Scotland and shall allocate to each region of provenance an identity code.”,
 - (c) in paragraph (2) after “Commissioners” insert “, the Scottish Ministers”.
- (4) In regulation 6 (establishment and maintenance of the National Register)—
- (a) after paragraph (1A) insert—
 - “(1AA) The Scottish Ministers shall maintain that part of the National Register recording basic material approved by them under regulation 7.”,
 - (b) in paragraph (2) after “Commissioners” insert “, the Scottish Ministers”.
- (5) In regulation 7(11) (approval of basic material for use in the production of forest reproductive material) for sub-paragraph (b) substitute—
- “(b) the Scottish Ministers, in relation to basic material located in Scotland,
 - (c) the Commissioners, in relation to basic material located in England.”.
- (6) In regulation 11(4) (collection of forest reproductive material) for sub-paragraph (b) substitute—
- “(b) the Scottish Ministers, in relation to the collection, production or marketing of forest reproductive material in Scotland,
 - (c) the Commissioners, in relation to the collection, production or marketing of forest reproductive material in England.”.
- (7) In regulation 16 (registration of suppliers of forest reproductive material)—
- (a) in paragraph (1A)—
 - (i) for “two” substitute “three”,
 - (ii) in sub-paragraph (b) omit “or Scotland”,
 - (iii) at the end insert—
 - “(c) a part maintained by the Scottish Ministers which shall record suppliers whose principal place of business or trade is in Scotland.”,
 - (b) in paragraph (1B)—
 - (i) after sub-paragraph (a) insert—
 - “(aa) the Scottish Ministers, in relation to a supplier whose principal place of business or trade is in Scotland,”,
 - (ii) in sub-paragraph (b) omit “or Scotland”,
 - (c) in paragraph (6) after “Commissioners” insert “, the Scottish Ministers”.
- (8) In regulation 17(1)(c) (forest reproductive material which may be marketed)—
- (a) after “the Commissioners” insert “or the Scottish Ministers”,

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- (b) for “regulation 25(5) and (6);” substitute “regulation 25(5) and (6) or, as the case may be, regulation 25A(5) and (6);”.
- (9) In regulation 18(1) (licences) in sub-paragraphs (a) and (b) omit “or Scotland”.
- (10) After regulation 18 insert—

“Licences: Scotland

- 18A.**—(1) The Scottish Ministers may authorise a registered supplier by licence to—
 - (a) market forest reproductive material in Scotland which would otherwise be prohibited under regulation 17(1), or
 - (b) import into Scotland forest reproductive material which would otherwise be prohibited under regulation 25A.
- (2) The licence shall be in writing and may be granted—
 - (a) subject to conditions,
 - (b) for a definite or an indefinite period.
- (3) The Scottish Ministers may give an authorisation under paragraph (1)(a) or (b) only—
 - (a) if the forest reproductive material is to be marketed for use in tests, for scientific purposes or for genetic conservation purposes,
 - (b) if the forest reproductive material consists of seed units which are clearly shown not to be intended for forestry purposes, or
 - (c) in exercise of a derogation permitted by the Directive.
- (4) The Scottish Ministers may also give an authorisation under paragraph (1)(a) if the forest reproductive material is to be marketed for use in selection work.
- (5) If the Scottish Ministers decline to give an authorisation under paragraph (1), they shall give the applicant their reasons for doing so in writing.”.
- (11) In regulation 25 (prohibition against imports of forest reproductive material into England or Scotland from third countries) omit “or Scotland” in each place where the words occur in paragraphs (1), (2), (3) and (4).
- (12) After regulation 25 insert—

“Prohibition against imports of forest reproductive material into Scotland from third countries

- 25A.**—(1) No person may import forest reproductive material into Scotland from a third country for the purpose of marketing it unless—
 - (a) it has been produced in an EU-approved third country or a permitted third country,
 - (b) it is permitted material, and
 - (c) the requirements set out in Schedule 13 are met on entry.
- (2) A person intending to import permitted material into Scotland from an EU-approved third country or a permitted third country shall notify the Scottish Ministers of the arrival of the material at least three days before the intended date of its arrival into Scotland.
- (3) The notification to the Scottish Ministers shall be—
 - (a) in writing, and
 - (b) contain the following details in relation to the material:—
 - (i) its anticipated point of entry into Scotland, and

(ii) its anticipated date and time of arrival into Scotland.

(4) After the permitted material has been imported into Scotland, the owner of that material may apply to the Scottish Ministers for a Master Certificate in relation to the material.

(5) If the Scottish Ministers are satisfied that the requirements set out in Schedule 13 have been met in relation to the permitted material, the Scottish Ministers shall issue a Master Certificate for the material to its owner.

(6) In the case of permitted material from an EU-approved third country, a Master Certificate issued under paragraph (5) shall—

(a) be based on the OECD Certificate of Provenance, and

(b) indicate that the material has been imported under an equivalence regime.

(7) In this regulation, “OECD Certificate of Provenance” and “permitted material” have the meanings given in paragraph 2 of Schedule 13.”.

(13) In regulation 26 (keeping and production of documents)—

(a) in paragraphs (2) and (3)(b) in each case after “the Commissioners” insert “, the Scottish Ministers”,

(b) in paragraph (5) after “the Welsh Ministers” insert “or the Scottish Ministers”.

(14) In regulation 27(1) (powers to inspect and take samples) after “the Commissioners” insert “, the Scottish Ministers”.

(15) In regulation 32 (appeals)—

(a) after “the Commissioners” where the words first occur, insert “, the Scottish Ministers”,

(b) in paragraph (1)(h), for “the Commissioners or” substitute “the Commissioners’, Scottish Ministers’ or”,

(c) in paragraph (3) after “the Commissioners” insert “, the Scottish Ministers”.

The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004

64.—(1) The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004(**26**) is amended as follows.

(2) In article 2 (interpretation)—

(a) in the definition of “the appropriate authority”—

(i) in paragraph (a) omit “and Scotland”,

(ii) after paragraph (a) insert—

“(aa) in relation to Scotland, the Scottish Ministers, and”,

(b) in the definition of “authorised officer”—

(i) in paragraph (a) omit “and Scotland”,

(ii) after paragraph (a) insert—

“(aa) in relation to Scotland, an officer of the Scottish Ministers or any person, whether or not an officer of the Scottish Ministers, authorised by the Scottish Ministers to be an inspector for the purposes of the Plant Health (Forestry) Order 2005.”.

(26) [S.I. 2004/1684](#), to which there are amendments not relevant to this Order.

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The Plant Health (Forestry) Order 2005

65.—(1) The Plant Health (Forestry) Order 2005⁽²⁷⁾ is amended as follows.

(2) In article 2 (general interpretation)—

(a) in the definition of “the appropriate authority”—

(i) in paragraph (a) omit “and Scotland”,

(ii) after paragraph (a) insert—

“(aa) the Scottish Ministers, in relation to Scotland”,

(b) in the definition of “inspector” after “Commissioners” insert “or the Scottish Ministers”,

(c) in the definition of “relevant territory”—

(i) in paragraph (a) omit “and Scotland, and”,

(ii) after paragraph (b), insert—

“, and

(c) Scotland.”.

(3) In article 2A (inspectors)—

(a) in paragraphs (1)(a), (2)(a), (3)(a) and (6)(a)(i), (ii) and (iii) omit “or Scotland”,

(b) in paragraph (1), after sub-paragraph (a) insert—

“(aa) in relation to tree pests and relevant material landed in Scotland, by an inspector authorised by the Scottish Ministers,”,

(c) in paragraph (2), after sub-paragraph (a) insert—

“(aa) in relation to compliance with the provisions of this Order in Scotland, by an inspector authorised by the Scottish Ministers,”,

(d) in paragraph (3), after sub-paragraph (a) insert—

“(aa) in relation to premises or a free zone in Scotland, by an inspector authorised by the Scottish Ministers,”,

(e) in paragraph (5), after “the Commissioners” insert “, the Scottish Ministers”,

(f) in paragraph (6), after sub-paragraph (a) insert—

“(aa) by an inspector authorised by the Scottish Ministers in relation to—

(i) premises in Scotland in respect of which a notice has been served under this Order,

(ii) possession or control of tree pests or relevant material in Scotland, and

(iii) sale or other disposal of tree pests or relevant material in Scotland.”.

(4) In article 6 (advance notification of landing)—

(a) in paragraphs (1) and (2) omit “or Scotland” in each place where the words occur,

(b) after paragraph (1) insert—

“(1A) Subject to article 29(3), the landing in Scotland by any person of relevant material to which paragraph (2A) applies is prohibited unless notice is given to the Scottish Ministers in accordance with this article.”,

(c) after paragraph (2) insert—

⁽²⁷⁾ S.I. 2005/2517, to which there are amendments not relevant to this Order.

- “(2A) The prohibition on landing relevant material in paragraph (1A) applies to the landing in Scotland where Scotland is the point of entry of the material into the European Union of—
- (a) the relevant material mentioned in paragraph (2)(a) and (b), and
 - (b) any solid fuel wood to which paragraphs (2)(a) and (2)(b) do not apply and whose final destination is in Scotland.”.
- (5) In article 8(1) (exceptions from certain prohibitions and requirements) after “Article 6(1)” insert “and (1A)”.
- (6) In article 18 (prohibitions and restrictions on landing tree pests and relevant material)—
- (a) in paragraph (3) omit the words “or Scotland”,
 - (b) after paragraph (3) insert—
- “(3A) No person may bring any solid fuel wood into Scotland from another part of the European Union unless the Scottish Ministers are given notice in accordance with the requirements of Schedule 12.”.
- (7) In article 24 (registers of forestry traders)—
- (a) in paragraph (1)(a) omit “or Scotland”,
 - (b) after paragraph (1) insert—
- “(1A) The Scottish Ministers shall maintain a register listing the particulars set out in paragraph (3) with respect to each forestry trader who—
- (a) engages in any activity to which this Order applies at any premises in Scotland, and
 - (b) meets the requirements of this Part.”.
- (8) In article 30(7) (examination, sampling and marking) after “as the case may be,” insert “the Scottish Ministers or”.
- (9) In article 32(5) (actions which may be taken by an inspector) after “as the case may be,” insert “the Scottish Ministers or”.
- (10) In article 36(2) (failure to comply with a notice) after “the Commissioners” insert “, the Scottish Ministers”.
- (11) In article 40 (notification of the presence or suspected presence of certain tree pests)—
- (a) in paragraph (1B) omit “or Scotland”,
 - (b) after paragraph (1B) insert—
- “(1C) If the Scottish Ministers become aware of the presence or suspected presence of *Xylella fastidiosa* (Wells et al.) in any place or area in Scotland, the Scottish Ministers must ensure that any person having under their control trees which may be infected by *Xylella fastidiosa* (Wells et al.) is immediately informed of—
- (a) its presence or suspected presence,
 - (b) the possible consequences arising from its presence or suspected presence, and
 - (c) measures to be taken as a result.”.
- (12) In article 42A (power to share information for the purposes of the Order)—
- (a) after paragraph (1) insert—
- “(1A) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to the Scottish Ministers for the purposes of this Order.”,

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(b) in paragraph (2), for “Paragraph (1) is” substitute “Paragraphs (1) and (1A) are”.

The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006

66.—(1) The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006⁽²⁸⁾ is amended as follows.

(2) In article 2 (interpretation)—

(a) in the definition of “inspector” after “Commissioners” insert “or the Scottish Ministers”,

(b) in the definition of “the appropriate authority”—

(i) in sub-paragraph (a) omit “and Scotland”,

(ii) after sub-paragraph (a) insert—

“(aa) the Scottish Ministers, in relation to Scotland;”.

(3) In Schedule 2, in the form of certificate, after “FC SEAL”, before the Appendix, insert—

“[[or, as appropriate]

Signed on behalf of the Scottish Ministers

.....]”.

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

67.—(1) Schedule 1 to the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009⁽²⁹⁾ is amended as follows.

(2) In the entry for the Forestry Commission, in columns 2 and 3, omit “or Scotland”.

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

68.—(1) Schedule 2 to the Infrastructure Planning (Compulsory Acquisition) Regulations 2010⁽³⁰⁾ is amended as follows.

(2) In the entry for the Forestry Commission, in column 2, after “in England” omit “or Scotland”.

The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011

69.—(1) Schedule 1 to the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011⁽³¹⁾ is amended as follows.

(2) In the entry for the Forestry Commission, in columns 2 and 3, after “in England” omit “or Scotland”.

The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015

70.—(1) The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015⁽³²⁾ are amended as follows.

⁽²⁸⁾ S.I. 2006/2695, to which there are amendments not relevant to this Order.

⁽²⁹⁾ S.I. 2009/2264, to which there are amendments not relevant to this Order.

⁽³⁰⁾ S.I. 2010/104, to which there are amendments not relevant to this Order.

⁽³¹⁾ S.I. 2011/2055, to which there are amendments not relevant to this Order.

⁽³²⁾ S.I. 2015/350.

(2) In regulation 2 (interpretation), in the definition of “plant passport authority”, after “Forestry Commissioners” insert “or the Scottish Ministers”.

(3) In regulation 3 (fees)—

(a) in paragraph (1) for “Fees” substitute “In relation to England, fees”,

(b) after paragraph (1) insert—

“(1A) In relation to Scotland, fees payable under this regulation are payable to the Scottish Ministers.”.

The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

71.—(1) Schedule 1 to the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015(33) is amended as follows.

(2) In the entry for the Forestry Commission, in column 2, omit “or Scotland”.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 81 of the Forestry and Land Management (Scotland) Act 2018 (“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.

This Order is made under section 104, and other sections, of the Scotland Act 1998 (“the 1998 Act”) and makes provision in consequence of the 2018 Act.

Article 3 makes provision in relation to cross-border arrangements between the Scottish Ministers and other persons and bodies. Article 3 provides that the Scottish Ministers may enter into such arrangements with the persons and bodies listed in Article 3(2), for the purposes of carrying out the functions of the Scottish Ministers listed in Article 3(3). Article 4 makes provision for cross-border arrangements between the Forestry Commissioners and the Scottish Ministers, for the purposes of carrying out the functions of the Forestry Commissioners listed in Article 4(2).

Article 5 makes provision to allow Scottish Ministers to construct renewable energy installations and to generate, transmit, distribute, supply and use electricity produced from renewable sources for the purposes of the carrying out of the Scottish Ministers’ functions listed in Article 5(2). Article 5 reflects the powers previously held by the Forestry Commissioners in relation to Scotland under section 7AA of the Forestry Act 1967.

Article 6 and the Schedule make modifications to primary and secondary legislation in consequence of the 2018 Act.

A full regulatory impact assessment for this Order has not been produced as no impact on the private or voluntary sectors is foreseen.

(33) [S.I. 2015/462](#), to which there are amendments not relevant to this Order.

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