

# Forestry and Land Management (Scotland) Bill

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## Financial memorandum

### Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Forestry and Land Management (Scotland) Bill, introduced in the Scottish Parliament on 10 May 2017.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 11-EN);
  - a Policy Memorandum (SP Bill 11-PM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 11-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.
4. Forestry contributes almost £1 billion per year to the Scottish economy and supports more than 25,000 full-time equivalent jobs.<sup>1</sup> Forests and woodland cover 18% of the land area of Scotland, approximately 1.4 million hectares. Around one third of Scotland's woodland cover is on the Scottish Ministers' National Forest Estate (NFE), currently managed by the Forestry Commission's Executive Agency, Forest Enterprise Scotland; the

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<sup>1</sup> 'The economic contribution of the forestry sector in Scotland' (November 2015), pp.4–5 (<http://scotland.forestry.gov.uk/supporting/forest-industries/economic-contribution-report>).

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remaining two thirds is land owned privately and by communities, third sector organisations and local authorities.<sup>2</sup>

5. The Scottish Government's commitment to completing the devolution of forestry is an integral aspect of its wider ambitions to support the valuable and growing forestry sector in Scotland. Although forestry is broadly devolved and forestry strategy and policy in Scotland is set by the Scottish Ministers, the management of forestry in Scotland – including management of the Scottish Ministers' NFE – has remained the responsibility of the Forestry Commissioners. This is a UK Non-Ministerial Department with a statutory Board of Commissioners and, since devolution, a cross-border public authority.

6. The Bill is the first of three principal activities required to complete the devolution of forestry. As set out in more detail in the Policy Memorandum, three policy objectives are achieved through the Bill:

- **Improved accountability, transparency and policy alignment.** Transferring the powers and duties of the Forestry Commissioners, in so far as they relate to Scotland, to the Scottish Ministers ensures that forestry is fully accountable to Ministers and to the Scottish Parliament.
- **Modernisation.** Creating a new legislative framework to support, develop and regulate forestry replaces the application in Scotland of the outdated Forestry Act 1967.
- **More effective use of Scotland's publicly-owned land.** Ensuring that the Scottish Ministers can manage their own forestry assets with greater flexibility and enter into arrangements to manage land owned by other people or bodies (including public sector bodies).

7. Once the Bill has completed its passage, there will be two further pieces of work required to complete the devolution of forestry. The first is the passage of secondary orders under the Scotland Act 1998 in the UK Parliament to wind up the Forestry Commissioners as a cross-border public authority and to make other consequential provisions in light of the Bill. These orders will help establish new collaborative cross-border

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<sup>2</sup> 'Forestry Statistics 2016' (September 2016), Table 1.1, p.4 ([http://www.forestry.gov.uk/pdf/Ch1\\_Woodland\\_FS2016.pdf/\\$FILE/Ch1\\_Woodland\\_FS2016.pdf](http://www.forestry.gov.uk/pdf/Ch1_Woodland_FS2016.pdf/$FILE/Ch1_Woodland_FS2016.pdf)).

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arrangements with the UK and Welsh Governments, managed hitherto by the Forestry Commission; and make arrangements for transferring some of the Forestry Commissioners' property and liabilities to the Scottish Ministers. Financial, business and regulatory impacts will be considered as part of development of these orders, in line with standard requirements.

8. The second is to establish new organisational arrangements by transferring to the Scottish Government the activities presently delivered by the Forestry Commissioners in Scotland through Forestry Commission Scotland (FCS – policy, advice, regulation, grants) and Forest Enterprise Scotland (FES – an Executive Agency of the Forestry Commissioners which manages the NFE for forestry and other purposes). The forestry functions currently carried out by FCS will be undertaken by a dedicated Forestry Division to be created within the Environment & Forestry Directorate and a new Executive Agency called Forestry and Land Scotland (FLS) will take on functions currently carried out by FES. FLS will focus initially on the development and management of the NFE, with the potential – via powers contained in the Bill – to take on management of other land in the future. It is planned that a Scotland-wide network of local offices, which provides essential local engagement, will be retained by the Forestry Division and by FLS. The Annex shows a comparison between current structures and new ones.

## Government funding of forestry in Scotland

9. There will be no changes to current funding arrangements when the devolution of forestry is completed and Forestry Commissioners' functions, in so far as they relate to Scotland, are transferred to the Scottish Government. FCS is funded wholly through the Scottish Consolidated Fund under authorisation in the annual Budget Acts; FES receives about 20% of its funding from the same source (see Table 1 for 2017–18 figures). The remainder of FES's funding is derived from various income sources – principally from the sale of timber but also from renewable energy, deer management and tourist and recreational facilities.

10. Enabling powers in the Bill for financial assistance allow the Scottish Ministers to continue to distribute grants in the same manner as FCS and FES currently do. Any future activity relating to this will be a continuation of the activities already being carried out; there will be no change to the level of grant distributed as a result of the Bill's provisions.

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Table 1: 2017-18 Scottish Draft Budget: forestry spending plans<sup>3</sup>

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<sup>3</sup> Based on 'Scottish Government Draft Budget 2017-18 Level 4', Rural Economy and Connectivity (REC) section ([http://www.parliament.scot/FinancialScrutiny/2017-18\\_Budget\\_level\\_4.xlsx](http://www.parliament.scot/FinancialScrutiny/2017-18_Budget_level_4.xlsx)), available at <http://www.parliament.scot/parliamentarybusiness/17534.aspx>).

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<b>Level 3</b>	<b>2017-18 Draft Budget £'m</b>	<b>Description</b>
Woodland Grants	40.00	Supports the private forestry sector's contribution to the expansion and sustainable management of Scotland's woodlands (part of the Scottish Rural Development Programme)
Policy Regulation & Administration	4.24	Staff costs relating to forest policy and corporate services, including contribution to Forestry Commission's central shared services
Programme costs	16.03	Support for various initiatives, including Strategic Timber Transport Scheme, tree health monitoring, Native Woodland Survey for Scotland, Branching Out, Forest Education Initiative
Forest Enterprise	20.70	Supports the sustainable management of the National Forest Estate by Forest Enterprise
Depreciation	0.10	
EC Income	(19.80)	Funding from European Agricultural Fund for Rural Development to support woodland grants
<b>Total</b>	<b>61.27</b>	

## Approach to Financial Memorandum

11. The estimated figures in this Financial Memorandum are based on information on current levels of costs from FCS and FES and the collaboration of Scottish Government specialists in relevant areas.

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12. Stakeholders were asked to identify any additional costs and burdens as part of the formal public consultation on the Future of Forestry in Scotland (31 August– 9 November 2016) and the memorandum takes into account those views.

13. The Bill provides the legislative framework for the development, support and regulation of forestry policy. The Scottish Government has identified no financial implications for local authorities or other bodies, individuals or businesses as a direct result of the Bill's provisions and only minimal additional cost on the Scottish Administration. However, as mentioned earlier, the Bill is not the only vehicle required to complete the devolution of forestry. For the purpose of promoting understanding of the wider context and the Bill's place in completing the devolution of forestry, the Financial Memorandum also considers the potential impact of future cross-border collaboration with England and Wales and of new organisational structures in Scotland. The profiling of figures assumes that 1 April 2019 is the earliest possible date that the new organisational arrangements in Scotland could come into being.

14. This Financial Memorandum examines only costs which are additional to those which would have been incurred should forestry management not have been devolved to the Scottish Government. Therefore, operational costs which would have been incurred regardless of the decision to devolve control of forestry management are not discussed in detail, given these are already accounted for in budgets.

15. In determining which costs met this criterion, the majority of relevant costs could be tracked to two items of expenditure: integration of IT and branding activities required in preparation for the new organisational arrangements coming into being in 2019 (paragraphs 41-45 below). As final decisions are still being made, some uncertainty exists around the scale of costs. This Financial Memorandum therefore presents some potential costs as a range representing likely cost floors and ceilings. Forestry officials have indicated that costs, which run for four years to 2021, can be subsumed within the anticipated overall budget provision. This position will continue to be monitored to assess level of budgets received and affordability.

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## Costs on the Scottish Administration

16. This part of the Financial Memorandum sets out the estimated financial impacts on the Scottish Administration and provides ranges for cost figures where there is a margin of uncertainty in the best estimates, in line with Standing Order rule 9.3.2. The financial impacts associated directly with the Bill's provisions are considered first, then the indirect impacts which will follow on from the Bill. The latter are associated with the establishment of new collaborative arrangements across Great Britain and of the new organisational structures in Scotland.

## Direct costs associated with the Bill

17. The Policy Memorandum sets out the detail of the key policy areas addressed by the Bill. The Bill provides the legislative framework for forestry; it does not make changes to specific policies relating to forestry in Scotland (for example, the detail that is currently set out in the Scottish Forestry Strategy, how the NFE is managed, or how new planting is funded or approved). One, minimal additional cost (in relation to registration of notices) on the Scottish Administration has been identified as a direct result of the Bill's provisions.

## Duties placed on Ministers

18. The existing general duty on Forestry Commissioners to promote the interests of forestry is replaced with a modern, updated duty on the Scottish Ministers to promote sustainable forest management (SFM). SFM balances the economic, environmental and social benefits of forestry and brings the duty into line with modern forestry standards, as set out in the UK Forestry Standard.<sup>4</sup> FCS already uses the UK Forestry Standard to regulate the forestry sector in Scotland and therefore no additional costs arise.

19. The Scottish Ministers are also placed under a statutory duty to prepare a forestry strategy. The Scottish Forestry Strategy will set out the Scottish Ministers' objectives, priorities and policies with respect to SFM including economic, environmental and social objectives to be realised from forestry. Provision for consultation and for laying a Scottish Forestry Strategy before the Scottish Parliament will allow for appropriate engagement on and scrutiny of the development of the strategy.

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<sup>4</sup> <https://www.forestry.gov.uk/ukfs>.

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20. FCS already produces a Scottish Forestry Strategy (2006, reviewed in 2011)<sup>5</sup> on a non-statutory basis and the Scottish Government is committed to reviewing that strategy during the period of the current Land Use Strategy (2016-2021). The resource needed to produce a strategy, estimated at £0.07m for staffing and publication costs, is therefore already taken into account within existing FCS budget and staffing plans; no additional costs are anticipated as a result of the Bill's provisions.

21. The Scottish Ministers will replace the Forestry Commissioners as the competent body in relation to Scotland for tree health and silvicultural material testing under, respectively, the Plant Health Act 1967 and the Plant Varieties and Seeds Act 1964. The Scottish Ministers will retain the powers to charge under these Acts. The funding of and arrangements for tree health are part of discussions on cross-border collaboration with England and Wales (see paragraphs 36-38).

## Land management

22. On land management, policy objectives centre on creating more flexibility in the use of the Scottish Ministers' NFE and enabling a wider land management role to help manage Scotland's publicly-owned land in the national interest.

23. Forestry Commissioners have power under the Forestry Act 1967 to manage the Scottish Ministers' forestry land, including for the production of timber; to enter into arrangements with any body or person in relation to the management of other forestry land; to delegate functions to community bodies; and to acquire and dispose of land. These powers are transferred to the Scottish Ministers and a duty placed upon them to manage forestry land in a way that promotes SFM; as set out in paragraph 9, there are no changes to current funding arrangements.

24. The Bill includes a power to enable management of forestry land for the purpose of furthering the achievement of sustainable development, provided this is done with regard to the Scottish Forestry Strategy. This new power creates greater flexibility in the use of the NFE compared to the Forestry Act 1967, which required all activity to be tree-related. The new power in itself will have no direct cost but will give the Scottish Ministers the potential to deliver more of their economic, environmental and social

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<sup>5</sup> <http://scotland.forestry.gov.uk/supporting/strategy-policy-guidance/forestry-strategy>.

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objectives on the NFE and potentially to drive efficiencies in its management.

25. In addition, the Bill makes provision to enable the Scottish Ministers to manage certain other land for the purposes of furthering the achievement of sustainable development. This is linked to a new power for the Scottish Ministers to enter into arrangements with any person, including public bodies, to manage land or to provide advice or assistance in relation to managing land. These arrangements may be for the purpose of promoting SFM or for furthering the achievement of sustainable development. FES already has considerable expertise in managing afforested and open land for a wide range of purposes and it follows that the new Executive Agency should offer to provide this expertise to others.

26. There is potential for such arrangements to generate net savings for the Scottish Administration through more efficient and effective management of publicly-owned land and for arrangements with other bodies or individuals to generate some income. It is not possible at this stage to provide estimates about their extent as that will be dependent on the individual arrangements put in place.

27. The Bill carries forward from the Forestry Act 1967 and confers on the Scottish Ministers powers to delegate land management functions to community bodies. As noted in the Policy Memorandum the powers to delegate are widened slightly to include delegation of management of any land. Provision for delegation is enabling: the Scottish Ministers may exercise the power to such an extent and on such terms as are considered appropriate. It is considered that any costs to Scottish Ministers associated with the broadening of the power to delegate would be minimal and any potential burdens considered fully by community bodies before approaching or reaching agreements with the Scottish Ministers.

### Felling and restocking regulation

28. Effective and proportionate regulation of forestry is required to maintain appropriate woodland cover and to ensure sustainable management of Scotland's forests. The Bill sets out powers for Ministers to undertake the same regulatory functions as currently operated by the Forestry Commissioners, i.e. to: regulate felling (including refusing permission or granting permission with or without conditions, e.g. on restocking); require felling to be undertaken; and require restocking of land where trees have been felled illegally.

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29. In contrast to the Forestry Act 1967, where all the detail of the regulation is included in the primary legislation, enabling powers allow for a more modern, flexible regime where specific details will be set out in secondary legislation. This approach will allow greater opportunities to engage with the sector and the public on the details of the regime. Work in connection with development of the regulations is underway in association with Forestry Commission staff and engagement with the sector will begin after Bill introduction. The secondary legislation will be laid before the Scottish Parliament in the course of 2018, with final commencement of the new framework planned for 2019.

30. Regulation is underpinned by a more straightforward regime of offences and a more transparent appeals process. Penalties, which varied across the offences, have been aligned (so that the same maximum fine is applicable for all offences) and are no longer tied to timber values, since illegal felling can relate to woodlands with environmental or social value as much as to those with a significant economic value. In addition the scale of any unauthorised felling can be taken into account when determining penalties to be applied, due to the maximum fine being applicable to each tree felled.

31. Regulation is currently carried out locally by the FCS conservancy offices across Scotland. The local office network will continue to operate once powers and duties have transferred to the Scottish Ministers. There will be some additional resourcing costs, which will be funded within existing budgets, associated with permitting the Scottish Ministers to register notices so that obligations (such as continuing conditions on felling permissions, felling directions or restocking directions) are easily assessed by any prospective new owner and are automatically passed to any future owners of the land to which they relate. Work is underway in association with Forestry Commission Scotland staff to develop proportionate arrangements for the registration of notices and the intention is that not all obligations would require registration. However, for the purposes of this Memorandum, over the last five years FCS has dealt with approximately one thousand relevant transactions (i.e. approval of felling licences and long-term forest plans or investigation of suspected illegal felling) per year that might be subject to registration notices. At a standard cost of approximately £60 per notice, this would amount to £0.06m per year. There may, in time, be some savings from operating a less burdensome regulatory regime. The Bill also enables the Scottish Ministers to recover expenses where a remedial notice has been served, the terms of that

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notice have not been complied with, and the Scottish Ministers have therefore used their power to enter the land and carry out the remedial steps themselves. This replicates a similar power in the Forestry Act 1967.

32. Based on recent trends, the Scottish Government anticipates that the costs of – and any income from – enforcing compliance will be minimal. Over the last five years, FCS has investigated between twenty and seventy cases of suspected illegal felling per year, covering all of the offences set out in the Bill and resulting in, on average, one conviction per year. These levels of investigation and prosecution are not expected to increase significantly as a result of the Bill.

33. In line with section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 the Bill binds the Crown, introducing parity between the state and non-state timber sector in terms of the statutory regulation of felling and restocking. This means that Forestry and Land Scotland, as a forest manager, will be subject to the same regulatory framework as other forestry managers. In practice, FES is already required to submit requests to FCS under separate administrative arrangements. These arrangements are broadly similar to the forest plan approval arrangements that apply to the private sector in Scotland, with 200-250 annual transactions between FES and FCS concerning approvals and renewals of, or amendments to, forest plans. It is therefore the Scottish Government's assessment that existing costs will not increase either for the Forestry Division as regulator or for the regulated Forestry and Land Scotland.

### Other provisions

34. The Bill includes general powers to enable the Scottish Ministers to fulfil their functions under the Bill. These include powers to conduct research and carry out inquiries, collect data and publish statistics or other information; to provide education and training; and to establish corporate bodies. The Scottish Ministers may also provide financial assistance, including grants and loans, and the Bill enables charging in respect of the functions in the Bill. The latter will enable the existing charging arrangements in place for activities on the NFE to be carried forward when management transfers to the Scottish Ministers. These activities range from renewable energy developments and sales of timber and venison to recreation permissions, such as holding mountain biking events, amounting to £83.00m in 2015-16 (the most recent audited figures). Income generated is managed internally by FES as part of its overall budget, with the Scottish Government providing subsidy of £20.70m in 2017-18 to support FES. The

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Scottish Ministers will also retain the powers to charge under the Plant Health Act 1967 and Plant Varieties and Seeds Act 1964 when they take over tree health and silvicultural material testing functions from the Forestry Commissioners. Exercise of powers will be taken forward in compliance with the fees and charges section of the Scottish Public Finance Manual.<sup>6</sup>

35. Powers in relation to the use of land for the production of renewable energy, and the ability to delegate this function to community bodies, will be sought via an order under section 104 of the Scotland Act 1998 due to the reservation in Section D1 of schedule 5 of that Act.

### Indirect costs: cross-border collaboration

36. Selected functions of the Forestry Commissioners operate on a cross-border basis across Great Britain. These functions include forestry science and research, common codes such as the UK Forestry Standard and Woodland Carbon Code, and some tree health functions. The annual core budget of around £11.00m is funded through the UK's Department for Environment, Food and Rural Affairs (DEFRA) on behalf of the UK and devolved administrations. FCS and FES also provide some additional funding, the majority of which goes to Forest Research, the Forestry Commissioners' research agency. This funding covers work specific to forestry in Scotland and can vary from year to year – in 2016-17, Forest Research received £2.48m from FCS and FES for activities such as research projects, diagnostic services, inventory and forecasting support.

37. The Scottish Government is committed to ensuring that there are ongoing effective cross-border arrangements where it makes sense and where those meet Scottish needs. A Forestry Governance Project Board (FGPB), consisting of senior officials from the Scottish Government, DEFRA, the Forestry Commission and, more recently, the Welsh Government, was set up in August 2015 and has been considering options in relation to legislation, financial arrangements and cross-border functions. FGPB is due to make recommendations to the three Administrations about the equitable division of the existing DEFRA budget for all cross-border functions and of various assets and liabilities where ownership has been vested in the Forestry Commissioners. It will also make recommendations about how continuing collaboration and partnership working between the

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<sup>6</sup> <http://www.gov.scot/Topics/Government/Finance/spfm/feescharges> (this includes, for example, guidance on cost recovery and on commercial services).

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three countries will operate and be reviewed in future to guarantee an appropriate level of service to all three countries.

38. An order under section 104 of the Scotland Act 1998 in the UK Parliament will be required to help set up these arrangements following the passage of the Bill. While final decisions have still to be made, it is anticipated that Scotland may take the lead on delivering some of the functions on behalf of England, Scotland and Wales. The Scottish Government's intention is to ensure that the transfer agreed with the UK and Welsh Government should be sufficient to fund those functions. The working assumption is that the division of existing funding will not lead to increased cost for Scotland, England or Wales.

## Indirect costs: new organisational arrangements in Scotland

39. As mentioned earlier, following passage of the Bill the activities currently delivered by FCS and FES will transfer to the Scottish Government. Functions previously carried out by FCS will be undertaken by a dedicated Forestry Division and a new Executive Agency called Forestry and Land Scotland will take on functions carried out by FES. The Annex shows a comparison between current structures and new ones.

40. A Forestry Devolution Programme Board, consisting of officials from the Scottish Government, FCS and FES, has responsibility for making sure that FCS and FES are in a position to move to the new arrangements on commencement of the Bill. This work will build on several years of the Forestry Commission already taking steps to devolve its central services to Scotland and England and of FCS and FES already operating as part of the Scottish Government's Environment & Forestry Directorate on a day-to-day basis.

## One-off programme costs

### Integration of IT

41. Responsibility for delivery of IT services, originally provided to FCS and FES and their equivalents in England by Forestry Commission Central Services on a shared services model, is already in the process of being transferred to the individual countries as part of an internal Forestry Commission project (and therefore costs are not included in this Memorandum). By the time that the Bill has completed its passage, it is anticipated that FCS and FES will be connected to the Scottish Wide Area

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Network (SWAN); the server set-up will have been modernised; and the number of supported applications will have been reduced from nearly two hundred to fewer than fifty. This advance work will facilitate moving onto the Scottish Government's network.

42. IT officials in the Forestry Commission and the Scottish Government are in discussion about the options for integration, recognising in particular that the Executive Agency has some complex requirements because of the nature of its work (bespoke forestry functionality includes GIS for planning and managing the NFE, timber and venison sales systems, and engineering and mechanical support software). This has led to a phased approach, with planned integration of the Forestry Division completed by 2019 and of Forestry and Land Scotland by 2021.

43. Table 2 sets out the anticipated set-up costs for IT integration. As options are still being developed, current estimates for the items specifically linked to the integration of applications ('technical support' and 'service integration') have a high variance. As previously stated, forestry officials have indicated that costs can be subsumed within anticipated overall budget provision. This position will continue to be monitored to assess level of budgets received and affordability.

Table 2: Anticipated set-up costs for IT integration, 2017–2021

	2017–18	2018–19	2019–20	2020–21	TOTAL
	Forestry Division		Forestry and Land Scotland		
Item	£'m	£'m	£'m	£'m	£'m
Feasibility Study	0.05	-	0.05	-	<b>0.10</b>
Project management	-	0.10	0.05	0.10	<b>0.25</b>
Desktop and mobile devices	-	0.08–0.24	-	0.32–0.96	<b>0.40–1.20</b>
Technical support	-	0.10–1.00	0.20–1.00	0.30–1.50	<b>0.60–3.50</b>
Service integration	-	0.20–0.50	0.20–1.00	0.30–1.50	<b>0.70–3.00</b>
<b>TOTAL</b>	<b>0.05</b>	<b>0.48–1.84</b>	<b>0.50–2.10</b>	<b>1.02–4.06</b>	<b>2.05–8.05</b>

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#### Branding and website development

44. Table 3 sets out anticipated costs for branding design, website development and the replacement of corporate items. Costs of branding redesign and website development, totalling £0.25m, are split between 2017–18 and 2018–19 to ensure that a website is in place for the anticipated commencement of the new structures in 2019. A programme of work to update a variety of corporate items – including signs, vehicles, clothing and publications – will be undertaken between 2018 and 2020. Indicative figures, based on current known replacement costs, suggest that total costs may be around £4.00m.

45. Some of the costs will be met by existing FCS and FES budget lines for replacing corporate items (approximately £0.50m per annum). It is anticipated that the remaining costs can be subsumed within the anticipated overall budget provision for forestry. As with the costs associated with integration of IT, this position will continue to be monitored.

Table 3: Anticipated costs for branding and website development, 2017–2020

Description	2017–18	2018–19	2019–20	TOTAL
	£'m	£'m	£'m	£'m
Brand design	0.05	0.04	-	<b>0.09</b>
Website development (including content)	0.08	0.08	-	<b>0.16</b>
Replacement of corporate items (signs, clothing, etc.)	-	2.00	2.00	<b>4.00</b>
<b>TOTAL</b>	<b>0.13</b>	<b>2.12</b>	<b>2.00</b>	<b>4.25</b>

#### Recurring costs

46. The existing functions of FCS and FES (e.g. policy advice, regulation, management of the NFE) will continue once the new organisational structures have been established and therefore in general the recurring costs associated with providing those functions are not expected to increase as a result of the Bill.

#### Staffing

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47. The skills and knowledge of existing FCS and FES staff are highly valued by the Scottish Government and by forestry stakeholders. Employees from both organisations are civil servants and will remain as such as they are transferred into the employment of the Scottish Government.

48. The Scottish Government aims to ensure that the transfer is achieved with minimal disruption to the 1,000 members of staff currently working in FCS and FES and with appropriate induction training provided. The direct transfer of existing staff will ensure business continuity and the retention of specialist skills. Staff are based in national and local offices across Scotland, almost all of which are already owned or leased by the Scottish Ministers. The local office network will be retained as part of the transfer to the Scottish Government.

49. The Cabinet Office Statement of Policy (COSOP) provisions will apply to that transfer. This means that the rights and existing terms and conditions of FCS and FES staff will be protected on transfer to the new Forestry Division and FLS. As usual in such transfers, any proposals to bring those terms and conditions into alignment with the Scottish Government's (including any associated costs) would be subject to consultation and negotiation with the trade unions at that point.

#### Pensions

50. As Forestry Commission staff are civil servants, they are already members of the Principal Civil Service Pension Scheme (PCSPS). Liability for future employer contributions will transfer from the UK Government to the Scottish Government. No additional costs will be incurred as a result of the transfer.

#### VAT status

51. The new Executive Agency will continue to recover VAT as set out in section 41 of the Value Added Tax Act 1994; not doing so would incur additional costs in the region of £3.00m to £5.00m per annum. In addition HM Revenue & Customs has confirmed that FLS can continue to operate under FES's current partial exemption status, resulting in VAT recoveries of circa £2.70m per annum.

#### Public corporation status

52. As more than 50% of FES's annual income – principally from its sales of timber – is derived from commercial markets, it is classified as a public

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corporation for national accounting purposes, giving it the flexibility to roll forward reserves from one financial year to another. HM Treasury has indicated to the Scottish Government that, as there is no change to the funding and therefore the proportion of income derived from commercial sales, the public corporation classification for the purposes of national accounting is expected to continue to apply when Forestry and Land Scotland takes on FES's functions.

#### Crown exemption

53. Crown exemption, which for example allows FCS and FES staff to be exempt from the normal insurance requirements of the Road Traffic Act 1988 for vehicles used for official purposes (crown indemnity), will still apply when the functions are transferred to the Scottish Government.

#### Corporate services

54. Currently all corporate costs (e.g. covering HR, Finance or IT) for FCS and FES are fully funded; this will continue under the new organisational arrangements, requiring no additional costs on a recurring basis.

55. The Forestry Commissioners' National Committee of Scotland (NCS) currently has three non-executive members whose costs are funded from FCS budgets. The NCS will cease to exist once Forestry Commissioners' functions are transferred to the Scottish Ministers but, as required by the Scottish Public Finance Manual, Forestry and Land Scotland (as a Scottish Government Executive Agency) will need to recruit at least three part-time non-executives to advise the Chief Executive on audit and risk and related matters. The existing NCS budget will be used to cover their salaries instead.

56. There may be some marginal savings identified as the result of the Forestry Division coming into the core Scottish Government. It will no longer be required to prepare a separate annual audit (saving around £0.04m per annum) and it should be able to draw on legal services provided centrally (presently FCS shares in a legal contract with FES and the Forest Research agency, resulting in expenditure of circa £0.10m per annum).

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## Costs on local authorities

57. The provisions in the Bill have no direct financial implications – and therefore no additional costs - for local authorities.

## Costs on other bodies, individuals and businesses

### Other bodies

58. FCS and FES already work in partnership with the Scottish Government and with other relevant agencies, including Scottish Natural Heritage and Scottish Environment Protection Agency, on sustainable forest management matters. The provisions of the Bill will make no substantial changes to current arrangements with other bodies and there are therefore no direct financial implications for those other bodies.

59. As set out in paragraph 32, with regards to the regulatory regime and the work of the courts, the Scottish Government does not expect the current, minimal levels of prosecution to increase significantly as a result of the Bill.

### Businesses and individuals

60. A Business and Regulatory Impact Assessment (BRIA), published to coincide with the introduction of the Bill, concluded that the provisions of the Bill have no direct, immediate financial implications for businesses or individuals.<sup>7</sup> As mentioned above, the Bill provides a legislative framework for forestry and will not make changes to the detailed policies and strategies relating to forestry in Scotland. The Scottish Government recognises that there may be impacts on businesses and other organisations if or when changes are made to these policies: these impacts will be assessed appropriately at that point.

61. As in the Forestry Act 1967, the Bill set out penalties for those who commit offences under the regulatory regime. The maximum fines available under the existing regime assume a differing level of impact for each offence whereas the Bill treats the regime as a whole, interconnected framework where any offence (including, for example, obstructing access or failing to provide information) can have a significant impact on the scale of damage caused. The Scottish Government has simplified and rationalised the regime so that the maximum fine available is level five for

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<sup>7</sup> The BRIA is available at [www.gov.scot/forestry/devolution](http://www.gov.scot/forestry/devolution).

This document relates to the Forestry and Land Management Bill (SP Bill 11) as introduced in the Scottish Parliament on 10 May 2017

any offence. The new regime ensures that the scale of any unauthorised felling can be taken into account when determining penalties to be applied, due to the maximum fine being applicable to each tree felled.

62. It is recognised that, after the Bill has been passed, other aspects of work to complete the devolution of forestry, such as the subordinate legislation setting out how felling is regulated, will be of interest to businesses, woodland owners and wider stakeholder groups. The Scottish Government is committed to continuing to engage with stakeholders on the detail of this work as it develops and to undertaking further BRIAs if and when necessary.

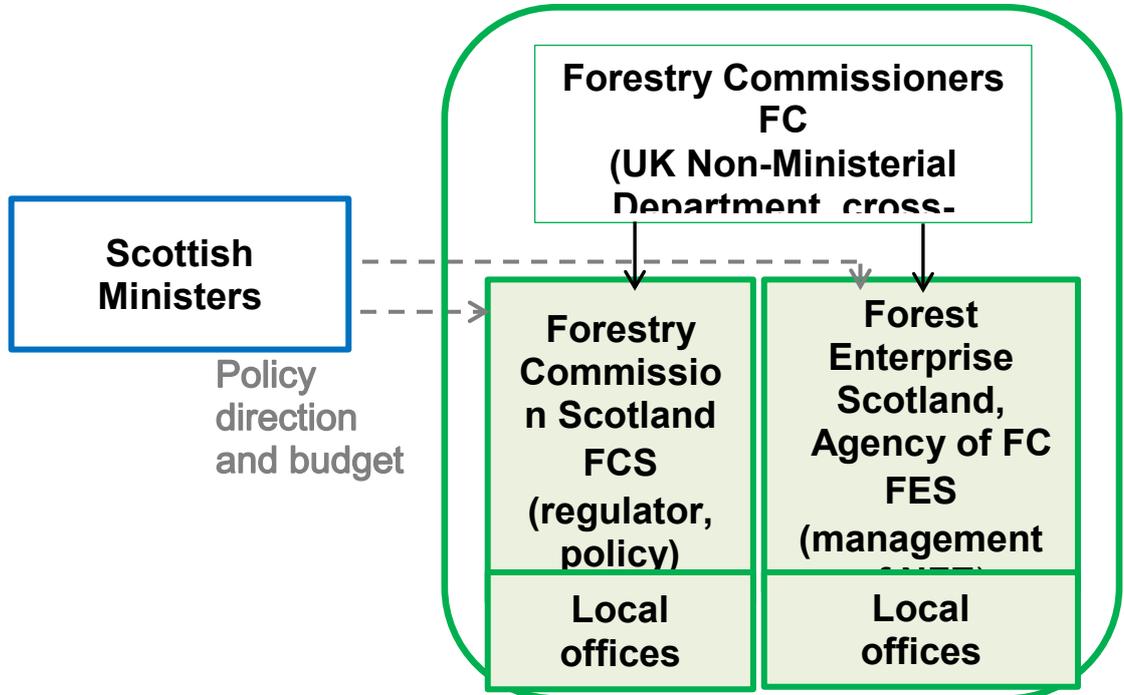
### Summary of costs arising from the Bill

<b>Costs</b>	<b>Year</b>	<b>£'m</b>
Costs on the Scottish Administration* (registration of notices, IT integration, branding and website development)	2017-18	0.18
	2018-19	2.60-3.96
	2019-20	2.56-4.16
	2020-21	1.08-4.12
Costs on Local Authorities	n/a	n/a
Costs on other bodies, businesses and individuals	n/a	n/a
<b>TOTAL</b>	<b>2017-21</b>	<b>6.42 - 12.42</b>

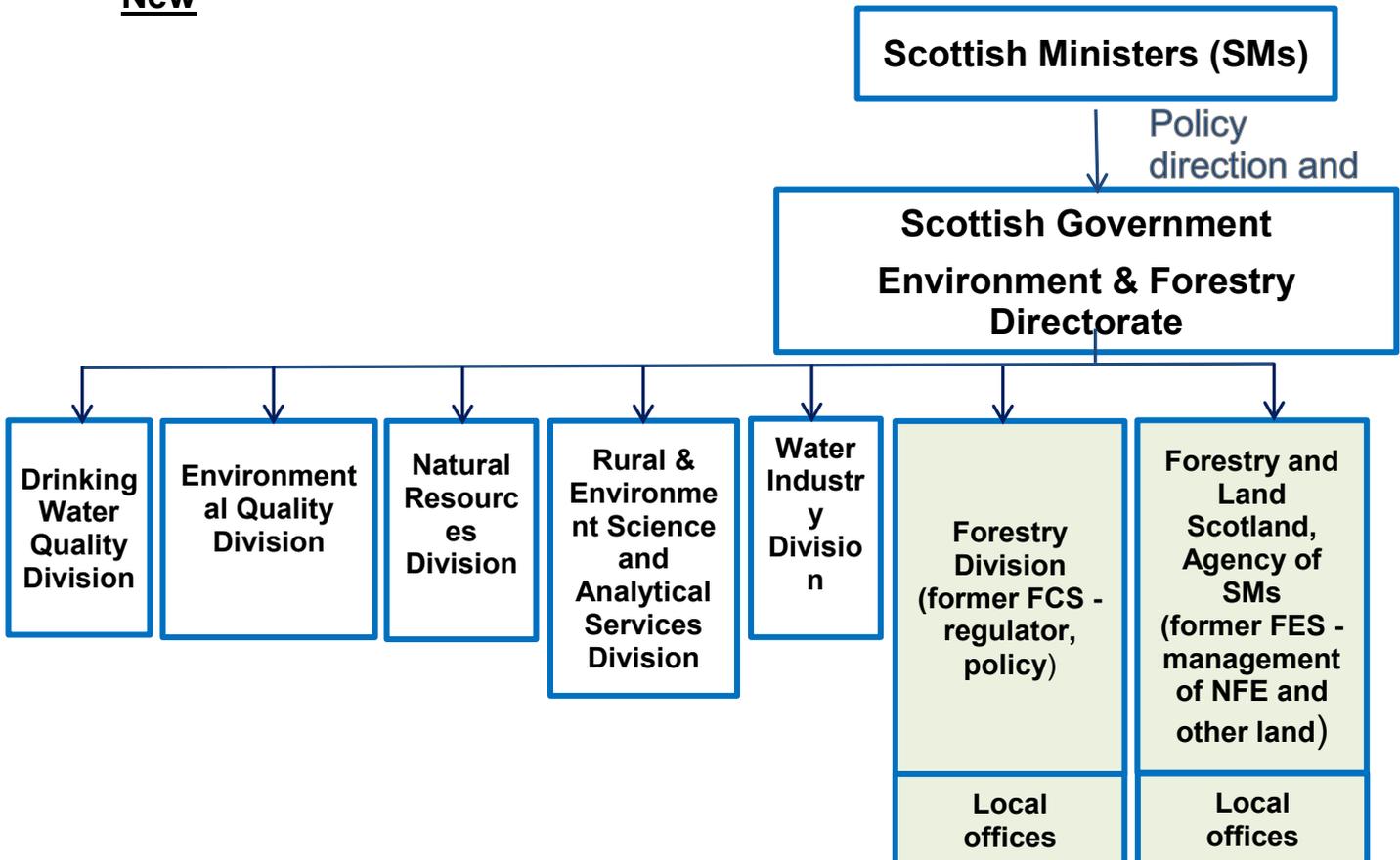
\* As stated throughout the Memorandum, it is anticipated that these costs can be subsumed within the overall budget provision. This position will continue to be monitored to assess level of budgets received and affordability.

## Annex - Comparison between current and new organisational arrangements in Scotland

### Current



### New



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# Forestry and Land Management (Scotland) Bill

## Financial memorandum

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