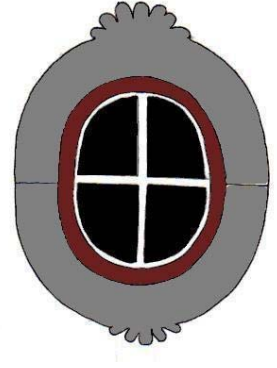


Neil King & Carol Duncan



Liz Kirk  
Forestry Commission Scotland  
Silvan House  
231 Corstorphine Road  
Edinburgh  
EH12 7AT

BY E-MAIL ONLY

6 December 2008

Dear Ms Kirk

**Consultation on forestry provisions in the Scottish Climate Change Bill (CCB)**

Having been tangentially involved professionally with the national forest estate (NFE) in a previous life, I read with interest the above consultation document and section 47 of the CCB relating to the statutory powers of Forestry Commission Scotland (FCS).

I write to respond to question 4 of the consultation and, specifically, to make a rather esoteric point which is perhaps more within the province of FCS's lawyers and/or OSSE/parliamentary counsel than anyone else.

The NFE is owned by the SMs and FCS manages it on their behalf. So, if leasing part of the NFE for a development in pursuit of the SMs' climate change (CC) goals, the contract is between the developer and the SMs, not FCS.

Section 47 of the CCB gives the SMs power to modify FCS's powers where desirable in pursuit of CC goals. But it says nothing about the SMs' own powers in relation to the NFE. These are contained in the same legislation as FCS's and suffer from the same weaknesses alluded to at page 5 of the consultation.

During my involvement with the NFE a few years ago, these issues – particularly the inter-relationship of FCS's and the SMs' respective statutory functions – gave rise to much arcane legal debate productive of expense and delay. I confess I forget the detail now so my point just boils down to this: that the issue of the SMs' functions in relation to the NFE be flagged up to the lawyers inputting to the bill.

I'm probably doing them a disservice and I expect they've concluded after due deliberation that the weaknesses in the existing legislation can be plugged by modifying just FCS's functions. But if it were up to me, I would prefer to be "belt and braces" and reword section 47(1) of the CCB as follows:-

*The Scottish Ministers may, by order, modify-*

*(a) the functions of the Forestry Commissioners in or as regards Scotland; or*

*(b) their own functions in relation to land in Scotland for the time being placed at the disposal of the Forestry Commissioners*

(I should explain that "land for time being placed at the disposal of the FCs" is the way the legislation refers to the NFE owned by the SMs and managed by FCS.)

In similar vein, I would also amend s.47 of the CCB by adding "or the Scottish Ministers" after "Forestry Commissioners" in sub-sections (2) and (3).

Yours sincerely

**Neil King**