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DRAFT STATUTORY INSTRUMENTS

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**2006 No.**

**REGULATORY REFORM**

**FORESTRY**

**The Regulatory Reform (Forestry) Order 2006**

*Made* - - - - *2006*

*Coming into force on the day after the day on which the  
Order is made*

Whereas:

- (a) the Secretary of State for Environment, Food and Rural Affairs (“the Secretary of State”) has consulted –
  - (i) such organisations as appeared to her to be representative of interests substantially affected by her proposals for this Order,
  - (ii) the Forestry Commission,
  - (iii) the National Assembly for Wales, and
  - (iv) such other persons as she considered appropriate;
- (b) following the consultation mentioned in recital (a) the Secretary of State considered it appropriate to proceed with the making of this Order;
- (c) a document setting out the Secretary of State’s proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001<sup>(a)</sup> and the period for Parliamentary consideration under section 8 of that Act has expired;
- (d) the Secretary of State had regard to the representations made during that period and in particular to [*name of Parliamentary Report*];
- (e) a draft of this Order was laid before Parliament with a statement giving details of those representations [and the changes to the Secretary of State’s proposals in the light of them];
- (f) the draft was approved by resolution of each House of Parliament;
- (g) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

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<sup>(a)</sup> 2001 c.6.

- (h) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretary of State is of the opinion that –
- (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and
  - (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made.

Now therefore the Secretary of State, in exercise of the powers conferred upon her by section 1 of the Regulatory Reform Act 2001, makes the following Order:

### **Citation, commencement and interpretation**

- 1.—(1) This Order may be cited as the Regulatory Reform (Forestry) Order 2006 and shall come into force on the day after the day on which it is made.
- (2) In this Order “the 1967 Act” means the Forestry Act 1967<sup>(a)</sup>.

### **Incidental powers of Forestry Commissioners**

2. After section 7 of the 1967 Act insert –

#### **“7A Incidental powers of Commissioners**

- (1) For the purpose of the exercise of their functions under this Act so far as relating to land in England and Wales, or for the purpose of the exercise of their functions under section 8(1)(b) of this Act, the Commissioners may—
- (a) form, or participate in the forming of, a body corporate;
  - (b) invest in a body corporate;
  - (c) provide loans;
  - (d) establish a charitable trust; or
  - (e) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust.
- (2) The powers contained in subsection (1)(b) and (c) shall be exercisable only with Treasury approval.”.

### **Miscellaneous powers of Forestry Commissioners**

- 3.—(1) Section 8 of the 1967 Act is amended as follows.
- (2) Renumber the existing provision as subsection (1).
- (3) After that subsection insert –
- “(2) The Commissioners may exploit any intellectual property or intangible assets arising from the carrying out of any activity referred to in subsection (1)(b).
- (3) “Intellectual property” for the purpose of subsection (2) includes any patent, trademark, copyright, design right, registered design or plant breeder’s right.”.

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<sup>(a)</sup> 1967 c.10.

#### **Power of Forestry Commissioners to require restocking after unauthorised felling**

4.—(1) Section 17A of the 1967 Act (power of Commissioners to require restocking after unauthorised felling) is amended as follows.

(2) For subsection (1) substitute –

“(1) The Commissioners may serve a notice under this section (a “restocking notice”) on a person where –

(a) it appears to the Commissioners that he has committed an offence in England and Wales under section 17 of this Act, or

(b) he is convicted in Scotland of an offence under that section,

and (in either case) he has such an estate or interest in the land in question as is mentioned in section 10(1) of this Act.”.

(3) After subsection (1) insert –

“(1A) A restocking notice is a notice requiring the person on whom it is served –

(a) to restock or stock with trees the land or such other land as may be agreed between the Commissioners and him; and

(b) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding ten years, specified in the notice.”.

(4) In subsection (2) after “A restocking notice” insert “which relates to land in Scotland”.

#### **Powers of Forestry Commissioners to enforce restocking requirements**

5.—(1) Section 24 of the 1967 Act (notice to require compliance with conditions or directions) is amended as follows.

(2) In subsection (2)(a) for “the owner of the land” substitute “the person specified in subsection (2A)”.

(3) After subsection (2) insert –

“(2A) The person referred to in subsection (2)(a) is –

(a) where the licence relates to land in England and Wales –

(i) the applicant for the licence, if on the date the notice is served he has such estate or interest in the land as is referred to in section 10(1) of this Act; or

(ii) in any other case, the owner of the land;

(b) where the licence relates to land in Scotland, the owner of the land.”.

(4) In section 17C of the 1967 Act (enforcement of restocking notice) for “the reference in the said subsection (3)” substitute “the references in section 24(2A)(a)(i) and 26(3)”.

#### **Amendments to Countryside Act 1968**

6.—(1) The Countryside Act 1968(a) is amended as follows.

(2) In section 23 (provision of facilities by Forestry Commissioners) –

(a) in subsection (2) after “think fit” insert –

“or to allow another person to make such charges as that other person thinks fit”; and

(b) after subsection (2) insert –

“(2A) Any arrangements between the Commissioners and another person entered into pursuant to subsection (2) that provide for the sharing of profits shall be subject to Treasury approval.”.

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(a) 1968 c.41.

(3) After section 24 insert –

**“24A Incidental powers of the Commissioners**

(1) For the purpose of the exercise of their functions under sections 23(2) and 24(1) of this Act so far as relating to land in England and Wales, the said Commissioners may –

- (a) form, or participate in the forming of, a body corporate;
- (b) invest in a body corporate;
- (c) provide loans;
- (d) establish a charitable trust; or
- (e) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust.

(2) The powers contained in subsection (1)(b) and (c) shall be exercisable only with Treasury approval.”.

2006

*Name*  
Parliamentary Under Secretary of State  
Department of Environment, Food and Rural Affairs

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 1 of the Regulatory Reform Act 2001. It amends the Forestry Act 1967 (“the Act”) and the Countryside Act 1968 (“the 1968 Act”) by removing restrictions on powers of the Forestry Commissioners (“the Commissioners”).

The Order removes restrictions on the powers of the Commissioners to form or participate in bodies corporate or charitable trusts for the purpose of exercising functions relating to land in England and Wales (Article 2 and Article 6(3)), to exploit intellectual property arising from forestry research (Article 3) and to take action to secure restocking following felling on land in England and Wales (Articles 4 and 5). It also permits the Commissioners to delegate their power to charge for facilities provided on land placed at their disposal, in England, by the Secretary of State or, in Wales, by the National Assembly for Wales (Article 6).

Articles 2 and 6(3) provide the Commissioners with incidental powers to form and, subject to Treasury approval, invest in bodies corporate, to make loans (also subject to Treasury approval), to establish charitable trusts and to act (and to appoint persons to act) as officers of bodies corporate or as trustees of charitable trusts for the purpose of their functions under the Act or under the 1968 Act so far as relating to land in England and Wales.

Section 8(b) of the Act contains the Commissioners’ powers, amongst other things, to carry out experiments and research. Article 3 amends section 8 to permit the Commissioners to exploit intellectual property arising from research carried out by the Commissioners or which they have aided in carrying out.

Section 17A of the Act gives the Commissioners power to serve a restocking notice on a person who has been convicted of the offence of felling without a licence under section 17 of the Act. Article 4 amends this power to allow the Commissioners to serve a restocking notice on any person who appears to them to have committed an offence in England and Wales under section 17. The notice remains subject to the appeal provisions in section 17B of the Act.

Section 24 of the Act permits the Commissioners to serve an enforcement notice on “the person responsible”, which is defined in section 24(2) as the owner of the land (“owner” is defined in section 34 of the Act), to require him to comply with the conditions of a felling licence or (as applied by section 17C) with works required by a restocking notice. Where the land to which a felling licence relates is in England and Wales, article 5 redefines “the person responsible” as the applicant for the licence if that person still has an interest in the land (being the same interest as that which a person is required to have before he can apply for a felling licence). In all other cases “the person responsible” is the owner of the land. By virtue of the amendment to section 17C made by article 5(4), the same provisions that apply to an applicant for a felling licence apply to a person served with a restocking notice.

Section 23(2) of the 1968 Act allows the Commissioners to provide or arrange for or assist in the provision of facilities for tourism, recreation or sport on land placed at their disposal, in England, by the Secretary of State, and, in Wales, by the National Assembly for Wales, and to charge in connection with those facilities. Article 6 amends section 23(2) to permit the Commissioners to delegate their power to charge and makes any arrangements entered into between the Commissioners and another person under section 23(2) that provide for the sharing of profit subject to Treasury approval.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from [ ]