



Forestry and Land Management (Scotland) Act 2018: Felling and Restocking Regulations

Data Protection Impact Assessment – Final



Scottish Government
Riaghaltas na h-Alba
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Data Protection Impact Assessment (DPIA) – Final

1. Introduction

The purpose of a DPIA is to assess, and report on, any potential privacy impacts of the proposed Forestry and Land Management (Scotland) Act 2018 felling and restocking regulations. A draft DPIA formed part of the suite of documents relating to the proposed felling and restocking regulations which were published on the Scottish Government website and were subject to an eight-week consultation. Analysis of the consultation responses which were received found that no comments relating to the draft DPIA were submitted during the consultation period. This final DPIA therefore remains largely unchanged from the draft DPIA.

2. Document metadata

- 2.1 Name of Project: Forestry and Land Management (Scotland) Act 2018: Felling and Restocking Regulations
- 2.2 Authors of report: Catherine Murdoch and Gail Rogerson
- 2.3 Date of report: December 2018
- 2.4 Name of Information Asset Owner (IAO) of relevant business unit: Jo O'Hara (Head of Forestry Commission Scotland, Accountable Officer).
- 2.5 Date for review of DPIA

Review date	Details of update	Completion date	Approval Date
The final DPIA will be kept under review in line with the post-implementation review of the Business Regulatory Impact Assessment and the Scottish Forestry Strategy review cycle. This is set out in the new legislation, which essentially requires reporting every three years and a review at least every nine years.			

3. Description of the project

3.1 Description of the work:

Effective and proportionate regulation of forestry is required to maintain appropriate woodland cover and to ensure sustainable management of Scotland's forests.

The regulations that will determine which activities require permission, and frame the processes for issuing permissions, directions and notices, will together allow the Scottish Ministers to be effective and proportionate regulators.

This assessment looks at the procedures for processing personal data including receiving, storing and transferring between relevant teams/third parties, sharing or publishing, and destroying it. The IT systems used to hold and process the data are assessed as a separate project.

The proposals cover several different processes, in order to make this assessment clear, and where appropriate, sections are broken down into:

- Permissions (applications, decisions, compensation)
- Felling directions
- Restocking directions
- Compensation for Temporary Stop Notices (TSNs)
- Remedial Notices
- Appeals

3.2 Personal data to be processed.

Variable	Data Source
<u>Permissions(applications, decisions, compensation):</u>	
Applicant name, address, email address, phone number(s)	Data Subject
Owner name and address	Applicant with permission of owner
Consultee name, address, email address, phone number(s)	Data Subject
<u>Felling directions:</u>	
Person to whom the direction is given name and address	Registers of Scotland
<u>Restocking directions:</u>	
Person to whom the direction is given name and address	Registers of Scotland
<u>Compensation for TSNs:</u>	
Claimant name, address, email address, phone number(s)	Data Subject
<u>Remedial Notices:</u>	
Person to whom the direction is given name, address, email address, phone number(s)	Data Subject (where notice is served following non-compliance with permission). Registers of Scotland
<u>Appeals:</u>	
Appellant name, address, email address, phone number(s)	Data Subject

3.3 Describe how this data will be processed:

Permissions (applications, decisions, compensation for refusal)

Receiving and storing:

All processes assessed here involve a Conservancy office receiving information containing person data. In some cases this will only be received electronically but the majority will include, or be comprised entirely of, hard copy documents.

- Data will be stored securely either electronically or as hard copy documents
- A privacy notice(s) will be attached to the application form and will form part of the guidance for applying which will give details about the subject's rights, what will happen to their personal data, why we are able to process their personal data, and for what purpose it is being processed.

Sharing:

For applications where expertise is required that is not present within the Conservancy Team (for example those involving unusual circumstances or complex or technical applications) the Conservancy Team may share case files for applications/claims with other Scottish Forestry teams.

- Scottish Forestry will ensure that all staff regularly complete data protection training and will put in place a plan for detecting, investigating and reporting breaches.
- Before sharing any applications or claims the Conservancy Team will satisfy itself that there is a need to do so and that it has a lawful basis for sharing the information.

Sharing:

The majority of applications will be subject to consultation:

- Relevant data, including property name and grid reference of the felling site, will continue to be published on the Scottish Forestry website for 28 days.
- The same data may be shared with interested parties, such as neighbours and Scottish Natural Heritage, Scottish Environmental Protection Agency, and Historic Environment Scotland.
- Where responses are provided, the name and address of respondents will be published on the public register, currently on the FCS internet, which will transfer to the Scottish Forestry IT platform post 2019.

Sharing:

Where the proposals are deemed to be a 'relevant project' for the purposes of the Environmental Impact Assessment Regulations 2017:

- The data within the felling permission application, such as names and addresses of applicants, may be used to inform the screening opinion and decisions relating to the EIA regulations.
- Data may also be made available to relevant consultation bodies and the public in accordance with the requirements of EIA Regulation.

Sharing:

In addition, where a Tree Preservation Order (TPO) is in place, the application will either be shared with the planning authority that made the TPO in order to ask for their input, or will simply be referred to them to be treated as an application for consent under TPO legislation.

- Scottish Forestry will ensure that all staff regularly complete data protection training and will put in place a plan for detecting, investigating and reporting breaches.
- Before sharing any applications Scottish Forestry will satisfy itself that there is a lawful basis for sharing the information and will ensure that the planning authority agrees to handle the data in conformity with the applicant's rights.

Sharing:

Scottish Forestry is able to register conditions on permission in the Land Register or the General Register of Sasines.

Destroying:

Personal data will be held for the life of the permission and its conditions:

- Information relating to the permission, which contains personal data, may be held for a longer period on the new Scottish Forestry map browser servers. However, no personal data is published on the public map browser.
- The Privacy Notice associated with the application process will provide more details on the timescales for which information will be held.

Felling directions**Receiving and storing:**

In order to give a person a felling direction the regulator will require the name and address of the owner of the land in question.

- The name and address of the owner of the land will be obtained by searching the Land Register or General Register of Sasines,
- Data will be stored securely either electronically or as hard copy documents
- A privacy notice will be attached to the felling direction which will give details about the subject's rights and what will happen to their personal data.

Sharing:

Felling directions may be shared with other parts of Scottish Government, and externally with other organisations such as Scottish Natural Heritage or the planning authority; this will be undertaken with appropriate Data Sharing Agreements and using the Public Task Article (6(1)(e)) of the GDPR and Section 8 of the Data Protection Act 2018 as the legal basis.

- Scottish Forestry will ensure that all staff regularly complete data protection training and will put in place a plan for detecting, investigating and reporting breaches.
- Before sharing any details Scottish Forestry will satisfy itself that there is a lawful basis for sharing the information and will ensure that the other organisations agree to handle the data in conformity with the applicant's rights.

Sharing:

Scottish Forestry is able to register directions in the Land Register or the General Register of Sasines.

Destroying:

Personal data will be held for the life of the direction and its conditions.

- Information relating to the felling direction which does not contain personal data may be held for a longer period.
- The Privacy Notice attached to the direction will provide more details on the timescales for which information will be held.

Restocking directions**Receiving and storing:**

In order to give a person a restocking direction the regulator will require the name and address of the owner of the land in question.

- In the case of non-compliance with a permission, direction or notice the information will be taken from Scottish Forestry records.

- In the case of felling without a permission, direction or notice being in place the information will be obtained by searching the Land Register or General Register of Sasines,
- Data will be stored securely either electronically or as hard copy documents.
- A privacy notice will be attached to the felling direction which will give details about the subject's rights and what will happen to their personal data.

Sharing:

Restocking directions may be shared with other parts of Scottish Government and externally with other organisations such as Scottish Natural Heritage or the planning authority; this will be undertaken with appropriate data sharing agreements and using the Public Task Article (6(1)(e)) of the GDPR and Section 8 of the Data Protection Act 2018 as the legal basis.

- Scottish Forestry will ensure that all staff regularly complete data protection training and will put in place a plan for detecting, investigating and reporting breaches.
- Before sharing any details Scottish Forestry will satisfy itself that there is a lawful basis for sharing the information and will ensure that the other organisation agrees to handle the data in conformity with the applicants rights.

Sharing:

Scottish Forestry is able to register directions in the Land Register or the General Register of Sasines.

Destroying:

Personal data will be held for the life of the direction and it's conditions.

- Information relating to the felling direction which does not contain personal data may be held for a longer period.
- The Privacy Notice attached to the direction will provide more details on the timescales for which information will be held.

Compensation for Temporary Stop Notices

Receiving and storing:

Claims will involve a Conservancy office receiving information containing person data. In some cases this will only be received electronically but may include, or be comprised entirely of hard copy documents.

- Data will be stored securely either electronically or as hard copy documents.
- A privacy notice will be attached to the application form which will give details about the subject's rights and what will happen to their personal data

Sharing:

Personal data relating to claims will only be shared if that is required to verify evidence of losses, pay claims or to meet other public duty requirements, such as auditing.

- Scottish Forestry will ensure that all relevant staff and contractors regularly complete data protection training and will put in place a plan for detecting, investigating and reporting breaches.
- Before sharing any details Scottish Forestry will satisfy itself that there is a lawful basis for sharing the information, and will ensure that the other parts of Scottish Government or public organisations agree to handle the data in conformity with the applicants rights.

Destroying:

Information will be held for the life of the claim or, where necessary, longer to meet finance and audit requirements (currently seven years for similar claims).

Remedial notices

Receiving and storing:

Remedial notices are served in the case of non-compliance with a permission, direction or notice. In order to serve such a notice personal data will be taken from Scottish Forestry records.

- Data will be stored securely either electronically or as hard copy documents.
- A privacy notice will be attached to the remedial notice which will give details about the subject's rights and what will happen to their personal data.

Sharing:

Remedial notices may be shared with other parts of Scottish Government and externally with other organisations such as Scottish Natural Heritage or the planning authority; this will be undertaken with appropriate Data Sharing Agreements and using the Public Task Article (6(1)(e)) of the GDPR and Section 8 of the Data Protection Act 2018 as the legal basis.

Sharing:

Scottish Forestry is able to register remedial notices in the Land Register or the General Register of Sasines.

Destroying:

Personal data will be held for the life of the notice and its conditions.

- Information relating to the remedial notice which does not contain personal data may be held for a longer period.
- The Privacy Notice attached to the remedial notice will provide more details on the timescales for which information will be held.

Appeals

Two step process: step 1 is an internal review and step 2 is an appeal to the Planning and Environmental Appeals Reporters. At both stages the person requesting the review or appeal (the appellant') will submit personal data.

Step 1: Review

Receiving and storing:

Appellants will provide personal data when they request a review.

- Data will be stored securely either electronically or as hard copy documents
- A privacy notice(s) will be attached to the application form and will form part of the guidance for applying which will give details about the subject's rights, what will happen to their personal data, why we are able to process their personal data and for what purpose it is being processed.

Sharing:

During a review all information relating to a case will be passed from the Conservancy who took the original decisions ('host Conservancy') to the Conservancy who will consider the review ('review Conservancy'). This will include personal data in the original case file and in the request for a review.

- Scottish Forestry will ensure that all staff complete data protection training regularly and will put in place a plan for detecting, investigating and reporting breaches.

- Before sharing any details Scottish Forestry will satisfy itself that there is a lawful basis for sharing the information.

Sharing:

During a review, by agreement between the review Conservancy and the appellant, external input may be sought. In these instances the identity of the appellant will be shared with those contacted to provide input.

- This will only be done with the consent of the appellant.
- Those contacted will be asked to sign a data sharing agreement that sets out Scottish Forestry's and the third party's data protection responsibilities.

Sharing:

Information relating to the decision on the review is proposed to be published on Scottish Forestry's website.

Destroying:

Information will be held for the life of the application, permission, direction (and associated conditions), to which the appeal relates, unless required for Public Task duties, such as auditing.

Step 2: Appeal

Receiving and storing:

Appellants will provide personal data when they request a review.

- Data will be stored securely either electronically or as hard copy documents
- A privacy notice(s) will be attached to the application form and will form part of the guidance for applying which will give details about the subject's rights, what will happen to their personal data, why we are able to process their personal data and for what purpose it is being processed.

Sharing:

During an appeal all information relating to a case will be passed from the host and review Conservancies to the Reporters. This will include personal data in the original case file and in the request for a review.

- A data sharing agreement will be in place between Scottish Forestry and the Scottish Government Planning and Environmental Appeals Division (DPEA).

Sharing:

All information submitted for an appeal, that will be considered by the Reporter, will be published on DPEA's website.

- Personal data (including signatures, personal phone numbers and personal e-mail addresses) will be redacted prior to publication.
- Any confidential, personal or potentially defamatory information will not be published. Personal information includes financial or health information.

Destroying:

Information will be held for ten years, in line with other DPEA appeals.

3.4 Explain the legal basis for the sharing with internal or external partners:

Scottish Government staff and Ministers will process personal data only when required to carry out their duties relating to Part 4 of the Forestry and Land Management (Scotland) Act or other relevant legislation that such as EIA Regulations in support of grant applications.

Regulations may make provision for sharing externally, in order to support Scottish Government staff in discharging those duties.

The GDPR and the DPA allow personal information to be shared or published where data controllers, in this case Scottish Forestry, can demonstrate processing is necessary for the exercise of any functions of a public nature exercised in the public interest or, in the case of sensitive data, the processing is necessary for the exercise of any functions conferred on any person under an enactment. However, compliance with the GDPR and DPA principles remains paramount.

4. Stakeholder analysis and consultation

Groups representing the forestry sector were involved in the initial testing of the proposals and as a result informed the processes that were described in the draft DPIA. Stakeholders were given further opportunity to comment on the draft DPIA during the eight- week consultation period, however, none of the thirty seven consultation responses which were received contained comments relating to the draft document. This final DPIA therefore remains largely unchanged from the draft DPIA. All changes which have been made to the felling and restocking proposals as a result of consultation have been taken into account.

5. Questions to identify privacy issues

5.1 Involvement of multiple organisations

Data will only be shared with organisations outwith Scottish Forestry when this is necessary, such as during the 28 day public consultation period or when referring an application for felling trees covered by a TPO to the local authority. The data to be shared will be restricted to only that which is required for the purpose of delivering the Regulations.

5.2 Anonymity and pseudonymity

Property names, a case identification number, grid references and maps showing the proposed felling activity will continue to be published on the Scottish Forestry website for felling permission applications. The property name, grid reference and map will allow people to understand where the felling is to take place and this could lead to the identification of the applicant by those who have local knowledge of the area. The case identification number is generated as a case management tool and will not provide any link to the applicant's personal details.

5.3 Technology

A new IT system will be developed to support the regulations, including the public register used to run consultations on applications. This will be based on the existing systems. The change in technology will have no impact on what data is shared and will have the same safeguards built in.

5.4 Identification methods

Every application for felling permission, approved felling permission, felling direction, restocking direction and remedial notice will be given a unique case identifier. The identifier will be generated

sequentially and will be used as a case numbering system rather than a system to track individuals. The number will be made available to the public and other organisations and will appear on the Scottish Forestry website during and after consultation on permission applications. The applicant will not be able to be identified from the case identifier,.

5.5 Sensitive/Special Category personal data

None of the data which will be handled falls into the sensitive/special category.

5.6 Changes to data handling procedures

The data handling procedures associated with the new regulations will be based on the current procedures. No comments were received about the current or proposed data handling procedures during the consultation process.

5.7 Statutory exemptions/protection

No statutory exemptions/protections apply.

5.8 Justification

There are no proposed increased risks in this project so we have not investigated whether any increases in risk would be justified.

5.9 Other risks

No new risks have been identified.

6. General Data Protection Regulation (GDPR) Principles

Principle	Compliant – Yes/No	Description of how you have complied
6.1 Principle 1 – fair and lawful, and meeting the conditions for processing	Yes	Data will only be requested, stored and shared where it is required for the purposes of implementing the felling and restocking regulations. This is in line with Article 6(1) (e) of the GDPR. Individuals will be told about their data protection rights, what will happen to their personal data, why we are able to process their personal data and for what purpose it is being processed.
Principle	Compliant – Yes/No	Description of how you have complied
6.2 Principle 2 – purpose limitation	Yes	Data will only be used for the purposes of implementing the felling and restocking regulations.
Principle	Compliant – Yes/No	Description of how you have complied
6.3 Principle 3 – adequacy, relevance and data minimisation	Yes	Requested data will be the minimum required to enable the effective delivery of the felling and restocking regulations, for example, a felling permission applicant will only be required to give their name and address and not their email address. Giving an email address will be optional.
Principle	Compliant – Yes/No	Description of how you have complied

6.4 Principle 4 – accurate, kept up to date, deletion	Yes	Where personal data is found to be or we are made aware of it being inaccurate the data will be amended. The IT system used to process permissions will allow amendments and deletions of personal data. Any data held within paper files will be amended as required.
Principle	Compliant Yes/No	Description of how you have complied
6.5 Principle 5 – kept for no longer than necessary, anonymization	Yes	Data will be held for the periods set out within Scottish Forestry's file retention policy and the periods set out within the Scottish Governments Electronic Records Management System.
Principle	Compliant Yes/No	Description of how you have complied
6.6 GDPR Articles 12-22 – data subject rights	Yes	A privacy notice will be provided to all felling permission & compensation claim applicants, and felling direction & restocking direction recipients. The new IT system will allow subject access requests to be responded to more easily.
Principle	Compliant Yes/No	Description of how you have complied
6.7 Principle 6 - security	Yes	Personal data will be protected by a secure IT system and any paper files will be kept in secure offices. All staff must attend information handling training regularly.
Principle	Compliant Yes/No	Description of how you have complied
6.8 GDPR Article 24 - Personal data shall not be transferred to a country or territory outside the European Economic Area.	Yes	There will be no requirement for any of the data to be transferred to a country or territory outside the European Economic Area.

7. Risks identified and appropriate solutions or mitigation actions proposed

Is the risk eliminated, reduced or accepted?

Risk	Solution or mitigation	Result
Personal data is mistakenly shared with other organisations/members of the public. Particularly when files are prepared for consultation.	Ensure all staff are given regular data protection training, understand the contents of data sharing agreements and the lawful basis for sharing information. Ensure data processing agreements are in place.	Reduce risk

8. Incorporating Privacy Risks into planning

Explain how the risks and solutions or mitigation actions will be incorporated into the project/business plan, and how they will be monitored. There must be a named official responsible for addressing and monitoring each risk.

Risk	How risk will be incorporated into planning	Owner
Personal data is mistakenly shared with other organisations/members of the public.	<p>Ensure roll out of staff training and refresher of staff training is mandatory for all staff handling data.</p> <p>Ensure that data sharing agreements are completed before information is shared with other parts of Scottish Government and other organisations such as Scottish Natural Heritage or the planning authority.</p>	Information asset owner for Scottish Forestry

9. Data Protection Officer (DPO)

Any risks identified have been reduced to a low level by ensuring appropriate mitigation is put in place and as a result the data protection officer has not been asked to review this DPIA.

10. Authorisation and publication

I confirm that the impact of implementing the Regulations has been sufficiently assessed against the needs of the privacy duty:

Name and job title of a IAO or equivalent	Date each version authorised
JO O'HARA, HEAD OF FCS / CEO SCOTTISH FORESTRY	6/2/19