

# Business and Regulatory Impact Assessment

## **Title of Proposal**

Regulation of felling and restocking.

## **Purpose and intended effect**

### Background

Felling (and restocking) are currently regulated by the Forestry Commissioners according to the Forestry Act 1967 and Regulations made under it. The Forestry and Land Management (Scotland) Act 2018 will complete the devolution of forestry to Scotland and repeal the Forestry Act 1967 in Scotland. Scottish Ministers will become the forestry regulator in Scotland under Part 4 of the Act. A new set of Regulations is required in order to set out how the new regulatory regime will operate.

In this Business and Regulatory Impact Assessment, 'the Regulations' refers to the Forestry (Exemptions) (Scotland) Regulations 2019 and the Forestry (Scotland) Regulations 2019, and 'the 2018 Act' refers to the Forestry and Land Management (Scotland) Act 2018.

### Objective

The Regulations aim to put in place a fair, transparent and proportionate new regulatory regime, using the existing regime as a starting point in order to minimise disruption and ensure continuity for business and the regulator.

### Rationale for Government intervention

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

The Regulations – determining which activities require permission, the processes in place relevant to felling permissions, and the processes in place relevant to directions – will together allow the Scottish Ministers to be an effective and proportionate regulator.

The Regulations support several of the National Outcomes that make up Scotland's new National Performance Framework, and contribute to National Indicators linked to the Framework:

- We value, enjoy, protect and enhance our environment.
- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- We have thriving and innovative businesses, with quality jobs and fair work for everyone.
- We are healthy and active.



## Consultation

### Within Government

The Regulations have been developed in collaboration with Forestry Commission Scotland. Teams responsible for planning policy and appeals have also been involved on relevant issues.

### Public Consultation

In developing these Regulations, the Scottish Government and Forestry Commission Scotland have worked closely with stakeholders and individual organisations with an interest in the regulation of forestry in Scotland. Engagement with stakeholders began in September 2017 in order to determine where improvements could be made in the regulation of felling and restocking, and how to ensure a smooth transition from the current regime to the new one. This included a workshop on exemptions, attendance at Regional Forestry Fora and the national Customer Representatives Group, and meetings with individual stakeholders in order to explain the proposals and gather views.

An eight-week consultation ran from 20 August 2018 to 14 October 2018, and engagement with stakeholders continued throughout that period. Thirty-seven responses were received during consultation, 19 of which were from organisations, including Confor, Woodland Trust for Scotland, Scottish Woodlands Ltd and West Lothian Council. Non-confidential responses were published on the Scottish Government website in November 2018, and an analysis of the consultation responses was published in December 2018.

All associated documents can be found at:

<https://consult.gov.scot/forestry/fellingandrestocking/>

Consultation respondents accepted the need to have regulation of felling and restocking, and were supportive of the proposals being based on the current legislation, which will enable continuity for already approved or planned future forest management operations. Where respondents highlighted areas of concern they were mainly focused on issues relating to the exemptions from the requirement for a felling permission, and the application process. The main concerns along with mitigation measures have been summarised in the box below:

<b><u>Concern</u></b>	<b><u>Mitigation</u></b>
<b>Exemptions: Small Trees</b> Concern that the proposal to reduce the three separate diameter thresholds to one threshold of 8cm would reduce the opportunity to thin woodlands.	The Regulations set the diameter threshold at 10cm.
<b>Exemptions: Windblow</b> Concern about potential delays in being able to clear timber.	Guidance will set out when a 'fast track' approval process may be used, and provide clarity on the use of tolerance tables within long-term



	forest plans for clearing windblow.
<p><b>Exemptions: Volume</b> Concern that native pinewoods would not be given the same level of protection as the proposals set out for other native woodlands.</p> <p>Concern that the volume exemption would not provide enough flexibility for large landowners.</p>	<p>The Regulations exclude Caledonian pinewoods from the volume exemption, in line with other native woodlands.</p> <p>Guidance will explain that long-term forest plans can provide flexibility e.g through the use of tolerance tables. Where a long-term forest plan is not in place, ten years of thinning approval may be gained through the submission of a management plan.</p>
<p><b>Exemption Dead Trees:</b> Concern that the amount of deadwood left for biodiversity would be reduced by this exemption.</p>	Guidance will set out in detail what this exemption will cover, and include reference to the UKFS guidance on deadwood.
<p><b>Application information requirement:</b> Concern that providing pre and post stocking density for thinning operations is not the most efficient nor the most accurate way of describing what will be done.</p>	Information requested will relate to the proposed 'thinning intensity' and can be described as either the volume, number of trees, or basal area.
<p><b>Conditions:</b> Concern that future conditions on permissions would be more detailed and prescriptive than conditions on felling licences.</p> <p>Concern regarding a possible requirement in conditions to notify Scottish Forestry of an intended change in ownership.</p>	<p>Guidance will set out the type of conditions which will be set as standard on most permissions.</p> <p>A risk-based approach will be taken to registration. Guidance will detail what information will be required and how it will be used. Information required will always be the minimum information necessary for the Scottish Ministers to take a risk-based approach.</p>
<p><b>General:</b> Concern that the 2018 Act and the proposals refer to Sustainable Forest Management where the UK Forestry Standard (UKFS) is used to inform and direct practice.</p>	Guidance will indicate clearly that all decisions relating to Sustainable Forest Management will be based on the UKFS.



Four of the 37 responses commented on issues relating to the partial BRIA. In general, these comments related to the details set out in the table above, desires to ensure that the current flexibility in the system is maintained, and that greater burdens on the sector are not created. Guidance, which will be in place for the Regulations coming into force, will outline the new processes and provide reassurance that these processes will not be any more burdensome or time-consuming for applicants than those under the current regulatory system.

### Business

In total, 15 businesses and four membership organisations were sent details of the proposals, and subsequently contacted to gather information on their views of the likely impacts. These organisations ranged in size, geographical location and sector, and included small, medium and large wood-processing businesses, forest management companies, and private and community landowners, as well as the Community Woodlands Association (CWA), Confederation of Forest Industries (UK) Ltd (Confor), Scottish Land and Estates (SLE) and the United Kingdom Forest Products Association (UKFPA). All organisations were invited to participate in engagement activities which included a mixture of face-to face meetings and telephone conversations. A total of 15 organisations agreed to participate in this engagement process.

### **Options**

#### Option 1 – Do nothing

An assessment like this usually requires consideration of a ‘do nothing’ option.

In the case of the regulation of felling and restocking in Scotland, this would mean putting no detail into Regulations, and operating solely on the basis of what is in the primary legislation, the 2018 Act.

This was not considered a satisfactory option for the processes associated with permissions and directions, as placing some detail in secondary legislation provides clarity to all those who interact with the regime. It was also considered unreasonable to put no exemptions in place, as that would mean that every tree felled in Scotland would require a felling permission, regardless of impact or urgency. This would result in a disproportionate and burdensome regulatory system for owners, managers and the regulator.

#### Option 2 – The Regulations

The Regulations are based on current exemptions and processes for giving consent for felling operations and requiring restocking. Changes from the current exemptions and processes have only been made where

- opportunities to make improvements have been put forward by stakeholders or
- they are required because of a fundamental change in the primary legislation (e.g. because Scottish Ministers now have the ability to serve Temporary Stop Notices for illegal felling).



Minimising the changes that are made will ensure there is no disruption to ongoing and future forest management operations. In addition the “Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Savings Provisions) Regulations 2019” ensure that the transition between the existing regulatory regime and the new one is straightforward for current felling licence holders or those with applications pending.

During the development of these Regulations alternatives were considered, in particular in relation to the exemptions proposed. Due to the nature of the potential impacts of these alternatives they were explored in greater detail in the Strategic Environmental Assessment Environmental Report. Alternatives suggested during consultation have been considered, and where possible they have been included in the Regulations. Where it has not been possible to include the suggestions made, we have considered other ways in which the issues highlighted can be addressed, such as through additional detail in supporting guidance documents.

### **Sectors and groups affected**

A number of groups have an interest in the forestry sector and could be affected by changes to how felling is regulated. Landowners and managers, forestry managers, and wood-processing businesses have a direct interest in how forestry is regulated, as well as local government and a number of non-governmental organisations (NGOs).

The main group that will be affected by these Regulations are those who are currently regulated by the Forestry Commission, those who fell and restock trees in Scotland, for the most part commercial foresters.

In addition, those who manage areas where trees are planted, but are currently exempt from the requirement to have a felling licence, will have a particular interest in the exemptions. This will include the general public, local authorities, farmers, and landowners. Environmental groups will also have an interest in the extent of the exemptions.

### **Benefits**

It is hard to see what the benefits of having no exemptions and no processes in place (Option 1) could be.

The Regulations (Option 2) should

- simplify certain aspects of the regime such as some of the exemptions, compensation process, and appeals process and
- ensure continuity for those whose forestry activities are already regulated as processes and exemptions are based on what is currently in place.

### **Costs**

#### Option 1 – Do Nothing

- Having no exemptions in place would lead to resources being required to apply for felling permission for every tree felled in Scotland. This would be a burden on forest managers who currently carry out some of



their management under exemption, but primarily would affect every other landowner or manager who may need to fell trees in the course of their work. This cost has not been quantified as there is no benefit to this approach against which to balance the cost.

- Having no detail of processes in place in secondary legislation has a less clear resource burden attached to it. However, less clarity regarding processes would lead to slower adaptation to any changes and, potentially, delays in processing applications which would increase the burden on businesses.

#### Option 2 – The Regulations

Some businesses identified areas where there is the potential for an increase in costs and these are listed below. No businesses provided a quantification of these costs.

- Some businesses have identified that there will be a requirement for staff and manager time to adapt to new processes.
- Some businesses have identified that the impacts of the new processes will not be made clear until the guidance giving more details on how the regulations will be implemented has been published.
- Some businesses have concerns that there may be increased costs associated with the requirement to inform Scottish Forestry of an intended change in ownership, and the subsequent registration process.
- Some businesses have concerns that the requirement to gain a felling permission prior to clearing windblow will increase the costs and complexity of forest management.
- Some businesses have concerns that the transition between the old and new regulatory regimes could have an impact on ongoing and future felling operations approved before the 1<sup>st</sup> April.

#### **Scottish Firms Impact Test**

Views were sought from businesses and forestry membership organisations on the impact of the consultation proposals. Most comments were focused on the importance of ensuring a smooth transition from the existing regime to the new one, the likely costs and benefits to individual businesses of the new regime, and the likely impacts on businesses operating in different locations, sectors and at different scales.

In total, 19 questionnaires were sent to businesses and membership organisations, (see Annex), and 15 responses were collected via face-to-face meetings and phone calls. These discussions indicated that the proposals are not likely to have a negative effect on Scottish businesses, as the proposals largely reflect the regulatory regime which is currently in place.

Where impacts on businesses have been identified, they would be minor or time-limited as they would be linked to existing businesses adapting to any changes. This could mean that small businesses could be affected for longer than larger businesses who tend to interact with the regulator more frequently (e.g. by submitting more applications over any given time period). Comments included the following:



- The value in having a ‘fast track’ application process in place to allow prompt clearance of windblow. Guidance will set out the circumstances when a ‘fast track’ application process will be used.
- That clarification of the ‘place exemptions’, in particular those relating to public open spaces and gardens, is welcomed.
- That the volume exemption should include other types of woodland. Regulations include further protection for native Caledonian pinewoods.
- That there could be an impact if there were significant changes to the type of conditions imposed on permissions. Guidance will set out the circumstances when different types of conditions are likely to be used.

In the future, the underlying legislation in Scotland will be different from that applying in England and Wales. However, it is unlikely that the Regulations will have an impact on organisations working across different parts of the UK, as they are already dealing with separate regulatory systems and processes.

### **Competition Assessment**

There has been no indication from any organisations contacted that there will be an impact on the competitiveness of firms in Scotland, as the Regulations largely reflect what is currently in place.

### **Consumer Assessment**

There has been no indication from any organisations contacted that there will be an impact on the quality, availability or prices of goods or services as the proposals largely reflected what is currently in place. The United Kingdom Forest Products Association (UKFPA), which represented the technical and commercial interests of processors and British grown timber sector, was contacted to discuss the proposals. The Association considered that the proposals would not have an impact on its members.

### **Test run of business forms**

There are no new business forms contained within the Regulations.

New forms will be developed in the future as part of the guidance associated with the changes. These are not assessed as part of this exercise but will be tested appropriately as they are developed.

### **Digital Impact Test**

The felling permission application process will follow the same format as the current felling licence application process: applications will be submitted on paper forms with a paper map and then recorded by Scottish Forestry staff in an IT system to be processed. To enable this to happen, a new IT system is being developed and has been designed around the minimum information requirements and processes set out in the Regulations. In the future, the IT system may be able to accept applications online; however, paper forms will continue to be accepted. This will ensure that anyone who does not have access to the internet is able to apply. It is unlikely that any future developments in technology will have an impact on delivery.

### **Legal Aid Impact Test**

These Regulations do not have any impacts on rights to access justice for



individuals, through availability of legal aid or possible expenditure from the legal aid fund.

### **Enforcement, sanctions and monitoring**

Felling will be regulated by Scottish Ministers following 1 April 2019. In practice, this will form part of the role of Scottish Forestry, an executive agency of the Scottish Government, which is being created from Forestry Commission Scotland, the current regulator.

The 2018 Act provides Scottish Ministers with powers including those to:

- carry out agreed site visits relating to compliance
- gain entry to property when investigating non-compliance
- ask for information relating to felling or restocking conditions
- register conditions.

Sanctions for non-compliance are set out in the 2018 Act, and include offences of:

- felling without a permission and not within the terms of an exemption, direction or notice
- failing to comply with a permission (conditions), direction or notice
- providing false information relating to applications to fell.

### **Implementation and delivery plan**

It is intended that the 2018 Act will come into force on 1 April 2019. In practice this will include:

- two new executive agencies of the Scottish Government being created – Scottish Forestry (the forestry regulator) and Forestry and Land Scotland (manager of the Scottish Ministers' land known as the national forest estate)
- new felling and restocking Regulations coming into force
- a new Scottish Forestry Strategy.

### **Post-implementation review**

We propose to align the post-implementation review to the Scottish Forestry Strategy review cycle. This is set out in the 2018 Act, which requires reporting to be carried out every three years, and a review at least every nine years.

### **Summary and recommendation**

The introduction of the Regulations will allow the Scottish Ministers to regulate the felling of forestry in Scotland effectively and proportionately, and to ensure the retention of woodland cover and the sustainable management of forests.

Through the consultation responses, meetings with stakeholders and the Scottish Firms Impact Test, we have received support for the continued regulation of felling and restocking, and for the new regime based on the current legislation to ensure continuity. The approach which we have taken to the transition between the old regime and the new one reflects the desire for continuity and minimal disruption.

There are some concerns relating to the practical implementation and delivery of the Regulations. However, guidance will provide greater detail on processes with the aim



of giving clarity and reassurance to the forest industry.

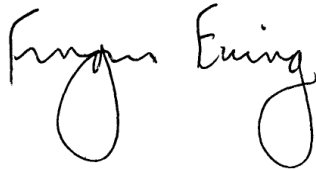
The Business and Regulatory Impact Assessment concludes that the Regulations will have no impact on businesses across Scotland.

This assessment is recommended for Cabinet Secretary clearance and submission in support of the Regulations.



**Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**A handwritten signature in black ink, appearing to read 'Fergus Ewing', with a large loop at the end of the last name.

**Date:** 06/02/19

**Fergus Ewing**  
**Cabinet Secretary for the Rural Economy**

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## Annex

### **Business Regulatory Impact Assessment** **Questions for businesses**

#### **Questions about you:**

Your name or organisation's name

Phone number

Address

Postcode

Email

#### **Questions about your organisation**

1. **Please provide a brief description of your business/how you are involved in forestry in Scotland.** *The reason for the question is to understand how any impacts will specifically relate to your business and to summarise responses and impact per business/sector.*
2. **As part of the new processes we will need to create new forms. Would you be willing to be contacted about the impacts of the new forms?**
3. **Which aspects of the proposals are of particular importance to your organisation?** *The reason for the question is to understand which aspects of the proposals are particularly important to different types of business.*
4. **Will the proposals have an impact on your organisation? If yes, for each aspect that you think will have an impact, what costs or benefits would you anticipate?** *The reason for the question is to capture and quantify costs and benefits to different sizes, scales and structures of business.*

#### **Questions about the wider forestry sector**

5. **Do you anticipate that the proposals will have an impact on other forestry businesses which you interact with? (suppliers/market – numbers, size, scale, location) Please give details of the impacts for each proposed regulation which you have identified.** *The reason for the question is to understand if there will be impacts on businesses which we have not considered or impacts that have not been captured elsewhere.*
6. **Do you anticipate that the proposals will have differing impacts for large/small scale organisations?** *The reason for the question is to identify if the proposals will unfairly affect a particular size of business.*



- 7. Do you anticipate that the proposals will have any impact on those starting out in your sector (for example new organisations or existing organisations looking to move into forestry or forest management)?**

*The reason for the question is to identify any potential impacts on new businesses/expanding the sector.*

- 8. Would there be different impacts for those that operate in Scotland only and those that operate across different parts of the UK?**

*The reason for the question is to identify if the proposals will have different impacts on businesses operating within different geographical markets.*

**Competition Assessment Questions:**

- 9. Will the proposals directly or indirectly limit the number or range of suppliers?**
- 10. Will the proposals limit the ability of suppliers to compete?**
- 11. Will the proposals limit suppliers' incentives to compete vigorously?**
- 12. Will the proposals limit the choices and information available to consumers?**