

Partial 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 repeals 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 are required in order to set out how the new regulatory regime will operate ('the proposal').

Objective

This proposal aims to put in place a fair, transparent, and proportionate regulatory regime using the current regime as a starting point in order to minimise disruption for business and regulator.

Rationale for Government intervention

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

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

The proposal supports several of the National Outcomes that make up Scotland's new National Performance Framework, and contributes to their linked National Indicators:

- 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 proposals have been developed in collaboration with Forestry Commission Scotland. In addition, on relevant issues, teams responsible for planning policy and appeals have been involved.

Public Consultation

In developing these proposals, 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 has been on-going since September 2017, in order to determine where improvements could be made in the regulation of felling and restocking. This has included a workshop on exemptions, attendance at Regional Forestry Forums and the national Customer Representatives Group, and meetings with individuals stakeholders to explain proposals and gather views.

This engagement will continue throughout the public consultation period.

This document will then be finalised, bringing together information provided during the consultation period and any changes made as a result of that information.

Business

13 businesses and four membership organisations have so far been contacted to gather information on the likely impacts of these proposals. The organisations range in size, geographical location and sector and include 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). This has so far involved a mixture of face to face meetings and telephone conversations with twelve of the organisations contacted.

During the public consultation period further businesses will be given a chance to comment on the impacts of the proposals, including through phone calls or face to face meetings.

Options

Option 1 – Do nothing

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

In the case of the felling and restocking regulations this would mean putting no detail into Regulations and operating solely on the basis of what is in the primary legislation. 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 in place no exemptions, 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 regulatory system.

Option 2 – Proposals as set out in the consultation paper

These proposals are based on current exemptions and processes for giving consent for felling operations and requiring restocking. Changes are only proposed where

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

In developing these proposals, alternatives were considered in particular in relation to the exemptions proposed. Due to the nature of the potential impacts of those alternatives they are explored in more detail in the Strategic Environmental Assessment Environmental Report published for consultation at the same time as this partial BRIA.

Sectors and groups affected

A number of groups have an interest in the forestry sector and could be affected by any proposed changes to how felling is regulated. Land owners 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 NGOs.

The main group that will be affected by these proposals 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 that 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 large 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 proposals for consultation (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 that are 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 land owner 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 of 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 certainty on processes would lead to slower adaptation to any changes and, potentially, delays in processing applications which would increase the burden on businesses.

Option 2 – Proposals as set out in the consultation paper

- Some businesses have identified that there will be a requirement for staff and manager time to adapt to new processes.

Scottish Firms Impact Test

Views were sought from businesses and forestry membership organisations on the impact of the proposals. Most comments were focussed on the likely costs and benefits to individual businesses, and the likely impacts on businesses operating in different locations, sectors and at different scales.

15 questionnaires were sent to businesses and membership organisations, see Annex, and twelve 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 interact with the regulator more frequently (for example by submitting more applications over any given time period). Comments included

- that there may be value in considering a 'fast track' application process in order to allow speedy clearance of windblow;
- that clarification of the place exemptions, in particular those relating to public open spaces and gardens, is welcomed;
- that the volume exemption should perhaps not apply to any small woodlands, or to any native woodlands less than 0.5ha; and
- that the scope of conditions which could be imposed on permissions could have an impact if there were significant changes in practice.

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

Competition Assessment

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

Test run of business forms

There are no new business forms contained within these proposals.

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

Legal Aid Impact Test

These proposals 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 new 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; and
- register conditions.

Sanctions for non-compliance are set out in the 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; and
- providing false information relating to applications to fell.

Implementation and delivery plan

It is intended that the new 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 and Forestry and Land Scotland;
- new felling and restocking Regulations coming into force; and
- 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 new legislation, which essentially requires reporting every three years and a review at least every nine years.

Summary and recommendation

The consultation paper (available at <https://consult.gov.scot/forestry/fellingandrestocking>) sets out the proposals that the Scottish Government is recommending.

Following the completion of the public consultation, a final BRIA will be published setting out decisions on the future of the regulation of felling and restocking, and the benefits and costs associated with those.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. 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".**Date: 20 August 2018**

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?**