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

Data Protection Impact Assessment – draft report for consultation



Scottish Government
Riaghaltas na h-Alba
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Data Protection Impact Assessment (DPIA) – draft report for consultation

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.

The purpose of this consultation document is to set out proposals for processing personal data and give you the opportunity to comment on those proposals.

2. Document metadata

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

Review date	Details of update	Completion date	Approval Date
This draft DPIA will be reviewed in order to take into account consultation responses and a final version will be published following the consultation analysis.			

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 what 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, 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 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 names and addresses of applicants, 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, 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 applicants 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 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 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.

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 organisation agrees 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, which is 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 person 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:

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

Appeals

Two step process: step 1 is an internal review and step 2 s 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 or 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 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.

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 parties 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 or 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 on 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 have been involved in the initial testing of the proposals and have, as a result, informed the processes that are describe and assessed in this draft DPIA.

This document has been produced for the purposes of consultation and all consultation responses will be taken into account in completing the final DPIA. In addition, detailed discussions on this impact assessment can be arranged by emailing the team at futureforestry@gov.scot.

A final version will be published once the consultation responses have been analysed and the proposals revised.

5. Authorisation and publication

The final DPIA report will be signed by the appropriate Information Asset Owner (IAO). Before signing the DPIA report, an IAO ensures that they are satisfied that the impact assessment is robust, has addressed all the relevant issues and that appropriate actions have been taken. By signing the DPIA report, the IAO is confirming that the impact of applying the policy has been sufficiently assessed against the individuals' right to privacy.

Information provided to us during consultation, on this partial DPIA, will help to ensure that the assessment is robust and does address all the relevant issues.