Scottish Land&Estates
Landowners Working for the Countryside

Consultation Response

Consultation Title	**Regulation of felling and restocking: consultation**
Date	**10th October 2018**
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Scottish Land & Estates is the voice of rural businesses throughout Scotland. We are a membership-based organisation representing a wide range of rural businesses, including farmers, foresters, tourism operators, housing providers, leisure companies, and renewable energy providers.

Our members provide a wide range of economic, environmental and social benefits which are vital to the success and survival of communities throughout rural Scotland. They play a critical role in ensuring sustainable, healthy and empowered rural communities, providing housing, employment and a wide range of economic, environmental and social benefits.

Forestry Context

Scottish Land and Estates represents a significant proportion of private sector forestry and tree related interests throughout Scotland. In order to ensure our members can continue to deliver high quality sustainable forestry outcomes on privately owned and managed land, we believe any regulatory change needs to carefully consider any potentially negative practical impacts and unintended consequences.

We very much welcome the new level playing field that the new 2018 Act delivers which will ensure the public sector will be subject to the same regulatory framework as the private sector.

We welcome the opportunity to respond to this consultation and this response is given with particular reference to your stated intention ***"… to remain as close as possible to the current position and to make changes only where they will make the processes more transparent, simpler or reduce the potential for inappropriate deforestation".***

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Exemptions to the requirement to have a permission to fell trees

1. Do you agree with the proposed exemptions?

No – see Q4 below

2. Would you like to see any of the proposed exemptions removed from the proposals?

No

3. Would you like to see adjustments made to any of the proposed exemptions?

No

4. Would you like to see any other exemptions added to the proposals?

Yes

We would like to see the reinstatement of the following three existing exemptions for the reasons outlined below. We believe the removal or amendment of these exemptions cannot be justified on silvicultural grounds, nor does their removal improve transparency, simplicity or prevent inappropriate deforestation.

Small Trees

Having one single below 8cm over bark exemption is inadequate and unnecessarily restricts the ability of forest managers to manage their resource sustainably for a range of desirable outcomes.

Removing the below 10cm diameter over bark exemption to improve the growth of other trees, essentially thinning, considerably reduces the time window within which this work can be carried out and imposes an additional time-consuming, costly and unnecessary administration burden that currently does not exist.

Suggesting a separate coppice threshold is not relevant in Scottish conditions cannot be justified. Removing the current coppicing threshold of 15cm diameter and suggesting coppicing can be captured by the new 8cm limit also cannot be justified. This reduces the exemption by a staggering 7cm and such a considerable reduction could render this very desirable management technique, particularly in ancient woodland management and restorations, uneconomic by again imposing an additional time-consuming, costly and unnecessary administration burden that currently does not exist.

We believe the existing Small Trees exemptions provide vital management flexibility and should be retained in their entirety. The potential unintended consequence of revising the existing exemption is that early woodland management intervention and coppicing in Scotland will become less practical, potentially uneconomic and thus less desirable as a management technique. Considering the Scottish governments wish to bring more woodland into management, we believe the proposal will have the opposite effect.

We believe the removal/revision of the current exemption cannot be justified on silvicultural grounds, nor does the proposal improve transparency, simplicity or prevent inappropriate deforestation.

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Volume

As it states in the consultation paper, "this exemption is in place to allow low level removal so that owners of small woodlands can use their resource".

We agree that the ability to sell the full $5m^3$ per calendar quarter makes sense.

However, the removal of the exemption for small woodlands 0.1-0.5ha where the canopy comprises over 50% of native broadleaves makes no silvicultural or commercial sense.

It is highly likely that most small woodlands, where this exemption is applicable, will be captured by this proposal. It is highly likely that this will have serious consequences for owners of these small woodlands who manage their resources for fire wood etc, whether for personal consumption or sale. It is highly unlikely to capture small coniferous stands such as shelter belts.

There is a significant risk that this proposed change will have a range of unintended and unsustainable consequences.

Firstly, it would be exceptionally difficult and costly to survey, map, administer and inspect the imposition of such an unnecessary regulatory burden.

Secondly, a key driver for both management of existing woodlands and new planting, particularly on farms, is the ability for the farm to utilise their own woodland resources whether for their own personal use or for diversification of the farm business. This revision would remove one of the key incentives for managing existing small native woodlands and planting new small woodlands on farmland by imposing such an unnecessary regulatory burden.

Finally, following discussion with the Forestry Commission regarding the consequences outlined above, it seems the reasoning behind this proposal is an attempt to prevent some gradual deforestation in advance of development. Whilst we do appreciate that the Forestry Commission has an issue with development related deforestation, we do not believe the revision of this exemption is the correct mechanism to solve that issue. We believe that development related deforestation is a planning policy issue and, if the planning departments approve development, the trees on the site will be removed under planning permissions regardless and often with ministerial approval. The current proposal would penalise the majority of small woodland owners who have no intention to pursue development for the potential actions of a small minority that may wish to pursue development.

We believe the removal/revision of the current exemption cannot be justified on silvicultural grounds, nor does the proposal improve transparency, simplicity or prevent inappropriate deforestation.

Dead Trees

The exemption for dead trees has been retained. **However, the *definition* of what constitutes a dead tree or non-growing tree appears to have been revised**. We do not support or agree with an arbitrary revision to the definition or understanding of what constitutes a dead or non-growing tree.

We believe it is entirely unacceptable to impose the requirement of a felling licence for the clearance of windblown trees or non-growing trees.

For example, windblow is the consequence of high winds outwith the control of the resource owner. Commercial conifer stands at higher elevations are most susceptible to windblow, although it evidently does occur in lowland and both mixed and broadleaved woodlands. Fire and disease are also outwith the control of the resource owner.

Windblown trees and stands are dangerous and unsightly. There is no reasonable justification for imposing a new requirement for a felling licence.

There is no legal obligation to restock these sites at present although the vast majority of commercial owners do so. Lowland policy woodlands are also restocked/regenerated in the vast majority of cases. It seems the Forestry Commission wish to impose a new requirement to restock windblown, diseased or damaged sites regardless of landscape, environmental, silvicultural or management context.

There are situations where, following a windblow event, that the landowner makes a perfectly legitimate decision to not restock the site. This may be because the scientific methodology of Windthrow Hazard Classification has resulted in an unacceptable risk rating, indicating that the site perhaps should never have been planted in the first place. It may be that the costs are prohibitive for restocking and managing the woodland or commercial forest over time due to possibly poor access or other legitimate financial reasons. This does not constitute "inappropriate deforestation" based on a subjective assessment by an officer of the state.

In order to impose this new requirement, it seems the very definition of what constitutes a "growing tree" has been revised. In any context, a tree that has been uprooted or snapped in half has been severely compromised.

It is the silvicultural management objective of the tree or stand of trees that is vitally important in this context. In the case of commercial conifers, an uprooted or snapped tree is unlikely to survive, is no longer commercially viable and needs to be cleared and replaced. In the case of a broadleaved tree it may not die and may regrow from the base etc. Broadleaves are also commercial trees in many contexts.

Whilst the ultimate land use, management and financial risk remains with the landowner, so should the decision whether to both clear and/or restock after an event such as windblow, fire or disease. The other option is to leave it as deadwood in situ, which is also a legitimate option should the landowner wish to do so.

Revising the definition of what constitutes a dead or 'non-growing' tree, seems a crude attempt to force private landowners into currently non-existent restocking obligations, and will have a number of negative consequences. **Who will decide whether a tree is actively growing or actively dying if the structure of the tree is compromised or the roots exposed.** There are endless scenarios where subjective assessments could be scientifically and legally challenged. This proposed revision will prove very costly and problematic to administer and will likely lead to considerable volumes of cases where compensation will be sought for commercial losses.

We believe the removal/revision of the current exemption cannot be justified on silvicultural grounds, nor does the proposal improve transparency, simplicity or prevent inappropriate deforestation.

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Felling: Applications, issuing permissions, compensation, felling directions

5. Do you agree with the proposals?
If no:

No – see below.

6. Would you like to see anything removed from the proposals?
If yes: What and why?

Yes

Regarding felling licence conditions:

The 1967 Act granted licences unconditionally, except where it was expedient to set conditions.

We are disappointed that this philosophy of "least administrative burden" has not been retained and it is proposed that conditions will be set in relation to perceived impacts of the felling and subsequent management on communities, individuals, environment, biodiversity, species, retaining or increasing woodland, and yet there is no reference to either silviculture, the landowners own objectives or long term business aspirations.

We believe it is vitally important to retain proportionality in both scope and regulatory burden regarding stand-alone felling licence applications and these should retain a focus on silvicultural considerations as opposed to wider stakeholders who are fully consulted via the public register and, on larger and more complex proposals, as part of the Long Term Forest Plan process.

Any proposed legally binding conditions must be quantifiable against measurable and auditable specifications and/or standards. For example, conditions relating to "compliance with sustainable forest management" must refer specifically to the UK Forest Standard or be entirely removed from the list. This would ensure compliance can be objectively measured and audited against a known, respected and trusted sustainability standard.

We can see no justification and will not support any requirement to notify an intended change in ownership to ministers. It is entirely inappropriate to expect any prior notification of the intention to sell private land or to include such a notification requirement in felling conditions. Any intention of sale is a private matter for the landowner and their agents and are subject to extensive existing legal processes.

We would like to see conditions for stand alone felling licences assessed on silvicultural merit and good practice as per the current regime with reference to 'wider stakeholder impacts' removed. Conditions should be restricted to those relating to restocking and maintenance.

We would like to see the terminology "compliance with sustainable forest management" removed as it is subjective and cannot be legally binding.

7. Would you like to see adjustments made to the proposals?
If yes: What adjustments and why?

8. Would you like to see anything added to the proposals?
If yes: What additions and why?

We would like to see the terminology "compliance with the UK Forest Standard" added. This is universally accepted as the minimum sustainability standard and can be audited and thus legally binding.

We believe it is essential that the regulations retain a focus on timber production to support this vital sustainable rural industry. Modern timber production delivers the financial backbone that supports sustainable forest management and the rural communities that rely on this industry. They are entirely inter-dependent, and it would be a colossal error for these regulations not to acknowledge that the only reason the vast majority of our forests exist is to produce timber. Sustainable forest management is the process, timber is the end product. Both process and product provide the delivery framework for all of the other benefits.

It is vital that the regulations clearly set out a requirement that professional staff that are appropriately qualified in forestry and silvicultural management make the decisions set out in these regulations.

Throughout the regulations it vital that the UK Forest Standard is referenced as the standard against which all activity is measured and audited. The term "sustainable forest management" means nothing without an auditable standard.

Felling Directions

9. Do you agree with the proposals?
If no:

No – see below.

10. Would you like to see anything removed from the proposals?
If yes: What and why?

The 1967 Act issued statutory felling directions based on silvicultural considerations.

We are disappointed that statutory felling directions could be issued with both consideration to, and conditions attached, in relation to perceived impacts of the felling and subsequent management on communities, individuals, environment, biodiversity, species, retaining or increasing woodland.

Regardless of whether the ministers have the power under the new act, these additional considerations and conditions should be removed as the proposal appears to suggest that statutory felling notices could be issued for any reason, regardless of landowner or management context, without adequate justification, and that any conditions attached to these statutory felling notices can be issued in an equally arbitrarily subjective manner.

We believe the proposal cannot be justified on silvicultural grounds, nor does the proposal improve transparency, simplicity or prevent inappropriate deforestation.

11. Would you like to see adjustments made to the proposals?
If yes: What adjustments and why?

12. Would you like to see anything added to the proposals?
If yes: What additions and why?

Appeals

13. Do you agree with the proposals?
If no:

Yes. We welcome the new two-stage appeals process that is aligned with planning appeals.

14. Would you like to see anything removed from the proposals?
If yes: What and why?

15. Would you like to see adjustments made to the proposals?
If yes: What adjustments and why?

16. Would you like to see anything added to the proposals?
If yes: What additions and why?

Compliance

17. Do you agree with the proposals?
If no:

No.

Considering the impacts and unintended consequences raised in the previous sections above, we cannot agree with these proposals as they are written.

As noted above, any proposed legally binding conditions, and compliance with said conditions, must be quantifiable against measurable and auditable specifications and/or standards.

In the event that the new regulations are amended to adequately address the concerns raised in this response, particularly with regard to setting licence conditions, incorporating the UK Forest Standard, and the necessary subsequent amendments to the compliance proposals, we would be happy to support a robust approach to measurable auditing and compliance enforcement.

18. Would you like to see anything removed from the proposals?
If yes: What and why?

19. Would you like to see adjustments made to the proposals?
If yes: What adjustments and why?

20. Would you like to see anything added to the proposals?
If yes: What additions and why?

Impacts Assessments

21. Do you agree with the impact assessments?
If no:

No, although we appreciate these are partial impact assessments.

Our comments below relate specifically to the Business and Regulatory Impact Assessment, Fairer Scotland Duty Assessment and the Strategic Environmental Assessment.

22. What do you disagree with and what do you think should be in its place?

We believe the Impact Assessments should be re-visited and re-assessed in light of the not inconsiderable negative impacts and unintended consequences that we have identified and raised in this response.

The impact assessments have failed to recognise the inherent flexibility and strengths of the existing regulations and why it is important ***"… to remain as close as possible to the current position and to make changes only where they will make the processes more transparent, simpler or reduce the potential for inappropriate deforestation".***