



Analysis of Responses

Regulation of Felling and Restocking: consultation

**Final Report
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EXECUTIVE SUMMARY

- i. This report presents an analysis of responses to the Scottish Government's public consultation on the regulation of felling and restocking¹.
- ii. The consultation received 37 responses from 18 individuals and 19 organisations.

Exemption on the requirement to have a permission to fell

- iii. The majority view is for a reconsideration of aspects of some exemptions, typically in relation to adjustments to the exemptions put forward by the Scottish Government. Approximately two thirds of consultation respondents - 24 participants - identified exemptions to remove, adjust or add.
- iv. A common theme in comments related to the proposed exemption from the requirement to have a felling permission for dead trees. A small number of participants expressed dismay at the inclusion in the exempted category 'places', of trees in churchyards, burial grounds and public open spaces.
- v. A small number of respondents commented on the specific reference to Dutch Elm Disease (DED). One agreed with the decision to retain the exemption but asked for inclusion of other diseased trees affected by other pathogens. A few suggested DED should be removed from the proposals. They felt it was unclear why this was maintained as a stand-alone category.
- vi. A small number of respondents urged the Scottish Government to increase the volume exemption. There were a small number of comments on the proposed Aerodromes Exemption, typically calling for greater detail about the intention. A few participants described potential confusion about the interpretation of some aspects of the proposed exemptions. The Scottish Government was asked for clearer definitions and/or guidance on some aspects of the proposals.
- vii. Two respondents advocated for the inclusion of a new exemption to allow the removal of conifer natural regeneration present in riparian zones².
- viii. The Scottish Government's proposal that windblow³ be removed from exemptions received numerous negative comments and was a dominant theme across responses; 10 participants made comments on this specific issue. Respondents frequently highlighted practical difficulties they envisaged arising from the removal of the exemption, such as adverse commercial impacts, technical and legal disputes, the need for speed to remove windblow and the potential danger of windblow.
- ix. A few participants also called for the Scottish Government to reconsider aspects of the new proposals, particularly requesting that exemptions for coppicing and small woodlands be retained, and for the small trees diameter to be revisited.

¹ <https://www.gov.scot/publications/regulation-felling-restocking-consultation/>

² A riparian zone or riparian area is the interface between land and a river or stream.

³ Windblow refers to the uprooting of trees by wind.

Applications, issuing permissions and compensation

- x. Two thirds of consultation participants responded to the questions on applications, permissions and compensation. The quantitative profile of these responses in terms of the numbers that agree or disagree with the proposals was largely positive. Respondents tended to focus on the changes to permissions and compensation; around a third called for adjustments or additions to the proposals.
- xi. Three participants objected to the requirement to notify an intended change of ownership, believing this will compromise commercial transactions, be costly and bureaucratic and place a strain on the Registers of Scotland.
- xii. One participant suggested that the proposals added an unwelcome layer of bureaucracy for tenants and landowners, specifically objecting to the proposed requirement for a land occupier to obtain written permission from a land owner before making an application. Another described an objection to inclusion of conditions relating to the impacts of the felling and subsequent management of the site(s) on communities or individuals, arguing these are unnecessary given that applications will go on the Public Register.
- xiii. A common focus in comments about adjustments related to the continuation of the application requirements in relation to thinning, calling for the Scottish Government to use the new proposals as an opportunity to make changes particularly in relation to the detail asked of applicants.
- xiv. There were also comments on the proposals in relation to restocking, with some questions about timescales and environmental considerations, and others querying the level of detail asked for.
- xv. Another minor theme in responses related to the proposals on consultation requirements. A small number of respondents expressed fears about the extent of consultation on applications required. There were suggestions this would be time-consuming, expensive and act as a barrier to economic activity.
- xvi. There were a small number of comments on the proposed minimum information required for felling applications. There were also calls for more detail about applications for felling in specific environments, a more flexible approach to applications, greater simplicity, and guidance on specific aspects.
- xvii. An environmental organisation suggested specific changes to the wording of the proposals, on the basis that these changes would make the application process comparable with those for local authority planning applications, and give greater prominence to environmental considerations. The detailed nature of these suggested edits is beyond the scope of this high-level report, and they have been signposted to the Scottish Government for review.
- xviii. One participant described 'significant concerns' about the proposed use of "notices to comply". They believe the proposals are open to interpretation and lacking important details.
- xix. Two participants highlighted concerns about any intention to make compensatory planting a condition of felling, describing this as potentially detrimental to habitat restoration.
- xx. Four respondents welcomed the indication that applications will be processed quickly but called for clarity around timescales for the approval of applications.

Felling directions

- xxi. Two thirds of consultation participants responded to the questions on the felling directions. The quantitative profile of these responses in terms of the numbers that agree or disagree with the proposals was largely positive.
- xxii. Seven respondents described adjustments for the Scottish Government to consider. Two suggested greater clarity is required regarding what is meant by 'prevent or reduce harm caused by the presence of trees'. One respondent called for more clarity on the process for assessing the 'impacts of felling'. Another said felling directions should have the flexibility to enhance as well as protect biodiversity. One noted 'any conditions imposed should be measured against compliance with the UK Forestry Standard (UKFS) and interpreted as such by Scottish Forestry staff'.
- xxiii. A few respondents repeated calls for the Scottish Government to make environmental matters more of an explicit consideration in directions. However, others focused on the impact on tree owners, with one suggesting the application of a Felling Direction needs to include the facility for some form of compensation for the woodland owner; another questioned aspects of the principles underpinning the new proposals.

Appeals

- xxiv. Just over half of the consultation participants responded to the questions on the appeals process. The quantitative profile of these responses in terms of the numbers that agree or disagree with the proposals was largely positive.
- xxv. Four respondents called for adjustments to the proposed appeals process. They expressed a general concern about the level of expertise of those involved in the appeals process, and stated that more information is needed on which organisations will be called upon. For example, respondents suggested that certain organisations would need to be involved depending on the topic of an appeal - stating that this aspect of the process is not currently clear.
- xxvi. Three respondents called for additions to the proposed appeals process. One individual reiterated their call for specialist environmental involvement in appeals. Another expressed concerns about the lack of scope for appeals to be made by parties other than the appellant. One called for adoption of good practice carried out by Forestry Commission Scotland with reference to public consultation and involvement of statutory consultees.
- xxvii. Two participants commented on timeframes for processing appeals. One highlighted it can take a long time; another expressed hope that the Scottish Government will reduce the length of time that appellants must wait for a decision.

Compliance

- xxviii. Just over half of the consultation participants responded to the questions on the proposals concerning matters of compliance. The quantitative profile of these responses in terms of the numbers that agree or disagree with the proposals was largely positive.

- xxix. One respondent called for the proposed compensation element of Temporary Stop Notices (TSN) to be removed. They described a fear that the compensation process may mean TSNs are not used by the Forestry regulator in order to avoid risk of compensation claims. Another participant suggested there should be no Local Authority exemptions to Temporary Stop Notices [TSN].
- xxx. One organisation called for some specific adjustments to the proposals on compliance, asking for greater references to environmental considerations. Another respondent highlighted inconsistent references to ecological protection across the various proposals set forth in the consultation document.
- xxxi. Four respondents suggested additions to the compliance proposals. They called for a clear statement that compliance with the UKFS should be a condition for all felling permissions and directions, and for compliance to be quantifiable against 'measurable and auditable specifications and/or standards'. One highlighted issues around clarity, and two respondents noted the need to have more reference to Environmental Impact Assessments and other relevant legislation within the compliance.
- xxxii. There were two comments on compensation. One participant warned against compensation, another requested further detail on the limits to compensation claims for Temporary Stop Notices [TSN] and what would be considered suitable proof of costs incurred.

Impact Assessments

- xxxiii. Of those that did respond to the question on impact assessments, 13 agreed, 6 disagreed and 1 did not answer the yes/no question but made a general comment in relation to impact assessments. A total of 7 comments were made on the impact assessments.
- xxxiv. Four participants identified issues in relation to the Business Regulatory Impact Assessment that they would like the Scottish Government to consider, with three urging the Scottish Government to retain the existing arrangements on the basis of their flexibility.
- xxxv. In other parts of their consultation responses some participants described potential commercial impacts or opportunities arising from the proposals put forward. These were also considered in relation to the Business Regulatory Impact Assessment. Key themes included bureaucracy, impact on practice and additional costs.
- xxxvi. Four participants commented specifically on the Strategic Environment Assessment. Two highlighted aspects that they agreed with; two identified gaps in the Strategic Environment Assessment or issues that they would like to see covered in more detail.
- xxxvii. Some participants referenced environmental considerations in responses to other questions in the consultation document, typically in relation to climate, biodiversity, ecology, ancient trees and habitat.

1. Introduction

- 1.1 This report presents an analysis of responses to the Scottish Government's public consultation on the regulation of felling and restocking⁴.
- 1.2 The consultation ran for eight weeks. Questions focused on the following six considerations:
- Exemptions on the requirement to have a permission to fell; situations or types of felling for which permission from the regulator is not required.
 - Applications, issuing permissions and compensation; including processes, conditions and eligibility.
 - Felling directions; cases in which Scottish Ministers can require owners to fell trees.
 - Appeals; the process for challenging a decision made by Scottish Ministers.
 - Compliance; matters related to remedial notices, restocking directions and compensation for temporary stop notices.
 - Impact assessments; consideration of any adverse effects the proposals may have in relation to commercial activity, children, data protection, groups with protected characteristics, inequalities and the environment in Scotland.
- 1.3 The Lines Between was commissioned to independently, accurately and comprehensively undertake and report on the analysis of consultation responses.

Background

- 1.4 In August 2018 The Scottish Government launched a national consultation on the regulation of felling and restocking. This was to inform the secondary legislation required to implement the Forestry and Land Management (Scotland) Act 2018 ('the 2018 Act'). The 2018 Act controls felling and restocking, based on an offence of unauthorised felling. Any felling of trees in Scotland must be carried out in accordance with a permission or direction from the regulator, or in a way that has been made exempt from requiring permission.
- 1.5 Forestry is currently regulated in Scotland by the Forestry Commissioners, according to rules set out in the Forestry Act 1967 ('the 1967 Act') and the Forestry (Exceptions from Restriction of Felling) Regulations 1979 ('the 1979 Regulations'). The consultation acknowledged that the Scottish Government intends to 'remain as close as possible to the current position and make changes only where they will make the processes more transparent, simpler or reduce the potential for inappropriate deforestation'.
- 1.6 The finalised proposals, informed by analysis of consultation responses, will be laid in Parliament early next year and come into force on 1st April 2019.
- 1.7 When the 2018 Act comes into force, forestry functions in Scotland will become the responsibility of the Scottish Ministers and two new agencies of the Scottish Government will be created to discharge those functions.
- Scottish Forestry will cover forestry policy, regulatory, support and grant giving functions.

⁴ <https://www.gov.scot/publications/regulation-felling-restocking-consultation/>

- Forestry and Land Scotland will have responsibility for the management of the current National Forest Estate, with flexibility to take on management of other peoples' land, by agreement.

Profile of participants and consultation response rate

- 1.8 The consultation achieved 37 responses from 18 individuals and 19 organisations.
- 1.9 Participants provided responses to the consultation through the online platform Citizen Space (23 responses) or by emailing their responses to the Scottish Government (14 responses). They were asked to submit a Respondent Information Form (RIF) to establish their identity, contact details and publication preferences. The profile of the 19 organisations that took part is as follows:
- 3 Non-Departmental Government Bodies: Scottish Natural Heritage (SNH), Health and Safety Executive (HSE) and the Scottish Environment Protection Agency (SEPA).
 - 4 businesses: Scottish and Southern Electricity Networks (SSEN), SSE Generation Ltd., Castle Milk and Corrie Estates, and Scottish Woodlands Ltd.
 - 4 environmental bodies and campaign groups: Scottish Wildlife Trust (SWT), Woodland Trust Scotland, Galloway Fisheries Trust and the Royal Society for the Protection of Birds (RSPB Scotland).
 - 5 membership associations or representative bodies: Confederation of Forest Industries (Confor), DWP Harvesting Ltd, Fisheries Management Scotland , Scottish Land and Estates and South Scotland Regional Forestry Forum .
 - 3 local authorities: West Lothian Council, Aberdeenshire Council and Stirling Council.
- 1.10 As with any consultation exercise, both the organisations and most of the individuals who participated in the consultation demonstrated a practical knowledge of and interest in forestry in their responses. While their responses offer informed and detailed comments on the proposals, the views expressed may not be necessarily be seen as representative of wider public opinion.

Analysis and reporting

- 1.11 The Lines Between developed a coding framework based on a review of the consultation questions and themes that became evident during the analysis process. Qualitative data (responses to open questions) was coded manually, according to specific themes; quantitative data was analysed with Excel. This analysis process enabled the research team to highlight and group key messages that emerged from the responses
- 1.12 While qualitative analysis of open-ended questions does not permit the quantification of results, we signify the weight of particular views using the following framework:
- Many/several - a recurring theme.
 - Some/a few - a minor theme.
 - One - issue raised by one respondent.

- 1.13 This report presents the range of views expressed and trends amongst responses. During analysis it became evident that a few participants repeated aspects of their responses across questions. In some cases, parts of a response aligned more closely with another question in the consultation document. To avoid repetition, the analysis is presented under the most appropriate thematic heading.
- 1.14 Where appropriate, quotes have been included to illustrate key points. Quotes provide useful examples, insights and contextual information, but may not always represent the views of entire groups, such as entire industries, sectors, or geographic areas of Scotland. Where participants gave permission for their responses to be published we have quoted directly, however minor spelling or grammatical errors have been corrected to improve readability.

Report structure

- 1.15 The Lines Between was commissioned '*to produce a clear and concise report for publication, that reflects a robust analysis of the responses*'. This report presents the findings of the consultation analysis.
- **Chapter 2** presents a quantitative overview of responses to the consultation.
 - **Chapter 3** sets out analysis of responses to the proposed exemptions on the requirement to have a permission to fell.
 - **Chapter 4** presents analysis of responses to the proposals for applications, issuing permissions and compensation.
 - **Chapter 5** presents analysis of responses to the proposals for felling directions.
 - **Chapter 6** sets out analysis of responses to the proposals for appeals.
 - **Chapter 7** presents analysis of responses to the proposals for compliance.
 - **Chapter 8** presents analysis of responses to the impact assessments.
 - The final chapter contains conclusions and reflections for the Scottish Government to consider when developing the final proposals for felling and restocking.

2. Quantitative summary of responses

- 2.1** The table below provides a quantitative overview of consultation responses. It indicates where participants gave a clear yes or no response to a specific proposal put forward by the Scottish Government, if a question was not answered, and cases where participants made a general response but did not provide a clear yes/no answer.
- 2.2** While the table is a useful reference point in terms of the overall number of responses to each question, it is not an exact representation of the views expressed. This is because in some cases a 'yes' or 'no' response was not clear cut. For example, some participants answered 'yes' to indicate agreement with an aspect of the consultation document but called for adjustments to proposals in their comments. In chapters three to seven we present both the quantitative and qualitative interpretation of responses to provide a fuller picture of the views expressed.

Question	Yes	No	Not answered	Non-specific response
<i>Exemptions on the requirement to have a permission to fell.</i>				
1: Do you agree with proposed exemptions	7	17	8	5
2: Would you like to see any proposed exemptions removed?	6	17	13	1
3: Would you like to see adjustments made to any of the proposed exemptions?	17	4	12	4
4: Would you like to see any other exemptions added to the proposals?	9	11	16	1
<i>Applications, issuing permissions and compensation; including processes, conditions and eligibility.</i>				
5: Do you agree with the proposals?	12	13	8	4
6: Would you like to see anything removed from the proposals?	3	18	16	0
7: Would you like to see adjustments made to the proposals?	11	9	14	3
8: Would you like to see anything added to the proposals?	9	8	19	1
<i>Felling directions; cases in which Scottish Forestry can direct owners to fell trees.</i>				
9: Do you agree with the proposals?	14	9	14	0
10: Would you like to see anything removed from the proposals?	1	16	20	0
11: Would you like to see adjustments made to the proposals?	9	8	20	0
12: Would you like to see anything added to the proposals?	5	11	21	0
<i>Appeals; the process for challenging a decision made by Scottish Forestry.</i>				
13: Do you agree with the proposals?	19	2	16	0
14: Would you like to see anything removed from the proposals?	2	6	27	2
15: Would you like to see adjustments made to the proposals?	4	8	25	0
16: Would you like to see anything added to the proposals?	3	8	26	0
<i>Compliance; matters related to remedial notices, restocking directions and compensation.</i>				
17: Do you agree with the proposals?	16	5	14	2
18: Would you like to see anything removed from the proposals?	1	8	27	1

19: Would you like to see adjustments made to the proposals?	3	8	25	1
20: Would you like to see anything added to the proposals?	1	8	28	0
Impact assessments; consideration of any adverse effect of the proposals.				
21: Do you agree with the impact assessments?	13	6	17	1

3. Exemption on the requirement to have a permission to fell

Introduction

- 3.1** This chapter presents analysis of responses to the proposed exemptions put forward by the Scottish Government. It describes the consultation questions, number of responses, overall level of support for the exemptions and any suggested removals, amendments and additions.
- 3.2** Themes in participants' comments about the consequences of the proposed exemptions, reflections on current practices and other issues for the Scottish Government to consider are also highlighted. A sample of quotes that typify the views expressed by respondents in relation to the proposed exemptions is included.

Overview

- 3.3** The consultation document sets out the situations or types of felling for which permission from the regulator is not required. These fall into two categories: continuation of existing exemptions as set out in the Forestry Act 1967; and proposed changes to exemptions, to reflect feedback from stakeholders about the opportunities for improvements afforded by the drafting of new proposals.

Situation or types of felling	Maintain existing exemptions as set out in the Forestry Act 1967	Some change to exemptions as set out in the Forestry Act 1967
Small trees		Yes
Places	Yes	
Topping and lopping, trimming or laying hedges		Yes
Volume		Yes
Danger or nuisance		Yes
Compliance with Acts of Parliament	Yes	
Aerodromes	Yes	
Infrastructure	Yes	
Planning	Yes	
Dutch Elm Disease	Yes	
Dedicated Agreements	Yes	
Dead Trees		Yes

3.4 Questions 1-4 asked participants for their views on the proposals:

- 1. Do you agree with the proposed exemptions?**
If no:
- 2. Would you like to see any of the proposed exemptions removed from the proposals?**
If yes: Which ones and why?
- 3. Would you like to see adjustments made to any of the proposed exemptions?**
If yes: What adjustments and why?
- 4. Would you like to see any other exemptions added to the proposals?**
If yes: What additions and why?

Responses to the exemptions

3.5 Most consultation participants responded to the questions on exemptions. The table below provides a quantitative summary of their responses:

Question	Yes	No	Not answered	Non-specific response
1: Do you agree with proposed exemptions	7	17	8	5
2: Would you like to see any proposed exemptions removed?	6	17	13	1
3: Would you like to see adjustments made to any of the proposed exemptions?	17	4	12	4
4: Would you like to see any other exemptions added to the proposals?	9	11	16	1

3.6 The majority view is for a reconsideration of aspects of some exemptions, typically in relation to adjustments to the exemptions put forward by the Scottish Government. Approximately two thirds of consultation respondents - 24 participants - identified exemptions to remove, adjust or add. This group comprised 13 individuals and 11 organisations, such as Scottish Land and Estates, Castle Milk and Corrie Estates, and Stirling Council. Just over a third of consultation respondents - 13 participants - did not advocate for any change to the exemptions.

3.7 Calls for changes to the proposed exemptions came from:

- The 17 respondents who answered 'no', to indicate they did not agree with the proposals.
- Two respondents who answered 'yes', to indicate they agreed with the proposals, but went on to call for clarifications about aspects of the exemptions within their comments.
- Five individuals who did not provide a clear yes/no answer but made a relevant comment. In each of these responses there was a call to remove, adjust or add to the exemptions.

3.8 The group who did not advocate for changes comprised:

- The 5 respondents who answered 'yes', to indicate they agreed with the proposals, and made no calls for change of any kind in their comment.

- The 8 respondents who did not respond to question 1, given they did not communicate a preference for the Scottish Government to do anything other than is suggested in the draft proposals.



SSE Generation Ltd welcomes the proposal to maintain the exemption for felling... “by, or at the request of, an electricity operator” ...Such an exemption is important to enable electricity generators to continue installation, maintenance or operation of a plant in a safe manner. [SSE Generation Ltd]

Removal of exemptions

- 3.9** The Scottish Government asked participants for views on proposed exemptions that should be removed - i.e. situations in which tree owners should be required to apply for permission to fell a tree. A common theme in comments related to the proposed exemption from the requirement to have a felling permission for **dead trees**. Five respondents made particular reference to this. Mixed views were evident in this group, with a strong theme of disagreement with this proposed exemption, in which participants frequently highlighted the valuable role of deadwood for small habitats and other positive biodiversity impacts. One respondent noted *‘We agree with the exemption for felling dead trees, which is a logical necessity’ [Confor]*.
- 3.10** A small number of participants expressed dismay at the inclusion in the exempted category ‘places’, of trees in **churchyards, burial grounds and public open spaces**. For example, one participant described a sense of cultural, historic and emotional loss to people in Lockerbie, when trees that had been burned in the 1988 air disaster, but remained standing, were recently felled without consultation or regulatory process.



We believe that public open space should NOT be exempt from requiring felling permission. We appreciate that much of this category of space is in the ownership of local authorities, but our experience is that these landowners can share the motivations of private landowners, and therefore should share the same regulatory oversight. [Woodland Trust Scotland]

Adjustments to exemptions

- 3.11** A small number of respondents commented on the specific reference to **Dutch Elm Disease (DED)**. One agreed with the decision to retain the exemption but asked for inclusion of other diseased trees affected by other pathogens. A few suggested DED should be removed from the draft proposals. They felt it was unclear why this was maintained as a stand-alone category.
- 3.12** There was a detailed explanation from Scottish Natural Heritage on their position in relation to DED, which highlighted (i) a lack of clarity as to why it applied only to DED, (ii) sanitation of a native species could reduce the potential for disease resistance to develop (iii) that *‘the requirement for “the greater part of the crown” to be dead makes this exemption ineffective for sanitation felling as, by this stage, the vector is likely to be well-established in the surrounding environment’*.
- 3.13** A small number of respondents urged the Scottish Government to increase the proposed volume exemption believing it to be too small, and expressed particular concerns in relation to the removal of nuisance trees. Confor *stated: ‘We disagree with not maintaining the exemption for nuisance trees. There are and will continue to be many instances where individual windblown trees need to be dealt with swiftly. So long as the*

principles of sustainable forest management are not compromised, we see no reason not to continue the present exemption’.

3.14 There were a small number of comments on the proposed **Aerodromes Exemption**, typically calling for greater detail. *‘It is not clear that the Scottish Government is competent to judge against this reserved regulatory area, so therefore this could be used as a way of justifying unsustainable felling’[Individual]. ‘We note and accept the removal of the need for trees obstructing aerodromes to be certified by Secretaries of State, but we suggest that it would be useful to specify how obstruction would be established, and who would be responsible for doing so’ [Scottish Natural Heritage].*

3.15 A few participants described potential confusion about the interpretation of some aspects of the proposed exemptions. The Scottish Government was asked for **clearer definitions and/or guidance** in relation to the following aspects of the proposals:

- Definitions of ‘urgent need’, ‘garden ground’ and ‘designated open spaces’.
- Sustainable forest management and sustainable forest management practices.
- A current list of diseases where felling permission is exempt.

3.16 Other areas of confusion highlighted by various respondents included:

- *With the proposed limitations on the permitted volume exemption for woodlands of high environmental value... **Is the 8cm size limit for each stem of the tree or for the whole tree?**... It would be prudent to clarify, and decide whether the regulations should say either "trees or any stem thereof of diameter 8cm or less" or "trees of stem of, or equivalent to, diameter 8cm or less" [Individual].*
- *‘The phrase "**expressly designed for use by the public**" is potentially misleading, as it is the use rather than the design that sets such land aside from other land. "expressly designated" might be better... The phrase '**pose an immediate danger**' is I think not in keeping with modern risk parlance. For danger to persons, the term used for exemption in the Tree Protection Order[TPO]/Conservation Area legislation - 'it is urgently necessary in the interests of safety' has a lot to commend it because it requires urgency and for the tree owner to consider alternatives to felling such as staying away from the tree’ [Individual].*
- *South Scotland Regional Forestry Forum challenges anyone to identify a **wood in Scotland where 50% of the canopy comprises the 27 species listed**. As drafted if the canopy was 51% of those species the statement would not apply. If the canopy comprised 50% of only 26 species the statement would not apply. The Forum does not think this is how government means this section to be interpreted... Are **wind turbines** considered to be electrical plant?’ [South Scotland Regional Forestry Forum].*

Additions to exemptions

- 3.17 Participants were asked to identify any new exemptions they believe the Scottish Government should introduce, i.e. situations in which tree owners should not need permission to fell a tree.
- 3.18 Two respondents advocated for the inclusion of a new exemption to allow the removal of conifer natural regeneration present in **riparian zones**⁵.
- 3.19 One respondent asked for '*an exemption to allow **up to one hectare of any commercial conifer crop** to be felled without a felling licence*' [Individual].

⁵ A riparian zone or riparian area is the interface between land and a river or stream

Comments on proposed changes to current exemptions

3.20 Much of the commentary from respondents across consultation questions 1 to 4 related to the alteration or removal of exemptions participants wish to see maintained.

Windblow

3.21 The Scottish Government's suggestion that **windblow**⁶ be removed from exemptions received numerous negative comments and was a dominant theme across responses; 10 participants made comments on this specific issue. Respondents frequently highlighted practical difficulties they envisaged arising from the exemption removal, such as adverse commercial impacts, technical and legal disputes, the need for speed to remove windblow and the potential danger of windblow. One respondent raised concerns about the aesthetic implications associated with waiting for permission for windblow, describing it as '*unsightly*' [Scottish Land and Estates].

“ We believe it is entirely unacceptable to impose the requirement of a felling licence for the clearance of windblown trees or non-growing trees. [Scottish Land and Estates]

3.22 Other proposed changes to exemptions that the Scottish Government was urged to reconsider are described in the table below

Exemption	Specific change to existing exemption proposed by the Scottish Government	Response to the exemption
Small Trees	Change to diameter measurement for small trees, to 8cm or smaller, measured 1.3 above the base of the tree,	<ul style="list-style-type: none"> • Three respondents suggested that 10cm would be a more realistic threshold. Their comments conveyed the view this would achieve a balance between regulating commercial felling and reducing the administration associated with seeking permissions on small scale uses of woodland. • Six consultation participants called for the Scottish Government to retain the exemption for coppicing.
Volume	Removal of the exemption for small woodlands 0.1-0.5ha where the canopy comprises over 50% of certain species.	<ul style="list-style-type: none"> • A view that this is not practical for silvicultural or commercial purposes. • Belief that most small woodlands will be affected by this proposal, with serious consequences for owners. • A suggestion this is highly unlikely to '<i>capture small coniferous stands such as shelter belts</i>' [Scottish Land and Estates]. • A call to remove the lower size limit in the belief it will not deter felling of small areas for development. • A view that this will not have the intended effect to reduce deforestation, because '<i>development related deforestation is a</i>

⁶ Windblow refers to the uprooting of trees by wind.

Exemption	Specific change to existing exemption proposed by the Scottish Government	Response to the exemption
		<p><i>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' [Scottish Land and Estates].</i></p> <ul style="list-style-type: none"> • A view there will be a lack of incentives to manage or plant small woodlands without exemption. • Identification of administrative difficulties and costs associated with surveying, mapping and inspecting small woodlands. • Mention of practical issues, such as mixed woodland where one tree falls within the list of trees for which exemption has been removed.
Nuisance	The Scottish Government do not propose to maintain an exemption for nuisance trees that are unlikely to require urgent action. The consultation document suggests that a person could reasonably apply for a permission from the Scottish Ministers.	<ul style="list-style-type: none"> • One person argued that the requirement to obtain felling permission for a 'nuisance' tree might represent an infringement of a property right; that a person should not have to seek permission to enact their rights. • Another agreed with the tightening of the exemptions proposed, noting '<i>minor works could achieve the avoidance of nuisance, without the felling of the tree</i>' [Woodland Trust Scotland].

“ We are broadly content with the proposed exemptions and particularly welcome the simplification of the definition of small trees, the inclusion of all burial grounds within the list of exempt places, and the proposal that the exemption for volume should not apply in woodland between 0.1ha and 0.5 ha where 50% of the canopy comprises native species. [Scottish Natural Heritage]

“ The proposal that the 5 cubic metre exemption will not apply to felling in woodland between 0.1 and 0.5ha where 50% of the canopy comprises the listed native species is welcomed. However, some species are of a small mature size and in areas where woodland comprises of predominantly these smaller species, the practicality of monitoring and investigating breaches may be difficult and a major task for Scottish Forestry. [Individual]

Changes to terminology

- 3.23 A small number of respondents commented on **changes to terminology** between the 1967 and 2018 Acts.
- 3.24 The 2018 Act refers to the felling of all trees rather than the 'growing trees' specified in the 1967 Act. Views on the implication of this change varied, as shown in the quotes below:
- *'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' [Scottish Land and Estates].*
 - *'We appreciate the difference the wording of The Act has made in referring to the felling of all trees rather than growing trees as per the 1967 Act' [Confor].*
 - *'The current felling regulation under Part II of the Forestry Act 1967 is for felling consent for 'growing trees' and that felling includes 'wilfully destroying it [a tree] by any means'. In relation to management of coppice this would not require any felling permission under the new proposals as coppice does not normally 'kill' a tree, therefore all and any of the proposed size thresholds proposed for coppice are invalid' [Individual].*
- 3.25 The South Scotland Regional Forestry Forum questions the value of shifting the language about regulation from licensing to permissions. *'The "word "a permission" (from the Scottish Ministers) is used. Is this not the same as a permit and is a permit not the same as a licence? While this change comes directly from the 2018 Act it looks like a change for change's sake and does not necessarily make things more transparent, nor simpler, nor reduce the potential for inappropriate felling'.*

Other issues for consideration

- 3.26 A small number of participants raised broader matters for the Scottish Government to consider in relation to exemptions.
- One respondent noted that *'We also proposed pre-consultation using the existing Ancient Woodland Inventory as a tool for identifying native ancient woodland where there should be no exemptions'. [Woodland Trust Scotland]*
 - One participant suggested *'although the consultation paper does not seem to mention this, there has been discussion about the 5m³ per quarter exemption referring to each property or woodland block as opposed to an exemption for an individual owner, and we support this concept, otherwise landowners with many different woodlands could be disadvantaged' [Confor].*

4. Applications, issuing permissions and compensation

- 4.1 This chapter presents analysis of responses to the proposals for applications, permissions and compensation put forward by the Scottish Government. It describes the consultation question, number of responses, overall level of support for the proposals and any suggested removals, amendments or additions. A selection of quotes that typify the views expressed by respondents in relation to the draft proposals are incorporated within the chapter.

Overview

- 4.2 The 1967 Forestry Act stipulates that the felling of growing trees requires a licence except where exemptions apply. An **application** for a felling licence can be submitted by those having such an estate or interest (in the legal sense) in the land on which the trees are growing as enables them, with or without the consent of any other person, to fell the trees. The Act sets out the framework for **permission** as to whether or not an application is granted or refused; it also notes the grounds on which **compensation** can be applied for, if an application is refused.
- 4.3 The 2018 Act maintains most elements of the previous legislation on the application process. However, on compensation it goes further; the 1967 Act provided compensation, in relation to deterioration in timber where a licence was refused, while the 2018 Act provides that compensation may be available to those who have suffered a loss as a result of a refusal of permission to fell. The draft proposals include:
- Conditions on permissions will be grounded in sustainable forest management and impacts on communities and individuals; the environment, biodiversity or species; or retaining or increasing woodland cover.
 - New compensation processes for refusals.
- 4.4 Consultation questions 5-8 asked participants for their views on the proposals with regard to applications, issuing permissions and compensation:

5. Do you agree with the proposals?

If you have answered no:

6. Would you like to see anything removed from the proposals?

7. Would you like to see adjustments made to the proposals?

8. Would you like to see anything added to the proposals?

Responses to the proposals on applications, issuing permissions and compensation

- 4.5 Two thirds of consultation participants responded to the questions on applications, permissions and compensation. These responses were largely positive - only 3 called for aspects of the proposals to be removed. Participants tended to focus their responses on the changes to permissions and compensation; around a third called for adjustments or additions to the proposals.

4.6 The table below provides a quantitative summary of their responses:

Question	Yes	No	Not answered	Non-specific response
5: Do you agree with the proposals?	12	13	8	4
6: Would you like to see anything removed from the proposals?	3	18	16	0
7: Would you like to see adjustments made to the proposals?	11	9	14	3
8: Would you like to see anything added to the proposals?	9	8	19	1

4.7 Calls for changes to the proposals came from:

- The 13 respondents who answered ‘no’, to indicate they did not agree with the proposals.
- 4 respondents who answered ‘yes’, to indicate they agreed with the proposals, but went on to call for adjustments within their comments.
- Four participants who did not provide a clear yes/no answer but made a relevant comment. In each of these responses there was a call to adjust the proposals.

4.8 The group who did not advocate for changes comprised:

- The 8 respondents who answered ‘yes’, to indicate they agreed with the proposals, and made no calls for change of any kind in their comment.
- The 8 respondents who did not respond to question 5, given they did not communicate a preference for the Scottish Government to do anything other than is suggested in the draft proposals.

4.9 Four organisations highlighted their support for particular aspects of the proposals. The Royal Society for the Protection of Birds (RSPB Scotland) noted they *‘particularly welcome the focus on sustainable forest management’*. Confor said *‘We welcome the development of a Customer Charter, and trust this is done with suitable input from industry’*. DWP Harvesting made a similar point.

“ We welcome reference to the broader view on permissions to include the environment and sustainable forestry and/or land management. This is a recognised shift change away from a more traditional timber production focus under previous legislation. [Scottish Environment Protection Agency, SEPA]

4.10 The response from Woodland Trust Scotland noted *‘The Trust does not agree with the proposal in relation to felling, applications, issuing permissions, compensation and felling directions’*. Their response included calls for adjustments within the proposals to make environmental considerations feature more highly.

Items to remove

4.11 In their response to the question on items to remove, one individual reiterated their request that the Scottish Government make no changes to the proposals at all but did not provide a rationale for this in relation to applications, permissions or compensation.

4.12 Three participants objected to the requirement to notify an intended change of ownership, believing this will compromise commercial transactions, be costly and

bureaucratic and place a strain on the Registers of Scotland. One said *'it should be incumbent on the seller to advise if a forestry obligation exists on land and due diligence on the purchaser can be addressed through consultation of a historic register of felling permissions located on the Land Information Search portal'* [Individual].

- 4.13 Scottish Woodlands Ltd suggested that the proposals added an unwelcome layer of bureaucracy for tenants and landowners, specifically objecting to the proposed requirement for a land occupier to obtain written permission from a land owner before making an application.
- 4.14 Confor described an objection to *'inclusion of conditions relating to the impacts of the felling and subsequent management of the site(s) on communities or individuals'*. They argued it is unnecessary given that applications will go on the Public Register.

Items to adjust

- 4.15 A common focus in comments about adjustments related to continuation of the application requirements in relation to **thinning**, calling for the Scottish Government to use the new proposals as an opportunity to make changes.
- Two participants called for the practice of asking for stocking density of trees prior to and after thinning operations to be removed.
 - One individual said: *'A reasonable estimate and activity within the scope of good forest management or good thinning practice would be sufficient'*. Another suggested *'a more common and measurable indicator of thinning intensity is the tonnes per hectare to be removed'* [Individual].
 - Confor highlighted disagreement *'with continuing the present requirement to state pre and post stocking densities in a thinning permission application'* suggesting it has led to *'spurious practice and unnecessary debate'*. They urged the Scottish Government to provide permissions based on conditions of thinning in accordance with the principles of the Forestry Commission's guidance on thinning⁷.
 - DWP Harvesting noted *'thinning is to be encouraged, not over-controlled. We are therefore concerned that further guidance is proposed. That is not necessary. We wish to see simple, clear regulation set out in the Regulations'*.
 - DWP Harvesting also observed *'LTFPs excepted, FCS current practice is not to grant felling licences for more than 3 years. This is restrictive on those who wish to thin woodlands on a standard 5 or 7-year cycle. The Regulations should therefore provide for a single licence to cover a thinning programme of 5 to 7 years, where requested. In addition where, for whatever reason, approved felling or thinning has not been carried out, there should be provision for extending the dates of the licence without there needing to be a requirement to start again and to make a new licence application'*.
- 4.16 There were also comments on the proposals in relation to **restocking**:
- RSPB Scotland highlighted concerns that *'by specifying timescales for restocking, a reduction in fallow periods may be further encouraged, with the potential for an increased use of pesticides as a result. This could be*

⁷ Thinning Control TJD Rollinson Forestry Commission Field Book 2

seen as detrimental to sustainable forest management, and therefore contrary to the Forest and Land Management (Scotland) Act. The regulations must ensure that this situation is avoided’.

- One respondent noted: *‘This consultation document does not explicitly note or explain the change to felling licence conditions to allow felling consent to be issued without a tree restocking condition to be attached for reasons of biodiversity restoration and enhancement...It is important to retain such a provision in the new system’ [Individual].*
- Castle Milk and Corrie Estates noted they *‘disagree with the Felling Licence making too specific requirements on restocking - i.e. type of ground preparation etc. Although I understand this can be done under current legislation there is a real risk that private sector foresters are forced to adopt silviculture that they may disagree with’.*
- RSPB Scotland observed *‘where there is a requirement to restock a site, it is essential that on sites where there is an opportunity for habitat improvement and/ or restoration, preference is given to native woodland. Examples of such sites include Plantations on Ancient Woodland Sites (PAWS) and where native woodland will help the conservation or priority habitats and species. Any restocking with productive conifers should include buffer areas of native planting between sites where biodiversity conservation is prioritised. We are strongly opposed to the restocking of sites which were inappropriately afforested in the past (i.e. sites which would be unlikely to comply with the current UKFS requirements).’*

4.17 Another theme in responses related to the proposals on **consultation requirements**. A small number of respondents expressed fears about the extent of consultation on applications required. There were suggestions this would be time-consuming, expensive and act as a barrier to economic activity.

4.18 There were a small number of comments on the **proposed minimum information required for felling applications**:

- Galloway Fisheries Trust called for the addition of a question to identify *‘whether the forest is planted on deep peats and if so what percentage of the overall forest’.* This view was supported by Fisheries Management Scotland . Scottish Environment Protection Agency (SEPA) noted *‘if an application is refused for restocking on sensitive areas such as deep peat then the applicant should be directed to peatland restoration funding programmes or alternative available funding’.*
- Confor said *‘We do not believe the regulations should state that all the information listed on page 14 should be a minimum requirement of every application. We would prefer an undertaking to develop guidance with industry which is more appropriate and proportionate than at present’.*
- *‘The form should be simplified further so that owners can provide the basic information needed for the purpose with[out] the need for professional help’ [Individual].*
- *‘We suggest that the final point of the list of information required (“whether there is a Tree Preservation Order in place or whether the site forms part of, or includes, a Conservation Area”) be extended to require that information is also provided where sites are designated for their nature conservation value, including SSSIs, SACs, SPAs and Ramsar sites’ [SNH].*
- An individual asked for the application forms to include guidance *‘in relation to trees and woodlands that are protected under planning legislation*

(TPOs, Conservation Areas), what this means, and how applications will be treated if this other legal protection is in place’.

- Scottish Woodlands Ltd noted *‘Page 16 of the consultation document suggests that the 2018 Act will allow the inclusion of conditions with a felling approval. While this is a reasonable requirement that broadly matches existing practice, the extensive list of potential conditions noted in the document suggest a much more prescriptive process. For example, to apply a ground preparation prescription as a condition of felling seems unduly prescriptive for most felling application scenarios’.*

4.19 Specific changes to the wording of the draft proposals were suggested by Scottish Wildlife Trust (SWT), on the basis of these making the application process comparable with local authority planning and/or to give greater prominence to environmental considerations. The detailed nature of these suggested edits is beyond the scope of this high-level report and have been signposted to the Scottish Government for review.

4.20 RSPB Scotland described *‘significant concerns’* about *‘the proposed use of “notices to comply” with continuing conditions on felling permissions. We believe that this will have a potentially significant negative impact on the potential for the restoration of priority habitats and also raised concerns regarding the potential to set conditions relating to “retaining or increasing woodland cover”.* They believe the proposals are open to interpretation and lacking important details

4.21 Two participants highlighted concerns about any intention to make compensatory planting a condition of felling, describing this as potentially detrimental to habitat restoration.

Items to add

4.22 One individual called for *‘regulations about the maximum area of contiguous land that can be clear felled in a given time period, to start to reduce the prevalence of large scale clear fell forestry and its detrimental impact on Scotland’s landscape and biodiversity’.*

Other issues identified by consultation participants

4.23 Four respondents welcomed the indication that applications will be processed quickly but called for clarity around timescales for the approval of applications. RSPB Scotland highlighted *‘although we support an increase in the speed of processing applications in principle, this must not be at the expense of proper scrutiny of proposals and ensuring that all relevant issues have been given full consideration’.*

4.24 A few respondents called on the Scottish Government to use the new proposals as an opportunity to bring in change. For example:

- The Health and Safety Executive (HSE) suggested that administrative arrangements for issuing permissions and directions represent an opportunity for engagement with the forestry sector on effective forestry management and safety matters.
- An individual reflected on woodland loss in Scotland through animal grazing, stating *‘at present this form of land use (destruction) is unchecked. Is it possible to protect these areas via this legislation? Do the proposals cover all aspects of felling where e.g. trees are removed for development,*

including renewables such as wind and hydro, where an equal area of compensatory planting should be required?

- 4.25 As in other sections of this report, a small number of respondents requested a clear definition of 'sustainable forest management' to avoid subjective interpretation. Several respondents noted the need to demonstrate compliance with the UK Forest Standard as a widely recognised standard that many already are familiar with.
- 4.26 One individual expressed confusion at the proposals, saying '*I am slightly unclear on the minimum woodland size where this application process will be relevant. As stated before I believe that even single tree felling should be subject to the process, including evaluation of solitary ancient tree status*'.
- 4.27 SEPA expressed disappointment that they are not listed as an important consultee. They would welcome the opportunity to assist in drafting model conditions in relation to their expertise.
- 4.28 One respondent put a technical query to the Scottish Government. '*We note that Registration will mean prospective new owners are aware of felling conditions and that any new owner would be subject to these conditions. Would it be the case that if a new owner received Planning Permission for the site, these conditions would then fall? Does the Registration process allow for this?*' [Aberdeenshire Council].

5. Felling directions

5.1 This chapter presents analysis of responses to the proposals for felling directions put forward by the Scottish Government. It describes the consultation questions, number of responses, overall level of support for the proposals and any suggested removals, amendments or additions. A selection of quotes that typify the views expressed by respondents in relation to the draft exemptions are incorporated within the chapter.

Overview

5.2 There are provisions within the 1967 Act for Forestry Commissioners to give tree owners directions to fell trees in specific circumstances. The 2018 Act maintains most elements of the previous legislation on directions. The new proposals include:

- Conditions on felling directions which will be grounded in sustainable forest management and impacts on communities and individuals; the environment, biodiversity or species; or retaining or increasing woodland cover.

5.3 Questions 9-11 asked participants for their views on the proposed felling directions:

9. Do you agree with the proposals?

If no:

10. Would you like to see anything removed from the proposals?

If yes: What and Why?

11. Would you like to see adjustments made to the proposals?

If yes: What and Why?

12. Would you like to see anything added to the proposals?

If yes: What and Why?

Responses to the proposed felling directions

5.4 Two thirds of consultation participants responded to the questions on the felling directions. These responses were largely positive. The table below provides a quantitative summary of their responses:

Question	Yes	No	Not answered	Non-specific response
9: Do you agree with the proposals?	14	9	14	0
10: Would you like to see anything removed from the proposals?	1	16	20	0
11: Would you like to see adjustments made to the proposals?	9	8	20	0
12: Would you like to see anything added to the proposals?	5	11	21	0

5.5 A group of 9 individuals and 5 organisations made comments calling for changes to aspects of the felling directions, typically asking for adjustments or more guidance. Material for analysis was drawn from the following:

- Explanatory comments from each of the 9 respondents who answered ‘no’, to indicate they did not agree with the proposals.
- Responses from 4 participants who answered ‘yes’, to indicate they agreed with the proposals, and made comments calling for specific changes to aspects of the proposed process.

5.6 The group who did not advocate for changes comprised:

- The 10 respondents who answered ‘yes’, to indicate they agreed with the proposals, and made no calls for change of any kind in their comment.
- The 10 respondents who did not respond to question 9, given they did not communicate a preference for the Scottish Government to do anything other than is suggested in the draft proposals.

Items to remove

5.7 In their response to the question on items to remove, one individual reiterated their request that the Scottish Government make no changes to the proposals at all but did not provide a rationale for this in relation to felling directions.

5.8 Scottish Land and Estates questioned the principles underpinning the new proposals, as follows: *‘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’.*

5.9 There was a general observation from South Scotland Regional Forestry Forum that they *‘cannot envisage the circumstances where Ministers will issue a direction on the grounds of preventing timber deterioration’.*

Items to adjust

5.10 Seven respondents described adjustments for the Scottish Government to consider.

- A small number of respondents highlighted the impact of re-stocking on deep peats, noting this can be particularly damaging to aquatic habitats and fish populations. Respondents also raised concerns about the management and protection of Riparian Buffer Zones.
- Two suggested more clarity is required regarding what is meant by *‘prevent or reduce harm caused by the presence of trees’*.
- One respondent called for more clarity on the process for assessing the *‘impacts of felling’* – particularly who is responsible for deciding what those

impacts are and whether they are deemed acceptable, welcoming a process of independent scrutiny to ensure timber production is not favoured over biodiversity or community impacts. They also called for more detail on what is considered '*Sustainable Forest Management*' within the proposals.

- Another said felling directions should have the flexibility to enhance as well as protect biodiversity.
- One noted '*any conditions imposed should be measured against compliance with the UK Forestry Standard and interpreted as such by Scottish Forestry staff*'.

Items to add

- 5.11 In comments on additions, a few respondents repeated calls for the Scottish Government to make environmental matters more of an explicit consideration in directions.
- 5.12 Scottish Woodlands Ltd. suggested the application of a Felling Direction needs to include the facility for some form of compensation for the woodland owner.
- 5.13 An individual suggested '*Direction should include Public Open Spaces*'; this individual did not explain the basis of this view.

6. Appeals

6.1 This chapter presents analysis of responses to the proposed appeals process put forward by the Scottish Government. It describes the consultation question, number of responses, overall level of support for the proposals and any suggested removals, amendments or additions. A selection of quotes that typify the views expressed by respondents in relation to the draft exemptions are incorporated within the chapter.

Overview

6.2 The consultation document set out the proposed two-step appeals process for decisions made under the 2018 Act:

- Step 1 is an internal review, within Scottish Forestry.
- Step 2 is an appeal to the Scottish Government Planning and Environmental Appeals Division (DPEA), with processes in line with planning appeals.

6.3 Questions 13-16 asked participants for their views on the proposed appeals process:

13. Do you agree with the proposals?

If you have answered no:

14. Would you like to see anything removed from the proposals?

15. Would you like to see adjustments made to the proposals?

16. Would you like to see anything added to the proposals?

Responses to the proposed appeals process

6.4 Just over half of the consultation participants responded to the questions on the appeals process. These responses were largely positive. The table below provides a quantitative summary of their responses:

Question	Yes	No	Not answered	Non-specific response
13: Do you agree with the proposals?	19	2	16	0
14: Would you like to see anything removed from the proposals?	2	6	27	2
15: Would you like to see adjustments made to the proposals?	4	8	25	0
16: Would you like to see anything added to the proposals?	3	8	26	0

6.5 A small group of 4 individuals and 1 organisation called for changes to aspects of the appeals process, typically asking for adjustments. Relevant comments were drawn from the following respondents:

- There was 1 explanatory comment from the 2 respondents who answered 'no', to indicate they did not agree with the proposals.
- 3 respondents who answered 'yes', to indicate they agreed with the proposals, made comments calling for specific changes to aspects of the proposed process.

- 1 respondent did not provide a clear yes/no answer but made a relevant comment.

6.6 The group who did not advocate for changes comprised:

- The 16 respondents who answered ‘yes’, to indicate they agreed with the proposals, and made no calls for change of any kind in their comment.
- The 16 respondents who did not respond to question 13, given they did not communicate a preference for the Scottish Government to do anything other than is suggested in the proposals.

6.7 Four organisations (Scottish Land and Estates, Fisheries Management Scotland, Scottish Environment Protection Agency (SEPA), and Galloway Fisheries Trust) specifically stated that they agreed with the proposals. SEPA particularly welcomed the reference to the broader view on permissions to include environmental and sustainable forestry and/or land management considerations, noting the clear shift away from the more traditional timber production focus of previous legislation.



We welcome the new two-stage appeals process that is aligned with planning appeals. [Scottish Land and Estates]

Items to remove

6.8 Two respondents said they would like to see items removed from the proposals but only one made a comment to explain why. This respondent, an individual, expressed concerns about the use of current Scottish Government Planning and Environmental Appeals Division (DPEA) for appeals against the new proposed regime. The respondent suggested DPEA does not currently work within the regulatory regime of forestry consented tree felling, lacks the relevant expertise, and that it currently does not consider or require the UK Forestry Standard compliance as a material consideration in planning decisions.

Items to adjust

6.9 Four respondents called for adjustments to the proposed appeals process. They expressed a general concern about the level of expertise of those involved in the appeals process, and stated that more information is needed on which organisations will be called upon. For example, respondents suggested that certain organisations would need to be involved depending on the topic of an appeal - stating that this aspect of the process is not currently clear.



I think there should be a stipulation made for ecologist involvement in reviewing planning/felling applications and appeals [Individual]

Items to add

6.10 Three respondents called for additions to the proposed appeals process. One individual reiterated their call for specialist environmental involvement in appeals. RSPB Scotland expressed concerns about the lack of scope for appeals to be made by parties other than the appellant. Another called for adoption of good practice carried out by Forestry

Commission Scotland with reference to public consultation and involvement of statutory consultees.



With regard to the appeal process, we note that there is no scope for appeals to be made by parties other than the appellant. We believe that there should be an equal right of appeal, in which interested parties (who may count as an “affected party”) can request a review of the decision-making process [RSPB Scotland]

Other issues raised

- 6.11** The timescales for processing appeals was commented upon by one respondent. They highlighted the long period of time between the appointment of a reporter and a decision, when appealing to the DPEA, describing the negative impact these delays can have on renewable energy projects.
- 6.12** One called for clear guidance about timeframes for appeals, expressing a hope that the Scottish Government will reduce the length of time that appellants must wait for a decision. They suggested this would help support renewable electricity developers and generators.

7. Compliance

- 7.1 This chapter presents analysis of responses to the proposed compliance process put forward by the Scottish Government. It describes the consultation question, number of responses, overall level of support for the proposals and any suggested removals, amendments or additions. A small sample of quotes that typify the views expressed are incorporated within the chapter.

Overview

- 7.2 Prior to the 2018 Act, if restocking associated with a felling licence or felling associated with a felling direction had not been completed and the deadline for the completion passed, Forestry Commission Scotland issued an 'Enforcement Notice'. This is a notice which details actions which must be completed and their associated deadlines. Failure to comply with an Enforcement Notice is an offence.
- 7.3 The 2018 Act lays out that a remedial notice requires the person to whom it is served to take steps or stop activities within a timescale specified in the notice. The Act also gives Scottish Ministers powers to issue a restocking direction where it appears felling has been carried out that is not covered by an exemption, or is not in accordance with a permission, a direction or a remedial notice. Finally, the Act introduces Temporary Stop Notices (TSNs) to require felling to stop on any site where they believe felling is taking place unlawfully, allowing investigations to begin safely on site.
- 7.4 The consultation document sets out the proposals for compliance, with key points summarised below:
- Conditions on remedial notices and restocking directions will be grounded in sustainable forest management and impacts on communities and individuals; the environment, biodiversity or species; or retaining or increasing woodland cover.
 - Restocking directions will include the reasons why the restocking direction is being given.
 - Temporary Stop Notice compensation will be available for losses between the day the notice is served and the day it is revoked.
- 7.5 Questions 17 to 20 asked participants for their views on the proposals to ensure compliance with a condition attached to a felling permission, felling direction or restocking direction:

13. Do you agree with the proposals?

If you have answered no:

14. Would you like to see anything removed from the proposals?

15. Would you like to see adjustments made to the proposals?

16. Would you like to see anything added to the proposals?

Responses to the proposed compliance processes

7.6 Just over half of the consultation participants responded to the questions on the proposals concerning matters of compliance. These responses were largely positive. The table below provides a quantitative summary of their responses:

Question	Yes	No	Not answered	Non-specific response
17: Do you agree with the proposals?	16	5	14	2
18: Would you like to see anything removed from the proposals?	1	8	27	1
19: Would you like to see adjustments made to the proposals?	3	8	25	1
20: Would you like to see anything added to the proposals?	1	8	28	0

7.7 A small group of 3 individuals and 4 organisations called for changes to aspects of the compliance processes, typically asking for minor adjustments and clarifications. Analysis of relevant responses draws on the following:

- Explanatory comments from 3 of the 5 respondents who answered 'no', to indicate they did not agree with the proposals.
- 3 respondents who answered 'yes', to indicate they agreed with the proposals, made comments calling for specific changes to aspects of the proposed process.
- 1 respondent did not provide a clear yes/no answer but made a relevant comment.

7.8 The group who did not advocate for changes comprised:

- The 13 respondents who answered 'yes', to indicate they agreed with the proposals, and made no calls for change of any kind in their comment.
- The 14 respondents who did not respond to question 17, given they did not communicate a preference for the Scottish Government to do anything other than is suggested in the proposals.
- 1 respondent who did not provide a clear yes/no answer but made a supportive comment.

7.9 While most of the small number of comments focused on changes that participants urged the Scottish Government to consider, RSPB Scotland highlighted that they '*support the proposals in principle*'.

Items to remove

- 7.10 One respondent called for compensation element of ‘Temporary Stop Notices’ (TSNs) to be removed. They described a fear that included the possibility that compensation may mean TSNs are subsequently not used by the Forestry regulator, to avoid risk of compensation claims.
- 7.11 Another participant suggested there should be no Local Authority exemptions to TSNs.
- 7.12 One individual made a general observation that *‘the procedures seem to be unnecessarily bureaucratic!’* but did not provide any specific detail about requirements they wished to see removed.

Items to adjust

- 7.13 There were calls from the Scottish Wildlife Trust (SWT) for some specific adjustments to the draft proposals on compliance, asking for greater references to environmental considerations, as follows:
- *‘On page 25, last paragraph on that page, starting ‘Our proposal’, at bullet point two, insert ‘conserving and enhancing’ between ‘the’ and ‘environment’. ‘*
 - *‘On page 26, first paragraph. Examples are given which are relevant to ‘communities or individuals’ and to ‘retaining or increasing woodland cover’, but no example is given regarding ‘the environment, biodiversity or species. This implies this aspect is less important than the others. To redress this balance, include at least one example(s), but preferably two, one on conserving and one of enhancing (proactively supporting) the environment, biodiversity or species. ‘*
 - *‘On page 27, first paragraph, bullet point two, insert ‘conserving and enhancing’ between ‘the and ‘environment’. We note that this time there is a biodiversity example included.’*
- 7.14 One respondent highlighted inconsistent references to ecological protection across the various proposals set forth in the consultation document.



‘Ecological protection’ is listed as a possible condition on a restocking notice which is welcomed. However, this potential condition is not specifically listed against other sections, such as felling permissions or felling directions. We recognise that general sustainable woodland management is listed against these conditions however it does appear inconsistent, particularly when felling is likely to be more ecologically disruptive, at least in the short term, than restocking [Aberdeenshire Council]

Items to add

- 7.15 Four respondents suggested additions to the compliance proposals. These are summarised below:
- Calls for clear statements that compliance with the UKFS should be a condition for all felling permissions and directions. RSPB Scotland stated they would be willing to contribute to the development of any future guidance, suggesting the need for it to go to public consultation before being published.
 - Linked to this, another participant noted that *‘Any proposed legally binding conditions, and compliance must be quantifiable against measurable and auditable specifications and/or standards’ [Scottish Land and Estates].*
 - Scottish Environment Protection Agency (SEPA) highlighted issues around clarity. They suggested the need for stream-lining and harmonisation

between the various proposals to avoid confusion between SEPA and landowners. They also called for a full explanation of who is the primary regulator for assessing whether permissions are being complied with, noting that an explanation could cover SEPA's duties and those of Scottish Natural Heritage (SNH) as secondary regulators offering advice and guidance on key issues.

- Two respondents noted the need to have more reference to Environmental Impact Assessments and other relevant legislation within the compliance



The benchmark used should be the UK Forestry Standard. [Individual]

Other relevant issues

7.16 Two respondents provided some additional comments, both relating to compensation. One participant warned against compensation, highlighting its potential costs to the Scottish taxpayer, and the chances of it becoming a 'minefield', suggesting it needs more thought. SSE Generation requested further detail on the limits to compensation claims for TSNs and what would be considered suitable proof of costs incurred.

8. Impact Assessments

- 8.1 This chapter presents analysis of responses to the impact assessments put forward by the Scottish Government. It describes the consultation question, number of responses, overall level of support for the impact assessments and other related issues raised elsewhere in consultation responses.
- 8.2 Just over half of the consultation respondents answered Question 21, however as shown in the table below, most did not provide further material for analysis beyond a yes/no answer. Of those that did respond to the question on impact assessments, 13 agreed, 6 disagreed and 1 did not answer the yes/no question but made a general comment in relation to impact assessments.

Question	Yes	No	Not answered	Non-specific response
21: Do you agree with the impact assessments?	13	6	17	1

- 8.3 A total of 7 comments were made on the impact assessments. These came from one respondent who answered ‘yes’, five respondents who answered ‘no’ and another respondent who made a general statement. Most comments were brief and focused on Business Regulatory Impact Assessment (BRIA) and the Strategic Environmental Assessment (SEA).

Responses to the BRIA

- 8.4 Four participants identified issues in relation to the BRIA that they would like the Scottish Government to consider:
- Three participants made an identical comment: *‘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’*. [Confor] [Scottish Land and Estates] [Individual]
 - One of the above made their comment with the caveat *‘we appreciate these are partial impact assessments’*.
 - Another participant suggested *‘as the impact of the regulations depends very heavily on the guidance that is created for the conservancy staff to follow I believe it is not possible to perform a BRIA until this is made available’*. [Individual]
 - Confor also suggested they had *‘identified a number of concerns in their response which would warrant a review of the BRIA’*. The key concerns within the body of their response are included in the summary below.

Other comments on potential business impacts made elsewhere in responses

- 8.5 Above and beyond the specific question on impact assessments, in other parts of their responses some participants described potential commercial impacts or opportunities arising from the proposals put forward. Key themes included bureaucracy, impact on practice and additional costs. These are included in the relevant chapter and are also summarised below, for ease of review:
- **Calls for an amendment to the 5m³ exemption ‘to removal by ownership AND within block (or a set distance)’**, on the basis that some woodlands may not have either a forest plan or forest design plan in place.
 - **Fears that the removal of exemptions for windblown trees will create significant** delays for businesses that do not have a forest plan or forest design plan in place.
 - Also, suggestions that following a **windblow event, the landowner should have the discretion not to restock the site** if they deem it to have an unacceptable risk rating or if the costs are prohibitive.
 - Suggestions that **the requirement to state the number of trees when the application is for a thinning or larger clearfell is unrealistic and that a reasonable estimate should be sufficient.**
 - Fears about the **extent of consultation** on applications required, on the basis that it can be an expensive proposal and prevent economic activity.
 - Concerns that the **proposal for a requirement to notify government prior to a change in ownership** will be overly bureaucratic and such information should be considered commercially confidential.
 - A suggestion that the proposed requirement for a land occupier (e.g. tenant) to **obtain written permission from a land owner** before a felling licence application adds a new, unnecessary layer of bureaucracy to the existing process.
 - A view that the specific conditions to **felling permissions are so wide ranging** that they may increase the level of bureaucracy.
 - Concerns about the **adjustments in relation to Small Trees**, on the basis these restrict the ability of forest managers to manage their resource by reducing the period in which work can be carried out. Also, a suggestion that this change imposes an additional time-consuming and costly administration burden.
 - Fears that the removal of the **exemption for small woodlands 0.1-0.5 ha** where the canopy comprises over 50% of native broadleaves will have unintended and unsustainable consequences for owners, such as the cost and times linked to survey, mapping, administration and inspection.
 - **Scottish and Southern Electricity Networks and SSE Generation Ltd** highlighted some specific issues that have the potential to affect their businesses; these were signposted to the Scottish Government separately.

- A call for **harmony between the Remedial Notices that can be applied under the new Permissions, enforcement tools available to Woodland Officers and those enforcement powers available to SEPA Officers.**
- Concern that the **requirements on restocking are too specific and will force private sector foresters to use new methods**, such as those used in public sector forestry that may not meet the standards required on private land.
- A suggestion that the **‘minimum’ information requirement should not be the same for every application**, with proportionate guidance depending on the application.

Responses to the question on the Strategic Environment Assessment (SEA)

- 8.6** Four participants commented specifically on the SEA. Two highlighted aspects that they agreed with; two identified gaps in the SEA or issues that they would like to see covered in more detail:

Agreement with the SEA

- 8.7** Both organisations that expressed agreement with the SEA operate in the fisheries sector. They welcomed Table 2, which summarises common issues associated with soil and water. One of these respondents also said they supported the comment within the SEA that *‘a specific question on peat and peatland restoration should be included to address issues around restocking in areas of deep peat’* [Galloway Fisheries Trust].

Disagreement with the SEA

- 8.8** The two participants who expressed disagreement with the impact assessments with reference to the SEA highlighted several issues for the Scottish Government to consider, as follows:
- *‘We believe that the Strategic Environmental Assessment has not fully considered the full environmental implications of the proposals, particularly regarding the potential impact of felling and restocking on biodiversity and specific habitats such as deadwood. The potential for cumulative impacts requires further consideration, particularly as the EIA process is sometimes lightly applied to current applications for felling and afforestation’* [RSPB Scotland].
 - One individual’s concerns about the SEA were far-reaching. They urged for greater consideration of a range of issues, including:
 - Deadwood habitats and species.
 - Scotland’s native wildlife and woodlands.
 - Regulatory connections between the proposed felling consenting regime and existing other environmental consents, for example related to designated wildlife sites (e.g. SPA, SAC, NNR & SSSI), designed historic landscapes and scheduled ancient monuments (SNH & HES), SEPA engineering water & pollution consents.
 - Environmental Impact Assessment under forestry regime (deforestation) as well as EIA related to development under the planning regime.
 - The role, expertise, training and capacity of regulatory staff within these regimes to comment on forestry proposals as statutory consultees, as well as

the expertise, capacity and training of forestry regulatory staff to issue and enforce felling consents.

- Potential legal and regulatory loopholes and problems, the current approach of Environmental Impact Assessment for deforestation, including assessment cumulative impacts, and consider the new proposals.

8.9 Scottish Environment Protection Agency did not provide a yes/no answer to the question on agreement with the impact assessments, but made several comments about environmental considerations. The detailed nature of the response is beyond the scope of this high-level report and has been signposted to the Scottish Government for review.

Other comments on potential environmental impacts made elsewhere in responses

8.10 Above and beyond the specific question on impact assessments, some participants referenced environmental considerations in responses to other questions in the consultation document. These have been covered in the report under the relevant chapter, but are summarised under key themes, for ease of review:

Environment

- A fear that any costs associated with the felling consents regime may be counterproductive in leading to insufficient levels of applications, more environmental loss and damage and poor forestry practice, and increased need to search for non-compliance.
- Concern that the switch from felling and the regulation of it, related to 'wilful damage of a growing tree' to consent for 'killing' a tree with exemptions for dead trees, will be subject to new case law and '*likely to have unintended loopholes, regulatory problems and environmental damage*'.
- A view that the proposal to consult on thinning applications will affect woodland management and should therefore '*be encouraged, not over-controlled*'.
- A call for incentives or requirements on forestry operators to ensure that areas which have been cleared of natural conifer regeneration in riparian zones are returned to appropriate native tree species. '*Without the establishment of native trees within a riparian buffer strip, the full ecological benefits of nutrient input, bank stabilisation, shading and creation of cover for fish provided by riparian woodland will not be realised*'.

Climate

- Concerns that the importance of peaty soils is missed throughout this document and is also absent in the parent Regulation of Felling and Restocking Consultation document.

Biodiversity

- A view that tree felling should take into consideration the ecological effects of removal from the environment. Any change to a forested area should be considered in line with local and national biodiversity plans, as well as knowledge of sensitive species or ecosystems local to planned felling.
- Calls to do more to support or encourage coppicing on the basis of it being a useful technique for smaller scale woodland management and small diameter timber production and can be of benefit for biodiversity.

Ecology

- An observation that '*ecological protection*' is listed as a possible condition on a restocking notice but not specifically referenced in relation to felling permissions or felling directions.

Ancient Trees

- Greater consideration of the need to remove trees to assist habitat restoration when making decisions related to restocking or compensatory planting.
- A call to use tools, such as the existing Ancient Woodland Inventory, for identifying native ancient woodland where there should be no exemptions.
- An appeal for information on ancient woodland to be more robust and accessible, for example through addition of clear definitions as to what the various terms mean, i.e. ancient woodland, ancient semi-natural woodland, and plantations on ancient woodland sites (PAWS).

Habitat

- A call for recognition that solitary ancient trees should be maximally protected, as even single specimens create a unique habitat for invertebrates, fungi, plant life, etc.
- A suggestion there should be an ecological consultation on the value of dead trees for wildlife.
- A call for greater protection of hedgerows because of their value for wildlife/invertebrates.
- Concerns that the removal of the exemption in respect of small native woodlands is potentially detrimental to the management of those woodlands and may be counterproductive.
- Suggestion that an improved definition of public open space is required as these may incorporate a number of small blocks of woodland and exemption would allow removal of such areas with an overall loss of woodland cover.
- A suggestion that the practicality of monitoring and investigating breaches associated with species of a small mature size may be difficult and a major task for Scottish Forestry.
- Calls for small remnants of native pinewoods to be protected from felling, by excluding such areas from the exemption.

9. Conclusions

- 9.1 Many informed stakeholders and individuals took part in the consultation. They were typically highly-engaged and knowledgeable about issues related to forestry and woodland management, sharing expertise, examples and reflections on ways the proposals may affect tree owners in Scotland. These responses provide a useful evidence base for the Scottish Government to draw upon in the development of the final proposals.
- 9.2 At a broad level, responses to the proposals were generally positive, evident by the very few calls to remove proposals put forward in the consultation document. However, participants frequently called for adjustments. These typically reflected their concerns about impacts on businesses or the environment; often these views were at odds with each other. This presents a challenge for those drafting the proposals; it is likely that the final proposals will not satisfy all stakeholders.
- 9.3 Reflecting across responses, it was evident that participants would like more guidance about aspects of the proposals, particularly in relation to exemptions, applications, permissions and compensation and directions. There were frequent calls for the proposals to make more references to the UK Forestry Standard. In some cases, participants asked for greater clarity about aspects of the proposals, requesting that the Scottish Government outline specific timescales for processes set out in the proposals and define terms such as 'sustainable forest management'.



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