

Forestry Regulation Review Task Force

Call for Evidence – Questions:

Initial response in Early Consultation, Feb-March 2011

About you

Name of respondent: Mike Wood¹, UK Forestry Policy Officer

Name of organisation: RSPB² (Royal Society for the Protection of Birds)

Location of respondent/ organisation: Edinburgh/UK

Organisation/business type: environmental non-government organisation.

Size of organisation:

micro (0-9 employees), small (10 – 50), medium (51-250), or large (250+) Large

Number of members (if applicable): approx 1million.

Area of woodland managed (ha.): 8,800ha in UK.

Does the woodland meet the UKFS? Yes.

Do you receive funding through the EWGS? Yes.

Does the woodland meet the UKWAS? No – currently in the process of being re-certified.

Questions

1. Do you think the current regulatory environment in England is fit-for-purpose? If not what changes would you suggest?

The RSPB does not view the UK Forestry Standard, Felling Licensing, forestry Environmental Impact Assessment, Appropriate Assessment, the EU Birds or Habitats Directives, or the Forestry Commission's Public Register as 'gold-plating' regulation.

A key issue for the RSPB is the appropriate location of new woodland, so that it does not damage sites for priority species, priority habitats or designated wildlife sites, such as wetland sites for breeding wading birds, peatland habitats, lowland heathland, SSSIs, SPAs, SACs and Ramsar sites. We therefore value the forestry Environmental Impact Assessment process and the requirements of the UK Forestry Standard and its associated Forest Guidelines. We also value the role of the UK Forestry Standard as a condition on state and private sector forest plans approved by the Forestry Commission, as a requirement for Felling Licences and as a condition on all woodland management consented by the Forestry Commission.

We do, however, consider that there is a disparity between how forestry Environmental Impact Assessments are requested for non-state forestry and the assessment of significant environmental impacts on the Public Forest Estate through Forest Design Planning. We also have

¹ Contact details: Mike Wood, UK Forestry Policy Officer, RSPB, Ground Floor, 2 Lochside View, Edinburgh Park, Edinburgh EH12 9DH. E-mail: mike.wood@rspb.org.uk

² Registered Charity : England & Wales no. 207076, Scotland no. SCO37654.

concerns about the rigour and consistency of forestry Environmental Impact Assessment process, particularly in relation to identifying significant impacts at the scoping stage, and requiring 'mitigation' of what are non-significant impacts at a later stage. We are uncertain whether there is a consistent approach between afforestation and deforestation proposals through forestry Environmental Impact Assessment, for example how biodiversity concerns are addressed in woodland expansion and biodiversity opportunities in open ground habitat restoration proposals. We have concerns about regulatory creep related to 'compensatory planting' - UK Government and its delivery bodies at all levels should remember the requirements of the UK Forestry Standard and current English open habitats policy.

We also consider that the UK Government adopts a partial approach to the implementation of the UK Forestry Standard. This standard is government's approach to sustainable forest management for all of the UK's woodland – it is inappropriate for UK Forestry Standard compliance to not be required for woodland expansion and management on farms under lower level agri-environment, or through the town and country planning system.

The RSPB has concerns about the intensity of compliance checking for the UK Forestry Standard by the Forestry Commission, the rest of the Defra family and by local authority planning departments. We also have concerns about the systems level checking and evidence collected for Forestry Commission Conservancy ('Region' in England) and country level reporting of UK Forestry Standard compliance. We note that an objective of the Government's GB forestry research strategy, as well as a task for Forestry Commission's own research agency – Forest Research – is UK Forestry Standard compliance and implementation monitoring.

The RSPB also has concerns about the implementation of new silvicultural systems and tree species for biomass, such as short rotation forestry using eucalyptus, without proper consideration of biodiversity impacts. We are concerned that Forestry Commission's own trials of short rotation forestry across GB did not undergo a site-based Environmental Impact Assessment for every site, and for those in Scotland, a Strategic Environmental Assessment. This shows an unfortunate regard for the precautionary principle, particular for such experimental works.

The RSPB is also concerned about the current status of the Forestry Act 1967 in relation to conditions attached to Felling Licences for the restoration of priority open ground habitats approved by forestry Environmental Impact Assessment.

We do have concern about the Ministerial Direction 12 April 1984 (Forestry Act 1967 Direction under Section 1(4)) on dispute resolution procedures which we think needs revision to better protect and enhance biodiversity.

2. How might the existing regulations and support mechanisms be better implemented?

The Ministerial Direction 12 April 1984 (Forestry Act 1967 Direction under Section 1(4)) sets out the Forestry Commission's dispute resolution procedures, allowing the Forestry Commission to step back from the decision and focus on conciliation. Under this Direction, the Forestry Commission is only able to grant consent in contended Felling Licence cases, following intervention from the forestry minister, rather than to determine applications by evaluation of net public interest and its obligations under the Wildlife & Countryside Act 1981, and the EU Birds and Habitats Directives.

There is a need to overhaul Forestry Commission's guidance on woodland management planning – currently it exists in three places and forms – which need revision and integration. The current Forestry Commission GB-wide guidance on all woodland management planning – *Forest Design*

Planning (FPG1³) - needs updating. The next revision of Forest Enterprise's in-house guidance on forest planning *Forest Design Planning (OGB36)⁴* needs to be publicly consulted during its development – it also needs to be widely available in the public domain. Finally, Forestry Commission England's guidance on woodland planning⁵ within the Woodland Planning Grant (WPG) of the English Woodland Grant Scheme needs to be integrated into national guidance – there may be other and better ways to meet the UK Woodland Assurance Standard apart from Forestry Commission England's WPG proforma

3. What are the main regulatory issues that affect your business/organisation/interests and what solutions do you propose?

The length of the process for forestry Environmental Impact Assessment for woodland expansion and open ground habitat restoration, as well as problems with the identification of significant impacts and setting of 'mitigation' conditions.

4. Please list, in order of priority, up to 10 changes in the regulatory environment that would make a significant impact in achieving the aims of your business/organisation/woodland ownership.

1. UK Government requires all woodland planting, felling and management to meet the UK Forestry Standard, including on agricultural land and through the planning systems, for short-rotation forestry and coppice for biomass, as well as for woodland and forestry management.
2. UK Government ensures UK Forestry Standard compliance for all woodland and forestry planting, felling and management. This includes auditing compliance and reporting.
3. Forestry Commission ensure consistency in regulation between Conservancies ('Regions') in England, and across Great Britain under the Forestry Act 1967, UK Forestry Standard compliance and forestry Environmental Impact Assessment. This includes compliance checking and requirement to meet the UK Forestry Standard, as well as Felling Licensing.
4. Forestry Commission England produces revised guidance on the design, planning and management of forestry operations to avoid disturbance to priority species that are not EU European Protected Species.
5. Forestry Commission carry out Environmental Impact Assessment for all afforestation and deforestation on the Public Forest Estate.
6. Introduce a formal role for Forestry Commission's Regional Advisory Committees in consideration of contentious forestry Environmental Impact Assessments and grant applications. This is currently an administrative convention that may differ in its application across Great Britain. This would be in addition to their existing statutory role on contentious Felling Licences and advice on the implementation of the Forestry Commissioners' statutory duties under Section 1 of the Forestry Act 1967.
7. Ensure that statutory consultees on forestry proposals, including Natural England and the Environment Agency, as well as local authority planning departments, effectively contribute to this consenting regime. This is particularly important when considering biodiversity impacts, both positive and negative.

³ Bell, S. (1998) Forest Design Planning - a guide to good practice. *Forestry Practice Guide 1*. Forestry Commission, Edinburgh.

[http://www.forestry.gov.uk/PDF/fdp.pdf/\\$FILE/fdp.pdf](http://www.forestry.gov.uk/PDF/fdp.pdf/$FILE/fdp.pdf)

⁴ Forestry Commission (2007) Forest Design Planning . *Operational Guidance Booklet 36*. June 2007. Forestry Commission, Edinburgh.

[http://www.forestry.gov.uk/pdf/ogb36.pdf/\\$FILE/ogb36.pdf](http://www.forestry.gov.uk/pdf/ogb36.pdf/$FILE/ogb36.pdf)

⁵ [http://www.forestry.gov.uk/pdf/eng-gr-managementplanquidancenotes.pdf/\\$FILE/eng-gr-managementplanquidancenotes.pdf](http://www.forestry.gov.uk/pdf/eng-gr-managementplanquidancenotes.pdf/$FILE/eng-gr-managementplanquidancenotes.pdf)

5. How could the process of applying for grants be improved?

No comment at this stage.

6. What changes to current GB forestry and related legislation applicable to England would you like to see?

Sections 10(2) and 12 of the Forestry Act 1967 need to be amended to permit the granting of Felling Licences without the requirement for compulsory replanting in cases where priority open ground habitat restoration has been approved via a forestry Environmental Impact Assessment. This would formalise current Felling Licensing administrative practice by Forestry Commission England which does not require compulsory restocking of such open ground habitat restoration sites. We note that such a change was made in Scotland in 2004 (Schedule 7 of the Nature Conservation (Scotland) Act 2004 amended in Scotland only, Sections 10(2) and 12 of the Forestry Act 1967).

The RSPB would like to know what was the impact on compliance rates on replanting, by the change in 2006⁶ to the Forestry Act in England and Wales that removed the need for obtaining a successful conviction for breach of Felling Licence

7. What changes to current EU forestry and related legislation applicable to England would you like to see?

The requirement for all woodland owners to meet the MCPFE Helsinki Principles for Sustainable Forest Management and to make this a condition of all agri-environment and forestry grants under the new EU Rural Development Regulation. In the UK this would mean compliance with the UK Forestry Standard for all woodland planting and management, including on agricultural land.

8. Is there a role for independent third parties, such as professional bodies or certification schemes, in helping to reduce or remove some elements of regulation? If so please explain further.

The UK Government, the Forestry Commission, Natural England and the Environment Agency must not step away from their statutory obligations to sustainable forest management and the protection and enhancement of biodiversity, and the regulation of this. Such duties cannot, and should not be delegated to third parties outside government.

Third party auditing, for example Forest Stewardship Council minor and major Corrective Action Requests, UK Woodland Assurance Standard Annual Monitoring Reports and Certification Audits, could provide additional evidential trail for UK Forestry Standard compliance checking by the Forestry Commission. These reports must not replace Forestry Commission's own checking, and cannot replace UK Forestry Compliance checking as they are not set-up to cover the standard completely, are not designed for regulatory compliance checking, rely on regulatory paperwork from statutory bodies to check legal compliance, and such reports may not be available in full.

We note that Forestry Commission England Conservancies ('Regions'), including Woodland Officers, lack experience of UK Woodland Assurance Standard audit, unlike their Forest Enterprise counterparts. If UKWAS was to be used as a partial compliance check, then FCE Woodland Officers and Conservators ('Regional Directors') need training in UKWAS audit protocols, as well as the objectives, structure, requirements and means of verification of the standard, and appropriate management plans. This goes beyond the limited WPG proforma that can lead an applicant to towards UKWAS certification.

⁶ Article 4 of the Regulatory Reform (Forestry) Order 2006: <http://www.legislation.gov.uk/ukSI/2006/780/article/4/made>

9. If you have experience of alternative models of forest regulation from other countries or regions please explain their strengths and weaknesses and suggest how the model might be applied in England.

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10. Please make any additional comments you may have.

There may be scope to improve the quality of woodland expansion proposals through biodiversity sensitivity and opportunity mapping. Ideally this would be at a 'regional' scale, as part of an indicative forestry and woodland strategy - positive work done on this for English Government Regions' woodland strategies must not be lost with the abolition of Regions. The RSPB would be keen to contribute to the development of biodiversity sensitivity and opportunity mapping at a landscape scale.

We also have concerns that the cumulative environmental impacts of woodland expansion ('afforestation') are not fully considered in the Forestry Commission's current consenting regime.

We may make additional comments following this initial consultation before the main consultation deadline of 29 April 2011.

RSPB
March 2011.

You do not have to respond to every question if you do not wish to. Please send all responses by noon on Friday 29th April 2011 to: forestryregulation@forestry.gsi.gov.uk

⁷ See: <http://www.legislation.gov.uk/asp/2004/6/schedule/7>