



Plan of Operations Contract Terms and Conditions

Introduction

The Management Plan and Plan of Operations Contract (together called the 'Plan') defines the work, grant aid and permissions that have been agreed by Forestry Commission Wales and the Applicant as part of the 'Better Woodlands for Wales' Scheme.

The Management Plan specifies the work, grant-aid and permissions that have been agreed together with the principles and reasons for them.

The Plan of Operations Contract specifies the terms and conditions that both Forestry Commission Wales and the Applicant should keep to when undertaking work and claiming grant as part of the Plan.

Signing this Contract

By signing this contract, the Applicant agrees to be bound by the Conditions contained in Section D of this Contract and in this introduction. The Forestry Commissioners also agree to be bound by these Conditions.

Permission for Felling Trees

Where the Applicant has proposed felling trees as part of the Plan, the Forestry Commission has considered the felling proposals as a Felling Licence Application. By signing this contract, the Applicant agrees to carry out any restocking which the Forestry Commission may specify in the contract as a condition of the Felling Licence. The Felling Licence will become active when the Applicant approves the contract on-line or receives a paper copy approved and signed by the Forestry Commission on behalf of the Forestry Commissioners. If the Felling Licence relates to trees that are covered by a Tree Preservation Order (TPO) and the existence of the TPO was not declared by the



Plan of Operations Terms and Conditions

applicant, then the Felling Licence will not cover the felling of these trees and you may commit an offence by felling them.

The permission to fell trees will last for the 5 year period of the Plan of Operations. Any restocking required must be undertaken within 3 years of the felling.

Information

Any general information that the Applicant needs to give the Forestry Commissioners under this Contract can be given either in writing (and be delivered and sent by post), or by electronic communication to the Forestry Commission Wales at the Wales G&L Services office.

If the Forestry Commissioners need to give the Applicant general information they will send it either in writing or by electronic communication to the Applicant. Unless the Forestry Commissioners have agreed otherwise, they will send it to the Applicant at his/her/their address(es) set out in this contract, or to the first of the Applicants named in this contract at the address given for that person.

Notices

Any formal notice that the Applicant needs to give to the Forestry Commissioners under this Contract must be given in writing (and be delivered or sent by post) to the Forestry Commissioners at the Wales G&L Services office.

If the Forestry Commissioners need to give the Applicant formal notice, they will send it in writing to the Applicant. Unless the Forestry Commissioners have agreed otherwise, they will send it to the Applicant at his/her/their address(es) set out in this Contract, or to the first of the Applicants named in the Contract at the address given for that person.

Plan of Operations Terms and Conditions

1. Restrictions and consents

You must tell us if there are any legal or other restrictions affecting the land, which could prevent you from completing the work or maintaining the work. It is your responsibility to find out whether any such restrictions exist and to obtain any necessary approvals or consents. This will include:

- Securing a General Development Order or planning permission from the Local Authority for the construction of tracks, roads or other civil engineering work identified in the Plan.
- Securing consent from the Environment Agency before constructing any tracks or roads that cross watercourses or undertaking any other operations that require machinery to cross watercourses.

If you do not tell us about any restriction that may affect the work proposals then we may terminate the contract, pay no further grants and may reclaim grants paid for work already carried out.

2. Historic & Archaeological sites

The work you do must not damage or destroy sites identified in the Plan as being of historic or archaeological importance. This contract only provides permission to carry out the operations specified in the Plan on sites of historic or archaeological importance.

There is additional protection for Scheduled Ancient Monuments. If CADW, as the statutory consultee, have identified the need for Scheduled Monument Consent for certain operations in the plan – or you wish to carry out other operations not specified in the plan, you must secure consent from CADW before starting any work.

3. Sites of Special Scientific Interest, National Nature Reserves, Special Protection Areas, Special Area of Conservation

This contract gives permission for you to carry out operations that appear in the Plan on these sites. If you want to do other operations that do not appear in the Plan and which may be prohibited by the designation, you must get the necessary consent from the Countryside Council for Wales.

If the project is to take place on or near a Natura 2000 site, i.e. Special Areas of Conservation (SAC) or Special Protection Areas (SPA), the giving of such consent may be qualified by the outcome of an appropriate assessment made by us of the implications for the conservation interests for which the area has been designated.

Plan of Operations Terms and Conditions

4. Public access

You must meet your legal obligations in relation to Public Rights of Way by avoiding blocking them, keeping foliage back and by guarding against injury caused by the condition of adjoining trees. You must also provide any permissive access that is specified in the Management Plan.

Grants from Better Woodlands for Wales will not be approved for work designed to meet your statutory obligations for public rights of way.

5. Duration of approval

The approval to carry out the work starts when both parties have signed the contract (the "Approval Date"). Approval to carry out the work will expire on 31st of March at the end of the 5 years covered by the Plan of Operations in Section C. If you are claiming grant aid for completed work, the grant must be claimed in the financial year as set out in Section C of the contract, (see condition 12).

6. Period of contract

We and you will be bound by this contract for a certain time, the "Contract Period". The "Contract Period" starts on the Approval Date and ends for each operation after ten years following the payment of grant for that operation.

7. Standards of work expected and maintenance

All work must be done in accordance with the Management Plan.

The Management Plan specifies operations that are essential and others that are optional. You must complete essential operations as specified in the Management Plan. If these are not completed in accordance with the Plan then we may withhold grants for other operations or terminate the contract.

You must carry out the operations specified in the Management Plan and all subsequent maintenance to achieve the expected or desired outcomes with due care, skill and diligence in line with advice given in our current best practice guidelines and the UK Forestry Standard published at the time that the work was approved by us. You must ensure that the work carried out is maintained to the end of the "Contract Period".

It will be your responsibility to carry out any necessary maintenance to ensure that the work specified in the Plan is successful.

We will not be held liable for any advice that may be given to you, (other than that given by us,) in this respect during the period of the contract.

Plan of Operations Terms and Conditions

We will not be liable for the effects of adverse weather, fire, pests or acts of God. It is your responsibility to utilise suitable skills and resources to complete the operations agreed in the contract.

8. Changes to the work

You cannot change the work specified in the Plan unless we agree and approve the change with you in advance in writing or by e-mail.

We reserve the right to accept amendments to the contract only once in each financial year (1st April to 31st March).

9. Inspection

You must let us, our staff, contractors or persons authorised by the Welsh Assembly Government to enter the land between 8am and 6pm on week-days during the Contract Period to check that you are keeping to this contract. We will notify you at least a day in advance if we intend to visit. Inspectors will carry written authorisation to undertake site visits and will present this to you at your request.

10. Rates of grant

Subject to Conditions 5, 11 and 12 and to your compliance with the remaining Conditions, we will pay you grants of the types specified in this contract, so long as the work is done in accordance with the requirements of the Contract. We will work out the grants using the rates quoted in this contract.

Where the Plan includes grants for planting new woodlands it will specify if you are eligible for income foregone payments. If so, the "Improved Land Premium" payments will be paid annually by the Welsh Assembly Government at rates which may alter during the period of the contract. The payments will be made at the prevailing rate when the payment is made each year.

11. What we will pay grant for

Any grants claims will be assessed against the quantity of work as agreed in the Management Plan. Area based grants will be paid according to the area measured automatically by our mapping system. If the map boundaries alter before you claim the grant, the grant payment may be paid against the new area measurement and may be higher or lower than the figure specified in the contract.

We reserve the right to correct contract errors and pay grant based upon the amended contract.

Plan of Operations Terms and Conditions

You must claim for all of the work agreed within any individual operation in the financial year identified for that operation. We will not accept claims for part of an operation. If you wish to claim grant for part of an operation, you must first seek an amendment to split the work into separate operations. You are only eligible to claim grants for work that has been completed. If you **unintentionally** claim for work that has not been completed, we will pay you for the amount completed, minus a penalty equal to the amount of incomplete work. The penalty will not be applied if you can demonstrate that this was not your fault.

If you **intentionally** claim for incomplete work, none of the grant will be paid to you and you will be ineligible to claim grants in the remainder of that calendar year and the following year. Any such claims will also be reported to the Welsh Assembly Government. If they consider the claim to be deliberately fraudulent, you may be prevented for up to 2 years, from claiming grants under other existing contracts or from entering other grant schemes (related to the Rural Development Plan).

12. Date by which you must claim grants

You must carry out the work and submit your grant claim to us by 28th February of the financial year specified in Section C of the Plan, unless we agree otherwise in writing.

Any Improved Land Premium (ILP) payments for new woodlands must be claimed directly from the Welsh Assembly Government. This contract confirms the areas for which you are eligible to claim ILP payments, once we have paid you the first instalment of the planting grant. However, it will be your responsibility to claim the ILP each year by completing the relevant part of the Single Application Form from the Welsh Assembly Government and submitting it to them by the specified closing date.

13. If work cannot be carried out within agreed timescale

You must inform us as soon as possible if the work cannot be carried out within the year specified in the contract. In that event, we reserve the right to specify a financial year when it will be possible to pay your grant. This may not be the year immediately following the one specified in your contract. In these circumstances we also reserve the right not to make grant payment if funds do not allow so.

14. Withholding grant payment

We reserve the right to inspect work prior to paying grant claims. If we find that further work or maintenance is required to fully meet the standards and time-scales set out in Conditions 7, we will withhold payment of the grant.

Plan of Operations Terms and Conditions

Where we withhold the grant, we will explain our reasons for doing so and give you an opportunity to put it right before re-submitting the grant claim.

If you are required to repay grants under any other grant scheme within the Wales Rural Development Plan, part or all of your BWW grant claim may not be paid to you but may be used to repay what you owe to the Welsh Assembly Government. You may also be prevented from claiming grants for a period of up to 2 years if you deliberately submit fraudulent grant claims, (see Condition 11) or commit a serious breach of the Cross Compliance regime (see Condition 22).

15. Repayment of grant

Where we have paid you a grant but we subsequently become aware that you did not carry out the work or maintenance to the standards and timescale set out in Conditions 7 and you do not put the situation right within a time-scale specified by us, we will require you to repay grant with interest at the rate set from time to time by HM Treasury for the work that is sub-standard.

If you are asked to repay grant, we may deduct this amount from any grants you are due now or in the future under this or any other agreement or contract with us or other grant schemes within the Wales Rural Development Plan.

16. Funding from other sources

You must tell us if any other public body (including the Heritage Lottery Fund and the European Union) has agreed to fund the work or maintenance or if you are claiming funding from any such body for other work on the land covered by this contract. All grant applications and claims will be "Cross Checked" against other publicly funded grant payments. Where incompatible payments are identified on an area of land, the grant payment or area may be reduced to prevent incompatible payments being made to you. If this happens we will contact you to explain the reasons for any reduction.

17. RDP publicity requirements in accordance with EU Regulations

Some of the grants delivered under the Better Woodlands for Wales scheme are part funded by the Rural Development Plan for Wales 2007-2013, under Axis 2. This is financed by the Welsh Assembly Government and the European Union.

In accordance with Commission Regulation (EC) No 259/2008, the Welsh Assembly Government is obliged to publish, at least annually, details about the beneficiaries

Plan of Operations Terms and Conditions

receiving Rural Development payments including details of such payments. The details published will be:

- The first name and surname of the beneficiary or the name of the company, partnership etc which is the beneficiary;
- The town or city name e.g. Cardiff and first 3 or 4 characters e.g. CF10 of the postcode of where the beneficiary resides;
- The amount of funding, including both the contribution from EAFRD and the Welsh Assembly Government, received in the financial year

The information will be published by 30th April 2009 and annually on this date thereafter.

<http://cap-payments.defra.gov.uk/>

All requests to the Welsh Assembly Government for the disclosure of information (including that contained within this form) will be considered in accordance with the Assembly's Code of Practice on Access to Information ('the Code') and the Assembly's statutory obligations under the Freedom of Information Act 2000 (FOIA), Environmental Information Regulations 2004 (EIR) and Data Protection Act 1998 (DPA). The Code reflects the Assembly's approach to open government and provides guidance on how the Assembly will respond to requests for information from members of the public whether they fall under the FOIA, EIR or DPA

You will acknowledge the grant aid received through Better Woodlands for Wales by including the following bilingual statement in any promotional information, leaflets or interpretation relating to the woodland and you must display the RDP logo in accordance with the Commission Regulation (EC) No 1974/2006 and the RDP branding guidelines.

"This work is partly funded by Forestry Commission Wales through the Rural Development Plan for Wales 2007 – 2013. The Plan is funded through the Welsh Assembly Government and the European Union".

"Ariennir y gwaith hwn yn rhannol gan Gomisiwn Coedwigaeth Cymru trwy Gynllun Datblygu Gwledig Cymru 2007 – 2013. Ariennir y Cynllun trwy Lywodraeth Cynulliad Cymru a'r Undeb Ewropeaidd".

Plaques/Billboards

In some circumstances beneficiaries are also obliged to publicise that they have received EAFRD funding under the Plan by displaying a plaque or billboard.

Plan of Operations Terms and Conditions

If your application is successful, and you receive a grant that is worth more than €50,000 there is a regulatory requirement to display a plaque that meets EU requirements. If your application is successful, and you receive a grant that is worth more than 500,000 then a billboard must be displayed that meets EU requirements.

You will be notified accordingly by FCW if and when you will be required to display a plaque/billboard.

Signs

Where the Management Plan specifies that signs will be erected in the woodland for the purposes of promoting Better Woodlands for Wales and or EU funds, you must erect and maintain bilingual signs provided by us or with our agreement, incorporate the wording and logos requested by FCW into your own signs.

Under Section 3 of the Welsh Language Act 1993, Forestry Commission Wales has agreed that public access and recreational activities funded through the Better Woodlands for Wales grant scheme will have regard to the need for any printed material to be fully bilingual (this includes leaflets, booklets, signs, posters, packaging, user instructions, menus, marketing, publicity and display material) and any website pages to be produced through Better Woodlands for Wales grant aid support will be published in Welsh and English.

18. Termination of Contract

We may terminate this contract immediately if:

- You do not keep to any Condition of this contract;
- You have not repaid any grant within three months of a written demand
- Any material information you gave us when you made this contract is false, misleading or incomplete;
- Any material information you gave us when you make your claim for grant is false, misleading or incomplete;
- You are declared bankrupt or make a composition or arrangements with, or grant a trust deed for your creditors, or go into liquidation (other than a members voluntary liquidation).

Before we terminate the contract or ask you to repay grant, we will give you notice of the reasons for termination of your contract. If we consider that the situation can be put right, we will give you the opportunity to put the situation right, within the time that we specify.

Plan of Operations Terms and Conditions

It will be possible to terminate the contract at other times by mutual agreement. If you wish to terminate the contract during the contract period described in Condition 6 but the work you have done will not achieve the purpose for which it was grant aided, we may, before we agree to termination, require you to repay part or all of the grant paid to you together with interest at the rate set from time to time by HM Treasury.

If you enter into this contract as an individual person, (rather than as a partnership or corporate body,) the contract will terminate in the event of your death and will not automatically transfer to the subsequent occupier of the land. Where the subsequent occupier wishes to take over the contract, we may agree to transfer the contract and the ongoing obligations to them.

19. Stopping occupying the land

You must inform us within 1 month if you stop occupying the land or any part of it, to which the contract applies. The outgoing occupier may, with our written agreement (for which agreement will not be unreasonably withheld) assign the contract to the incoming occupier. In the event of a sale of part of the land, the existing occupier may continue the work agreed in the contract over that part of the land that he or she still occupies, with their agreement.

In the event that the contract is not assigned to the incoming occupier, the contract will automatically terminate.

Where the ongoing obligations of the contract are not transferred to the incoming occupier or where the contract is terminated, the outgoing occupier will remain responsible for the ongoing obligations of the contract, as they apply to him or her, until the time that the contract would have expired. The outgoing occupier may transfer responsibility for the ongoing obligations to the incoming occupier with the agreement of the incoming occupier and us.

20. Repayment of grant on termination

If this contract is terminated we will not pay any more grant to you under this contract.

If the contract is terminated because you stop occupying the land or any part of it for any reason, and the work is not successful for what would have been the rest of the contract period, you will be liable to repay any grant you have received together with interest at the rate set from time to time by HM Treasury. The interest will be charged from the date the payable order was issued until the date that we write to seek reclaim unless we agree otherwise.

21. Contract termination if the approved work will have an adverse effect on the environment

If, following the Approval Date, we become aware of information or there is a change of circumstances as a result of which it appears to us that any work, which has not been completed, should no longer be approved for the purposes of this contract because:

- a) the work is not permitted by, or would only be permitted if formally approved under environmental law; or
- b) giving a grant towards the carrying out of the work would not be consistent with our statutory duties with regard to the environment, and we notify you accordingly; then, the contract shall apply, with any necessary adaptation, only to the work completed at the date of the notice.

If we give you the option of either making changes to the work or maintenance or terminating the contract, we shall notify you of the changes we are asking you to make. We will provide you with details of how future grant payments would be calculated if you choose to make the changes requested. We will tell you the amount of grant that will be paid to you in respect of works already carried out if you choose to terminate the contract.

If you do not notify us that you either wish to carry out the specified changes or to terminate the contract within 28 days of our notification to you of the information described in the preceding paragraph, we may terminate the contract with immediate effect.

In accordance with this Condition, if either you or us terminate the contract, grant will be paid to you in respect of work carried out before the date of termination but no further payments will be made under this contract.

22. Compliance with Rural Development Regulations

Some of the grants delivered under the Better Woodlands for Wales scheme are partly funded by European Agricultural Fund for Rural Development, (EAFRD) as part of the Rural Development Plan 2007-2013, and are therefore subject to the associated EU regulations including Cross Compliance. If you commit a serious breach of the Cross Compliance regime, you may be prevented for up to 2 years, from entering grant schemes or claiming grants under existing contracts related to the Rural Development Plan. Breaches may also result in a temporary reduction in the value of any annual, area based payments (such as Improved Land Premium) that you may be receiving from the Welsh Assembly Government.

The regulations may change during the life of this contract. If any changes affect you, we will contact you and let you know what you need to do. If changes to the regulations

Plan of Operations Terms and Conditions

are not acceptable to you, then you have the right to terminate the contract subject to you informing us within 28 days of the notification. If you terminate you must meet all your obligations in respect of grant aid received to date, and any felling licence conditions included within the contract.

23. Waiver

The failure of you or us to exercise any right or remedy shall not constitute a waiver of that right or remedy.

A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

24. Disputes

If we disagree with you about whether or not you have kept to the contract or about the standard or extent of the work done, either party may ask for the matter to be decided by an arbitrator chosen from a panel of arbitrators agreed jointly by you, us and the Institute of Chartered Foresters. You or us must give notice of this action to the other party. If you and us cannot agree to a suitable person within one month after notice, the President of the Institute of Chartered Foresters will appoint the arbitrator. Any other dispute shall be submitted to the courts in accordance with Condition 25.

25. Governing law

This contract will be governed by the Law of England and Wales and subject to the jurisdiction of the courts of England and Wales.

26. Force Majeure

You must tell us if as a result of: an act of war, terrorism, an epidemic, a disease affecting woodlands or catastrophic weather (which could not reasonably have been expected to take place during the period of the contract,) you are unable to complete or maintain the work set out in the contract. We will then discuss and agree with you certain measures such as:

- a longer period in which to complete the work
- a reinstatement plan where this is possible
- acceptance by us of a lower standard of work

We will not seek repayment of grants for work that was carried out satisfactorily but which is subsequently adversely affected by events described above, providing that you have made a reasonable effort to minimise the impact or make good the damage.

Plan of Operations Terms and Conditions

Where the events described above mean that we are unable to pay grants, we reserve the right to reschedule the years in which grants can be claimed.

In the event that storms, fire or disease have a significant impact on the woodland(s) covered by the Plan, we reserve the right to review the Plan with you and to modify or remove operations that are no longer appropriate.