

EWGS Terms & Conditions Consultation November - December 2007
Summary of consultees and FC responses

Consultee	Paragraph Number(s)	Comment	FC Use	Action
NW Regional FC staff	General	Will any of these changes apply retrospectively to existing contracts under old T&C's? Will new terms be phased in to old contracts if and when any amendments are approved, (including change of ownership) or will they always stay the same unless a new scheme is created?	No effect on old contracts. Any amendment requests to ERDP schemes that involve new or additional work will require a new contract with T&Cs that are current at that time	Update Internal Amendment Action Note to inform FC staff
NW Regional FC staff	4 - Felling	The change of wording from the current EWGS T&C seems to imply a retreat from the concept that Felling approvals had to be kept separate from any grant scheme approval so it could be legally enforceable. No longer the owners signing of the grant scheme being the "FL application", now the approval of the Felling Licence. Obviously a lot simpler to comprehend for applicants and I assume this has cleared legal tests.	This wording is taken from BWW T&Cs which went through legal checks. There is no retreat and the wording is now simpler	No action
NW Regional FC staff	5 - Felling	What about natural regeneration restocking? This could take longer and we would normally allow a reasonable time after felling before insisting on supplementary replanting. In this context can we take restocking within a year of felling to imply, creating the necessary conditions for regen to occur, e.g. stock proofing? Do we need to stress that the restocking deadline applies regardless of when any grant claim year may be?	Yes, it should reflect work to initiate restocking rather than establishment itself. May need to be clearer about what's expected within what timescale and that failure to regenerate may mean replanting or review of NR process and try again	T&Cs adjusted to set out expected outcome 10 years after felling.
NW Regional FC staff	7- Information	If the applicant elects an agent to act on their behalf they would normally expect us to communicate via that agent. Could this not be re-worded along the lines of "Unless the Forestry Commissioners have agreed otherwise or the Applicant has advised us otherwise it will be sent to"	Depends on who they want to be the contact, we can't assume. Suggestion would mean bespoke T&Cs for every contract which can't be done. Regions could make this clear in correspondence if they wish but not really necessary. FC staff should follow communication set out in EWGS 1	No action
NW Regional FC staff	8 & 9 - Notice	Why has electronic communication been dropped as an option (it was in the original ewgs T&C) surely this is the way ahead, not post? Similar comments to 7 regarding communication via Agents.	Agree, it should refer to electronic communication	Reference to electronic communication added to T&Cs
NW Regional FC staff	18 & 19 - Approval Period	I think the wording in 18 is a little misleading. We are not going to withdraw approval and stop people carrying out work beyond the designated claim year. In fact they would be under a legal obligation to complete restocking, regardless of whether they claimed grant in time or not. I know this is clarified in 19, but that raises another possible contradiction with para 5. One says restock to be completed within a year of felling, whilst 19 implies an approval period of up to 5 years for restocking?	Agree there is a little confusion	The T&Cs have been updated to make this clearer and less ambiguous

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NW Regional FC staff	23 – Claiming Grant	I am not sure about the assertion that “the contract specifies operations that are essential and others that are optional”. I don't think it's always as clearly spelt out as this. Not sure how applicants would spot the difference? Definition could be a stumbling block with any potential reclaims or withholding of grants.	Fair point, will simply remove that sentence	T&Cs adjusted to remove 'essential' reference but FC staff are encouraged to ensure contracts clearly set out expected contract outcomes against which the work will be assessed
NW Regional FC staff	26 – Standards of Work	The bit in brackets seems a bit worrying. We are being held liable for any advice that we may give. Could hinder / restrict trying to give helpful suggestions presumably verbally or in writing in case they are held against us. Presumably no choice legally with this?	No different to current position	No action
NW Regional FC staff	31 – Date for claims	Map only required to support claim if you are only claiming for part of a compt or sub compt (guidance notes on ewgs 8 claim form)	True though best to leave as it is and give FC staff guidance on when a map is really essential	No action
NW Regional FC staff	45 – Repayment of Grant	Only charging interest on reclaims from the "date of discovery of the problem", not the original grant payment date. I can't help feeling this is almost encouraging people to be slack in maintaining woodlands if they feel they could get away with it if we don't inspect. Could in theory do no planting and get an interest free loan! I don't see how this can be justified in terms of protecting the public purse. Lose the deterrent factor? At least under the existing reclaim procedures there is no argument as to when interest calculation starts. In some cases we have a degree of flexibility as to when interest stops being charged. This is often the same point that we now appear to be only starting to charging it from (i.e. date of FC inspection and alerting owner to problem).	We're falling in line with other delivery partners, key disincentive will be penalty application which is quite harsh	No action
NW Regional FC staff	46 – Repayment of Grant	Define “problem” and “date of discovery”. Needs to be clear to both FC staff and applicant and any warning properly recorded.	Problem is when we first find out the contract conditions have not been met. Date of discovery is usually when we inspect the case. Common sense really	No action
NW Regional FC staff	47 – Repayment of Grant	There would also be a disparity, because I am unsure that we have the capacity to get on the ground enough to check all schemes early on to see if there are problems. So some schemes holders may be looking at being charged years of back interest whereas others relatively little.	Not an issue, we inspect based on risk. Key is that they should adhere to the contract themselves, onus is not on us.	No action

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NW Regional FC staff	14 & 15 - Archaeological Sites	More often than not the course of action is to exclude any work around sites, whether SAM or OAM's, so the choice of wording in 14 seems slightly odd. As with SSSI areas in 16 it seems to be putting much more onus on the FC to be very precise in defining acceptable work activities in these areas. Fine in theory but not always quite so clear cut in practise. Consultation responses from Archaeologists and EH can often be rather vague. With pressures to move schemes on to approval to meet charter times etc. Tendency in these circumstances to put onus back on the applicant and the relevant specialist body to liaise with each other regarding work activities and practises around such sites.	Same clause as BWW which has been legally checked. Underlying principle is no damage to ancient monuments and need EH consent on SAMs	No action
NW Regional FC staff	16 SSSI'S etc	Similar comments to 14 & 15 regarding interpretation and dealing with overdue NE responses. Even if we have agreed Plan of Ops with them and incorporated their responses into the contract they will still insist on issuing a separate consent letter direct to the owner.	Comments as above, though assent letters not always sent by NE	No action
NW Regional FC staff	37-39 Stopping Occupying	Can we try and impose a deadline date for original owners to inform us of sale, within a month? Provide us with a forwarding address, if appropriate, especially if they are going to remain liable for any future potential reclaims. We really need written confirmation of sales from original owner or their agent before we can start dealing with any new owner, unless new owner provides legal evidence of purchase.	If we put a timescale, question is what if they don't? Agree getting a new address if they move helpful but can't be in the T&Cs	No action
NW Regional FC staff	66 – Disclosure of Information	With applicants bank account details now recorded in contracts for BACS payment purposes this could be of particular concern to some customers, especially in the current climate. Obviously we are not going to intentionally copy completed contracts (with payment details) to anyone, but should these conditions contain any reassurance statement for applicants, that such information will be safeguarded and not included in any blanket disclosures?	We will manage such data in accordance with Data Protection Act	No action
Mike Seville, agent and CLA	4	Put last sentence in bold	Agree	Last sentence made bold re TPO declarations on the EWGS application
Mike Seville, agent and CLA	39	Put this paragraph in bold	OK, though start to question that lots of the T&Cs could be made bold. If can't do it in GLOS or starts to get silly amount of bold, will look to highlight elsewhere e.g. DCT covering letter, email alert	Made bold in the word version though unsure it can be done in the GLOS contract

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Mike Seville, agent and CLA	52	The 3% threshold is rather harsh and could easily be exceeded with no malicious intent especially where the applicant does not have access to digital maps and photographs. I suggest that it be raised to 5%	3% is set out in the RDPE control regulations and cannot be changed	No action
Richard Sochacki, Tilhill	37 - 39	What is the value of the Transfer of Obligations if FC now requires to reclaim from the original contract holder?	Ops Note 14 explains this. There is no Transfer of Obligations anymore, but we try to assist scheme holders with private liability transfer through the template form	No action
Paul Nolan, Mersey Community Forest	4	Permission for Felling Areas. Licence will become active when the applicant approves the contract on-line..... I believe that the Agent will be able to approve the contract on-line therefore, should this read in this, and other cases within the document, Applicant or Agent (acting on behalf of the Applicant)? The current definition of the Main Applicant is "The individual or organisation who has responsibility to undertake the work proposed" This is not often the case with the Agent as it is the landowner (Main Applicants) responsibility. The Agent does not necessarily have to be the main contact.	when we say 'applicant' we mean someone with sufficient interest in the land to carry out certain roles (which depend on the particular owner/agent circumstances). Probably best clarified in the EWGS 1 guidance, though some refs to 'applicant' in T&Cs could be changed to 'you'	Refs to applicants mostly changed to 'you'
RPA	The good news is that I have no problems with what is proposed as the paragraphs on recovery of payments and penalties will meet the requirements as laid down in regulation.	Good news!	No action