

ENFORCEMENT POLICY STATEMENT

Introduction

The Forestry Commission has long been committed to the principles of better regulation. We provide incentives and promote best practice to reduce the need for regulation. We also recognise the benefit of working closely with all our stakeholders to make sure that wherever possible they can comply easily while maintaining the protection offered by the regulations. There are occasions however when conformity with the law needs to be sought by formal enforcement action.

The Forestry Commission's key enforcement objectives are to prevent:

- the illegal felling of trees;
- the import or export of timber, timber products and timber packaging in breach of plant health regulations;
- environmental damage caused by forestry operations;
- the marketing in seed, cuttings or planting stock in contravention of the forest reproductive material regulations.

In Great Britain (GB) we regulate felling to prevent loss of tree cover and planting to make sure that new woodland schemes are environmentally sound. We also enforce plant health regulations to protect trees and woodlands against potentially damaging pests. Our powers in these areas derive directly from the Forestry Acts or Plant Health Act. Consequently there are relatively few regulations relating to forestry. European Union (EU) Instruments are a major influence, and the majority of our regulations originate from them.

This Enforcement Policy Statement is in accordance with the Regulators' Compliance Code and the seven Hampton principles of good regulation required under the Legislative and Regulatory Reform Act 2006. All Forestry Commission staff, and others empowered under our regulations, who take enforcement decisions are required to follow this Statement.

Our Enforcement Principles

The Forestry Commission believes in firm and fair regulation of the matters for which it has responsibility. The effective use of enforcement powers in regulatory schemes is important to secure compliance with the law and where necessary to ensure that those who have not complied may be held to account. To achieve this we recognise the need to maintain a balance between enforcement and other advisory activities when allocating resources.

We have adopted four general enforcement principles that apply to the way in which we approach every case and how we decide what enforcement action to take. These are:

Proportionality

Proportionality in securing compliance will generally involve taking account of the degree of the risk of harm caused by non-compliance. Sometimes, however, the precautionary principle will require enforcement action to be taken even though the risks may be uncertain.

Consistency

Consistency means using taking a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available. There are many variables to be taken into account in using discretion to achieve an outcome, such as the attitude

and competence of the regulated person in relation to bringing about the outcome sought.

Transparency

Transparency means helping those regulated to comprehend what is required of them at the outset and setting out what they may expect from the Forestry Commission in return. It also involves making clear what remedial action is required from the regulated person and providing details of any rights of appeal etc.

Targeting

Targeting of enforcement action means prioritising and directing regulatory effort effectively. This means concentrating on the activities, which create the most serious risk, either because the nature of the activity is inherently high-risk or because of a lack of appropriate controls or appropriate attitude in other less high-risk activities. It also involves identifying and focusing on those responsible for the risk.

Accountable

The Forestry Commission will adhere to the four-enforcement principles set out above and justify its choice of enforcement action for all offences against which it can be expected to be judged. Enforcement action will be followed up to ensure that aims and outcomes such as restoration and behaviour towards compliance have been achieved. Enforcement outputs and outcomes will be published annually to evaluate performance in order to be responsive to change and to instil confidence in those that are regulated, our stakeholders and the public.

Compliance

Each case that the Forestry Commission deals with is unique in either the way it has arisen or the effect that it has. We therefore use a range of activities to ensure compliance. Advice and guidance is provided, proportionate, programmed and intelligence-led inspections are undertaken and, where necessary, inspections undertaken in response to complaints from third parties.

Where non-compliance is discovered, options to promote/seek compliance include:

- explaining legal requirements and, where appropriate, the means to achieve compliance;
- providing an opportunity to discuss points in issue where appropriate consideration of alternative means and reasonable time-scales to achieve compliance exist;
- the issuing of advisory letters, warnings, or statutory notices detailing non-compliance, and the action to be taken to address the risk;
- enforcement actions including, but not limited to, caution, prosecution and in the case of plant health, destruction or prohibition.

Immediate, without prior notice, enforcement action may be taken, but only where deemed necessary, reasonable and proportionate.

Depending on the circumstances of the incident, we may use one or more enforcement methods at the appropriate time during different stages. In some cases, one level of enforcement action may be appropriate and effective in dealing with the incident. In other cases where an earlier enforcement action has been unsuccessful, legal obligations continue not to be met, damage and disturbance carries on, or public confidence in our regulatory system is under threat, we will consider further enforcement action.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or sexual orientation. Such decisions will not be affected by improper or undue pressure from any source.

Enforcement Activity

Environmental Impact Assessment

Anyone undertaking a forestry project, which might have a significant impact on the environment, must obtain the Forestry Commission's consent before starting work.

If work is carried out without our consent, or in breach of the conditions of consent already given then an Enforcement Notice will be issued requiring remedial work to be undertaken.

The Enforcement Notice is a legal document. The Notice can be served on:

- the person carrying out the work, possibly the contractor;
- the property owner;
- any other people who have sufficient interest in the property (allowing them to carry out the work without the need to get permission from anyone else).

The Notice requires the person on whom it has been served to take one or more of the following measures:

- apply to the Forestry Commission for consent;
- restore the land to the condition it was in before any work on the relevant project was carried out;
- carry out any work on the land that is reasonably necessary to ensure the terms of the consent are complied with;
- remove or alleviate any damage or injury to the environment that has been caused by the relevant project;
- stop the work in relation to the relevant project.

The notice can specify the period during which any of the first four measures specified in the above list must be taken. Different periods can be specified for different measures.

If a person on whom a notice has been served does not comply with the terms written in the Notice, this is an offence. They may on summary conviction be liable to a fine currently not exceeding £5000 (level 2 on the Standard scale).

Felling

To help protect Britain's forests, a felling licence from the Forestry Commission is generally required to fell trees. It is an offence to fell trees without a licence where one is required. If there is no licence or other valid permission, or if the wrong trees are felled, anyone involved can be prosecuted, and restocking may also be required.

Penalties that can be applied are:

- On conviction, a fine of up to £2,500 or twice the value of the trees, whichever is the higher.
- When an owner or tenant is convicted of an illegal felling the Forestry Commission can serve a Restocking Notice to restock the land concerned, or any other land as may be agreed.

- The owner or tenant must also maintain the replacement trees to acceptable standards for up to 10 years.
- If the conditions of a Felling Licence or a Restocking Notice are not complied with, the Forestry Commission may issue an Enforcement Notice demanding you take action to meet the conditions.
- It is an offence not to obey an Enforcement Notice and can mean a possible fine of up to £5,000.

Plant Health

If you import controlled wood, wood products or bark you or your appointed agent must be registered with the Forestry Commission as a forestry trader. You or your agent must:

- meet certain requirements with regard to controlling the movement of consignments and keeping records before being authorised to handle imported material;
- have your premises inspected by an inspector to ascertain if it meets the standards required covering places of inspection e.g. storage areas separated from other accommodation and destruction facilities, if required, for any non-compliant material.

If an inspector has reasonable grounds to believe that any tree pest or relevant material is likely to have been landed in Great Britain in contravention of the Plant Health (Forestry) Order 2005, he/she may serve Notice on you.

Regulations apply to the import of wood, wood products and bark both from countries outside the European Union (EU) as well as from other member States. If an inspector has reasonable grounds for suspecting that the landing requirements have not been met, or where there is a risk of introducing a tree pest or disease, he/she may take or require you to take remedial action. This may take the following form:

- prohibition on the landing of the consignment;
- re-export of the consignment;
- specification of the manner by which the landing is carried out and the precautions to be taken after the landing of the consignment;
- prohibition on the removal of the material from the premises;
- destruction of the consignment by burning or deep burial;
- in exceptional circumstances he/she may order treatment of the material by a prescribed manner so that the landing requirements are met.

If you intend to export plants, seeds, wood and wood products these must comply with the importing country's plant health regulations. The controls may require physical action by the exporter and official inspection and paperwork. A Plant Health (Phytosanitary) Certificate usually must accompany controlled products.

If you intend to supply wood packaging material for use in exporting goods out of the EU this must be treated and marked. Before you can apply the relevant mark to treat wood packaging material you must have a certificate issued by the Forestry Commission authorising you to do so.

You will be committing an offence and could be liable to prosecution if, for the purpose of obtaining a certificate, you knowingly or recklessly make a false statement, or intentionally fail to disclose any necessary information. If found guilty you could be fined up to £5000 (level 2 on the Standard Scale).

Forest Reproductive Material

The Forest Reproductive Material (Great Britain) Regulations provide a system for the control of seed, cuttings and planting stock that is used for forestry purposes in Great Britain. This

ensures that planting stock is traceable throughout the collection and production process to a registered source of Basic Material. In addition, it provides information on the genetic quality of the stock. The Regulations implement a European Directive controlling the marketing of Forest Reproductive Material (FRM) within the EU and have been enforced since 1 January 2003.

The Forestry Commission is the official body responsible for the FRM regulations in England, Scotland and Wales. It has powers to ensure compliance with the Regulations and it can impose penalties for non-compliance.

The Forestry Commission has set up:

- an official control system, which ensures that all reproductive material remains separated and clearly identified throughout the entire plant production process from collector, to grower and to end user
- a public Register of Suppliers; only registered suppliers may market FRM
- a voluntary scheme for the certification of native trees and shrubs.

There are three types of inspection currently carried out under the FRM regulations, to ensure compliance with the regulations, traceability and protection of genetic quality. These are:

- inspection of basic material (stands, orchards etc). Existing entries in the National Register of Approved Basic Material are regularly re-inspected (approximately every 7 years), and new applications are inspected as they are made. Inspections are also made where changes in the stand are notified e.g. thinning,
- inspection of registered suppliers (their premises, labelling, separation and paperwork). The time intervals between inspections depend on the size and type of the business and their previous compliance with the regulations.
- inspection of seed collections and the taking of cuttings.

The Regulations set out a number of offences. The maximum fine for each offence is level 5, which is currently £5,000.

Woodland Grants

We pay grants for woodland creation, woodland management and other related activities. The Terms and Conditions are an essential part of a Woodland Grant Scheme contract. They set out what is expected of both the scheme holder (to comply with the contract) and the Forestry Commission (to pay grant that is due).

Contracts can be terminated where the scheme holder does not comply with the contract conditions, where false information has been given or where grant has not been repaid when requested. If the contract is terminated we will not pay any more grant to you under the contract.

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.

If the work you do does not meet the conditions of the contract we may withhold payment of grant. Where we withhold the grant, we will explain our reasons for doing so and give you an opportunity to put it right. Where you do not put the situation right, we will require you to repay grant with interest for work and on areas that have not been successful.

If we find that the approved work will have an adverse effect on the environment then we will give you the option of either making changes to the work or maintenance or terminating the contract.

If the contract is terminated because you stop occupying the land you will be liable to repay any grant you have received

In addition to the withholding or repayment of grant, a penalty will be applied where:

- an intentional false statement has been submitted,
- over-claiming of grant.

Other information

This document sets out our enforcement policy statement. It is not intended to be a detailed guide to the law. Further information can be obtained from:

Environmental Impact Assessment: <http://www.opsi.gov.uk/si/si1999/19992228.htm>

Felling: <http://www.forestry.gov.uk/website/forestry.nsf/byunique/infd-5ygfrm>

Forest Reproductive Materials: <http://www.opsi.gov.uk/si/si2002/20023026.htm>
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0105:EN:HTML>

Woodland Grants:

<http://www.forestry.gov.uk/website/forestry.nsf/byunique/infd-5ygfux>

Plant Health: <http://www.forestry.gov.uk/planthealth>

There are more details of our business and contact details on our website at www.forestry.gov.uk. We have a formal comments and complaints procedure which we use to deal with an enquiry, suggestion or complaint we receive about the way in which we have dealt with an enforcement case or any other area of our work. Details of this are also on our website.