

Operations Note 038

Date: 4 August 2015

# Cross-compliance Requirements for Forests / Woodland

## 1. Purpose

This note gives clarification on how the [cross-compliance requirements](#) under the Rural Development Programme will apply to trees and woodland.

## 2. Background

The EU Regulation refers to 'Forest' land as they do not use the term 'woodland' on mainland Europe, as we do in the UK. They mean exactly the same in relation to the Cross Compliance rules and so for ease of understanding the term 'woodland' will be used throughout this document.

A basic requirement of the Common Agricultural Policy (CAP) is that payment to beneficiaries of some support should be linked to compliance with rules relating to land management, agricultural production and agricultural activity. Consequently a 'cross-compliance' system has been established under which Member States impose penalties in the form of reduction or exclusion in whole or in part of support received under the CAP, where breaches of the basic standards take place.

The cross-compliance system incorporates certain CAP basic standards. These relate to the environment, climate change, maintaining good agricultural and environmental condition of land, public health, animal health, plant health<sup>1</sup> and animal welfare.

The system consists of two separate sets of standards which are:

- Specific requirements relating to European Regulations, known as 'Statutory Management Requirements' (SMRs).
- Standards for 'Good Agricultural and Environmental Condition' (GAEC) of land.

Originally the cross-compliance rules applied only to direct payments under Pillar I of the CAP but in 2007 they were extended to some support under the Rural Development Programme. Very few of the SMRs or GAECs have any relevance to woodland areas, although there has been uncertainty over exactly where these apply.

Detail of the SMRs and GAEC change each year and were most recently updated in December 2014 following a review prior to the CAP programme for 2014-2020 being introduced. Changes for 2015 has led to clarification as to when these requirements apply to areas of woodland.

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<sup>1</sup> Limited to the use of 'plant protection products' rather than wider plant health issues.

**Note:** A recent key change to policy has been the clarification that the extension to the bird nesting and rearing period identified in GAEC 7c only relates to the cutting or trimming of trees. The felling of trees in their entirety can continue provided the felling:

- Has been approved by the Forestry Commission (FC) through either the issuing of a felling licence or grant scheme contract; or
- The trees are exempt from the need for a licence due to one of the exemptions that are identified in the Forestry Act 1967<sup>2</sup>

### 3. Summary

For the purposes of Cross Compliance it is important to understand the definition of woodland that is included in the current Rural Development Programme for England (RDPE). This is:

*Land with a minimum area of 0.5 hectares, where there is a minimum width of 20 metres under stands of trees that are, or have the potential to achieve, a height of five metres and where there is a crown cover of more than 20% of the ground.*

Cross-compliance rules do apply to all woodland areas that meet the definition above. However, it is only SMR standards that apply and not GAEC's, unless the owner is also receiving funding on a woodland through the Basic Payment Scheme (BPS), previously the Single Payment Scheme (SPS).

#### Where BPS is not being claimed

The requirements of the EU birds and habitats directives which are covered by SMR2 and 3 respectively are the only relevant SMR's that affect woodland. However, as these are enshrined within the [UK Forestry Standard](#)<sup>3</sup> (UKFS), management in accordance with this (which includes a risk based approach to woodland management operations during the bird breeding season<sup>4</sup>) will also ensure compliance with the cross-compliance standards. No other SMR's or GAEC standard apply to these woodland areas.

#### Where BPS is being claimed

On areas of land that meet the definition of woodland then all SMR's and GAEC standards must be adhered to. The two most likely situations where this may be the case is as follows:

- Where the woodland is now being claimed for grazing purposes under BPS. This should have previously been identified using the code PP1 for SPS purposes;
- Where the woodland has been established under the English Woodland Grant Scheme (EWGS) since 2008 and where revenue foregone payments are being paid as well BPS. This should have previously been identified using the code SA2 for SPS purposes.

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<sup>2</sup> [http://www.forestry.gov.uk/pdf/treefellingaugust.pdf/\\$FILE/treefellingaugust.pdf](http://www.forestry.gov.uk/pdf/treefellingaugust.pdf/$FILE/treefellingaugust.pdf)

<sup>3</sup> See the [UKFS Guidelines for Forests and Biodiversity](#)

<sup>4</sup> Revised guidance for woodland managers on this is currently in preparation for publication in 2015.

The prohibition covering cutting or trimming of trees during the bird breeding and rearing season (GAEC 7c) for example, does therefore apply in the these two woodland situations.

Management of individual trees, trees in hedgerows or trees in small groups (copses or spinneys for example) that do not meet the definition of woodland above, must adhere to all the SMR and GAEC standards unless they fall under one of the exemptions.

### 4. Cross-compliance in the CAP 2014-2020

The new CAP regulations make it clear that the cross-compliance standards do apply to woodland areas and are no longer limited to agricultural activity<sup>5</sup>. More information on the EC regulations that set out the requirements and principles of cross-compliance are set out in [Annex 1](#).

The beneficiaries to whom cross-compliance standards may directly apply are those in receipt of direct support under Pillar I and/or annual payments for:

- Maintenance (or income forgone) associated with afforestation or the establishment of agro-forestry systems;
- Agri-environment agreements;
- Organic farming;
- Natura 2000 and Water Framework Directive commitments;
- Forest environment agreements.

Whilst there is a requirement to abide by the cross-compliance standards on the area of the holding, which is defined as "*all the production units and areas managed by the beneficiary within the territory of the same Member State*", this only applies to 'woodland' areas that are in receipt of support for afforestation, or annual Natura 2000 or forest environment commitments.

Owners should note therefore that if a breach of cross-compliance rules occurs anywhere on a holding any penalties may be applied to payments being made on a woodland area (as well as the rest of the holding), but only where that woodland is in receipt of an annual payment(s).

Under EWGS this will be:

- Woodland Management Grant (WMG); and / or;
- Farm Woodland Payments (FWP).

Under the new Countryside Stewardship scheme they will be:

- Woodland Creation – Maintenance Payments (Identified as Code WD1); and,
- Woodland Improvement Multi-Year Agreement (Identified as code WD2).

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<sup>5</sup> Article 91 (2) of Regulation (EU) No 1306/2013.

## SMRs and GAECs in CAP 2014-20

The list of SMR's and GAEC's have been combined into a single list in the current CAP Finance, Management and Monitoring regulation<sup>6</sup> which has led to some rationalisation and a reduction in the number of SMRs from 18 to 13 and in GAECs from nine to seven (it should be noted however that it is possible to identify additional domestic GAECs and under the last CAP there were 20 such 'standards').

Only two SMRs are applicable to woodland areas not in receipt of BPS payments; specifically aspects of the EU birds (SMR 2) and habitats (SMR 3) directives. The current wording of these is included in [Annex 1](#). These are both enshrined within the UK Forestry Standard and therefore should be adequately addressed in woodland management plans that are compliant with the standard.

## The Definition of Forest for RDPE and Cross-compliance

Because the revised wording to what is now GAEC 7<sup>7</sup> extends the no-cutting period for hedges and now includes trees, clarification was sought from the Agriculture Directorate General of the EC as to how this may apply to woodland areas. The response received was:

*Regarding GAEC standards, forest areas are not (my emphasis) concerned in so far as according to Article 94 of Regulation (EU) No 1306/2013 only "[...] agricultural areas, including land which is no longer used for production purposes, is maintained in good agricultural and environmental condition". As a result national standards implementing GAEC 7 aiming to maintain landscape features, such as hedges and trees, should not (my emphasis) apply in area classified as forest area."*

There is a requirement to define 'forest' within the RDPE programme document which is:

*"Forest" means land with a minimum area of 0.5 hectares and minimum width of 20 metres under stands of trees with, or with the potential to achieve, a height of five metres and crown cover of more than 20% of the ground.*

You should be reminded that where EU refers to 'Forest' they mean woodland in the UK context. Therefore areas of trees that do not meet the above definition (individual trees, trees in hedgerows or small copses or woodlands under 0.5 hectares) will be subject to the GAEC requirements as well as the relevant SMR's, but only where the land holding is subject to CAP payments (specifically BPS).

Owners that do not claim BPS payments on their holding, say woodland only owners, are not affected by the Cross Compliance requirements.

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<sup>6</sup> Regulation (EU) No 1306/2013.

<sup>7</sup> "Retention of landscape features, including where appropriate, hedges, ponds, ditches, trees in line, in group or isolated, field margins and terraces, and including a ban on cutting hedges and trees during the bird breeding and rearing season and, as an option, measures for avoiding invasive plant species"

In all cases though, even where SMR's and GAECs do not apply, land managers need to comply with all relevant legislation such as the Wildlife and Countryside Act 1981 (as amended) which provides protection to many specified plants and animals, as well as broad protection to unspecified plants and animals such as nesting birds, and the Natural Environment and Rural Communities Act 2006 (England and Wales) which affords certain wild birds with increased protection by prohibiting the taking, damaging or destroying of nests at any time during the year.

Compliance with the relevant 'Requirements' and 'Guidelines' of the UK Forestry Standard should ensure these laws are respected.

### 5. When must I comply with the Cross Compliance rules?

All owners who are in receipt of BPS on their holding must adhere to the requirements of all SMR's and GAEC's on the land that is in receipt of the BPS. There are a number of different scenarios where trees and woodland is concerned.

Where trees are clearly identified as 'non-woodland' under the definition, an owner must comply with all SMR's and GAEC's, provided they receive BPS on their holding.

Where trees clearly form a woodland area and this area meets the definition, no GAEC rules apply. Owners must still comply with SMR 2 and 3 which relate to the European Bird and Habitat directives.

In some circumstances an owner who has woodland that meets the definition, may also claim BPS on those areas. Two such situations have been identified. These will be:

- Where woodland clearly meets the definition but is being used for grazing purposes. The owner has declared the area as grazed on their annual BPS claim. (This would have previously been identified using the code PP1 for SPS purposes);
- Where the woodland has been established under the English Woodland Grant Scheme (EWGS) since 2008 and where revenue foregone payments (FWP) are being paid as well as BPS. (This should have previously been identified using the code SA2 for SPS purposes).

Owners who do not claim BPS payments on their land are not affected by the Cross Compliance requirements. These are most likely to be those that only own woodland, but may also include an owner of farmland who has either:

- no entitlement to CAP payments – usually someone new to farming or have bought a property where the previous owner has sold the SPS/BPS entitlement and the new owner has no entitlement to transfer;
- has decided not to claim SPS/BPS for various reasons; or
- who is undertaking some agricultural activity where access to SPS/SBS may not be allowed.

### 6. What schemes are affected?

An owner must have been in receipt of SPS or is claiming BPS on their land holding for the Cross Compliance rules to apply. Depending on the scheme you may be affected in different ways.

## Woodland Grant Scheme (WGS)

This is a legacy scheme with very few payments still remaining.

- Cross compliance does not apply to woodland areas (that meet the definition), unless:
  - The land in question is no longer under a grant obligation and you declared it as grazing land in 2008;

## Farm Woodland Scheme (FWS)

This was the first scheme where revenue foregone payments were made to owners for establishing woodland on previously productive (agricultural) land. Some schemes are still in receipt of payments, but these are not affected by the Cross Compliance standards due to the age of the agreement. The payments were made annually and were to compensate farmers for the loss of agricultural revenue as a result of planting new woodland on formerly productive agricultural land.

## Farm Woodland Premium Scheme (FWPS)

Most FWPS schemes carry a 30 year obligation period that means that no agricultural activity can be undertaken on this land until this period expires (although there may be a small number of conifer schemes that have a shorter obligation period of 20 years). As such an owner cannot claim BPS on these woodland areas (all of which should meet the woodland definition) and so Cross Compliance standards (other than the two SMR's), do not apply. The payments were made annually and were to compensate farmers for the loss of agricultural revenue as a result of planting new woodland on formerly productive agricultural land.

## English Woodland Grant Scheme (EWGS)

The EWGS has only recently become a 'legacy' scheme. However, there are likely to be very few cases where BPS is being claimed on areas of woodland that are also receiving grant aid through EWGS. Cross Compliance standards are therefore only likely to affect small woodlands that have been included in the EWGS, but which do not meet the definition of woodland. For these small areas all SMR's and GAEC's will apply.

## Farm Woodland Payments (FWP)

Most FWP schemes carry a 30 year obligation period that means that no agricultural activity can be undertaken on this land until this period expires (although there may be a small number of conifer schemes that have a shorter obligation period of 20 years). As such an owner could not claim BPS on these woodland areas (all of which should meet the woodland definition) and so Cross Compliance standards (other than the two SMR's), do not apply. However the scheme rules changed in January 2008 which meant that any owner who had declared their entitlement to claim SPS in 2008, could continue to claim SPS (and now BPS), whilst also claiming FWP, when establishing new woodland, from this point on.

The payments are made annually and are to compensate farmers for the loss of agricultural revenue as a result of planting new woodland on formerly productive agricultural land.

All SMR's and GAEC's will apply to those areas of woodland established from 2008, where SPS (and now BPS) is being claimed. Areas established prior to this and not benefitting from receipt of either SPS or BPS are not affected by the Cross Compliance standards.

### 7. Breaches and sanctions

Depending on the circumstances, an owner can be affected in different ways. The following scenarios assume that an owner with woodland that meets the definition and does not claim BPS, will not breach either of the SMR's that apply. The likely scenarios are:

- An owner of woodland only, or who has farmland that they do not claim BPS on is not affected by the Cross Compliance rules. There can be no breaches or sanctions;
- An owner of woodland and agricultural land, who claims BPS on the farm elements of the holding (which may include non-woodland trees) and claims no aid for the woodland, may breach the Cross Compliance requirements on the agricultural land. Any breach and resulting sanction, will be restricted to the agricultural land only (including areas of 'non-woodland' trees that do not meet the definition);
- An owner of woodland and agricultural land, who claims BPS on the farm elements of the holding (which may include non-woodland trees) but claims grant aid for the woodland (but not BPS, or any other annual payment), may breach the Cross Compliance requirements on the agricultural land. Any breach and resulting sanction, will be restricted to the agricultural land only (including areas of 'non-woodland' trees that do not meet the definition);
- An owner of woodland and agricultural land, who claims BPS on the farm elements of the holding (which may include non-woodland trees) and claims grant aid for the woodland (but this is restricted to either BPS, and / or annual payments), may breach the Cross Compliance requirements on the agricultural land or woodland. Any breach and resulting sanction, will apply to the whole holding as appropriate (including areas of 'non-woodland' trees that do not meet the definition). In the case of sanctions on woodland areas, this will only apply to schemes approved after 1 January 2008 which receive annual payments (the sanctions do not apply to capital grants). Sanctions cannot be applied to any schemes that were approved before this date.

### 8. Exemptions and derogations

A key change in 2015 has been the clarification that the extension to the bird nesting and rearing period identified in GAEC 7c only relates to the cutting or trimming of trees. The felling of trees in their entirety can continue provided the felling:

- Has been approved by the Forestry Commission (FC) through either the issuing of a felling license or grant scheme contract; or

- The trees are exempt from the need for a licence due to one of the exemptions that are identified in either the Forestry Act 1967<sup>8</sup> or the 2015 Cross Compliance guidance<sup>9</sup>

For the cutting and trimming of trees an owner can seek derogation from the RPA. This would allow them to undertake the work during the bird nesting and rearing period. The work can of course be undertaken at any other time of year.

It is not necessary for an owner to seek derogation, but if cutting is discovered the owner must be able to clearly demonstrate the need for the work in order to avoid any sanction that might be imposed.

### 9. Sources of further advice

You can find out more details on the Cross-compliance at [GOV.UK](http://gov.uk). If you are unsure how cross-compliance affects you contact the Rural Payments Agency: 0345 603 7777.

### 10. Versions

Version 1 issued 4 August 2015.

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<sup>8</sup> [http://www.forestry.gov.uk/pdf/treefellingaugust.pdf/\\$FILE/treefellingaugust.pdf](http://www.forestry.gov.uk/pdf/treefellingaugust.pdf/$FILE/treefellingaugust.pdf)

<sup>9</sup> See page 24 of the 2015 cross compliance guide at

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/397044/Cross\\_compliance\\_handbook\\_v2\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397044/Cross_compliance_handbook_v2_web.pdf)



## Annex 1

### Regulation (EC) 1698/2005

#### Article 50a

##### Main requirements

1. A beneficiary receiving payments under Article 36(a)(i) to (v) and Article 36(b)(i), (iv) and (v) shall respect, on the whole holding, the statutory management requirements and the good agricultural and environmental condition provided for in Articles 5 and 6 of, and in Annexes II and III to, Regulation (EC) No 73/2009.

The obligation to comply with the statutory management requirements and the good agricultural and environmental condition referred to in the first subparagraph shall not apply to non-agricultural activities on a holding and non-agricultural areas for which no support in accordance with Articles 36(b)(i), (iv) and (v) of this Regulation is claimed.

### Regulation (EU) No 1306/2013

#### Article 91

##### General principle

1. Where a beneficiary referred to in Article 92 does not comply with the rules on cross-compliance as laid down in Article 93, an administrative penalty shall be imposed on that beneficiary.

2. The administrative penalty referred to in paragraph 1 shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned; and where one, or both, of the following additional conditions are met:

- (a) the non-compliance is related to the agricultural activity of the beneficiary;
- (b) the area of the holding of the beneficiary is concerned.

With regard to forest areas, however, this penalty shall not apply in so far as no support is claimed for the area concerned in accordance with point (a) of Article 21(1), and Articles 30 and 34 of Regulation (EU) No 1305/2013.

## Questions and Answers

1. If I am prevented from cutting trees for six months of the year am I permitted to 'carry forward' my quarterly quota of five cubic metres (or two if I am selling the timber) that I can fell without a felling licence, or is this volume 'lost'?  
**A.** The five cubic metres is a quarterly quota that cannot be transferred to another period. If you are unable to fell trees in any one quarter this volume will be lost. Felling licences will not be affected by the tree cutting restriction in that you can fell the trees at any time whilst the licence remains in force.
  
2. I want to trim back some branches which overhang a gateway, preventing me from driving my tractor into a field. Am I affected by the extended ban?  
**A.** Yes you are. Any trimming back of trees is not permitted during the bird nesting and rearing period. If you need to undertake this work during this period then you should seek the necessary derogation from the Rural Payments Agency (RPA). Otherwise the branches can only be removed after 31 August and before 31 March.
  
3. I was issued with a notice from the County Highways department in March requiring me to cut some branches off some hedgerow trees as they are interfering with road users. Do I have to wait until after the 31 August as I have been given three months in which to comply?  
**A.** No, you can remove the branches at any time as their removal is an exemption under the cross compliance requirements. To avoid any issues in the future from arising as a result of the branches being removed, you should retain all correspondence that proves the work was required. A full list of exemptions can be viewed in paragraph 24 of the 2015 cross compliance handbook.
  
4. I have been approached by my local electricity supply company in relation to some essential maintenance work that they wish to undertake on trees and hedges on my property in June. Will the ban affect this work?  
**A.** No. The electricity company is known as a statutory undertaker and the work that they and other undertakers (e.g. water companies) do is exempt from the cross compliance requirements. A full list of exemptions can be viewed in paragraph 24 of the 2015 cross compliance handbook.
  
5. I have recently sold some cricket bat willow trees to a company who want to fell the trees during the summer. Do I take it that if they do proceed with the work I must seek derogation from RPA for the felling to avoid being held responsible for any cross compliance breach?  
**A.** The Forestry Commission has agreed a streamlined Felling Licence application process for cricket bat companies that allows them to apply for a licence on an owners behalf. You should check with the company buying the trees that they will have a licence in place before the work commences and you should ask to see

(and ideally retain a copy) of this. The felling of trees that has been approved through a felling licence will be exempt from the cross compliance requirements and the company can fell the trees at any time of year.

6. I want to re-lay a hedge. The trees are not big enough to need a felling licence from the Forestry Commission, can I undertake the work during April?
- A.** No you can't. Re-laying a hedge falls under the cross compliance requirements as the 'trees' during the laying process, are not being cut completely. You will need to delay the work until next year and complete it before the 31 March or seek a derogation from RPA.
7. I have an old hedge that has been left to grow on for at least 20 years. It now needs to be felled and allowed to regrow, so that the new growth can be laid in a few years' time. I assume I must comply with the cross compliance requirements?
- A.** At this age it is likely that the trees will require a felling licence from the Forestry Commission. This will only be issued on condition that the felled trees are allowed to regrow. Once the licence is in place, the trees can be felled at any time of the year as felling is exempt from the cross compliance requirements. The laying of the young growth once it reaches a suitable size will fall under cross compliance and work must be completed before 31 March, unless you apply for a derogation from RPA.
8. My landlord has told me that he is intending to fell some trees during June in a small woodland which is part of my tenanted holding. He is clearing an area ready for a pheasant release pen. Can he do this work during the ban period or will it result in a breach of the cross compliance requirements and will I then be held responsible for the breach?
- A.** Provided the trees are being felled legally the landowner can continue with the work at any time of the year without it being an issue for you. This is because tree felling is exempt from the need to comply with the cross compliance requirements. If a felling licence is required then this must be in place before work commences. You should ask to see a copy of this licence before your landlord begins the work. There are a number of exemptions where trees do not need a licence in order to be felled, e.g. where the total volume being felled is less than five cubic metres in a calendar quarter. If this is the case the trees can still be felled legally at any time during the year.
9. I own a small broadleaved woodland and want to continue managing by felling small areas on a rotational basis. Will I have to adhere to the cross compliance requirements, especially GAEC 7c.
- A.** Our initial understanding was that if your woodland does not meet the definition of 'forest' as previously described, then any felling would be caught by cross compliance. However, the Defra Policy team, who are responsible for interpreting the regulations, have now stated that the felling of trees is not covered by cross

compliance, provided those trees are being felled legally. They must therefore be exempt from the need for a licence either through their size, volume being felled or other exemption noted in the Forestry Act 1967, or alternatively the Forestry Commission will have issued formal felling approval through either a felling licence or existing grant scheme. It should be noted that all felling approval being sought through the new Countryside Stewardship scheme will be issued by means of a felling licence.

10. I have a neighbour who does his own thing. He is felling some trees at the moment (in April) in a small woodland area. They are big enough to need a licence, but I understand he hasn't bothered to apply for one. Is he allowed to do this?
- A.** If they are big enough to need a licence he is allowed to fell up to 5 cubic metres of timber per calendar quarter of which he can sell only two cubic metres. If you don't think he has applied for a licence then you should report him to the local Forestry Commission office. In addition it should be reported to RPA as well, as the owner may be in breach of cross compliance if he is receiving basic payments on his farm.
11. I have a young 3.0 hectare plantation that was planted in 2003. I want to undertake some pruning and cleaning work. Am I restricted as to when I can now undertake this? I am still in receipt of Farm Woodland Premium payments (FWPS).
- A.** Because the area was planted in 2003 and the area would meet the definition of woodland there would be no timing restriction on when the work was undertaken. You must obviously take care during the bird nesting and rearing period, especially if you need to clear any shrub or understorey in order to gain access to the trees.
12. I have a young 3.0 hectare plantation that was planted in 2009. I want to undertake some formative pruning on the trees. Is this permitted? I am in receipt of both Farm Woodland Payments (FWP) and also claim Basic Payment (BPS).
- A.** Unfortunately, even though the area is woodland by definition, you must respect the cutting ban period. This is because you are claiming BPS on the land and must adhere to all the GAEC requirements. You will be able to undertake the necessary work after 31 August and before 31 March. This restriction will remain in force until the BPS payments cease.
13. I have some young willow sets growing around my farm. I am required to maintain these trees by weeding and removing leaf / branch buds as they appear in order to maintain clear stems for future timber quality. The buds will be removed by simply rubbing them off. Am I affected by the GAEC7c cutting ban during the nesting and rearing period?

**A.** No, you can undertake the work at any time of year. This is because the rubbing off of new shoots does not represent 'cutting or trimming' and is therefore not covered by the GAEC.

14. I have an uncut hedgerow that is now some 12 years old. I am considering cutting the hedge off completely to allow the stumps to re-grow, so that it can be laid in three or four years' time. The present material is too big to be laid effectively, but the trees are not big enough to need a felling licence. Am I restricted to when I can cut this down?

**A.** Because you are intending to cut these trees off at ground level and then let the stumps re-grow you are exempt from the need to comply with GAEC 7c. Provided the trees are below 8cms in diameter, and/or the total volume does not exceed five cubic metres, you are entitled to fell the trees without a licence. If in doubt, then contact your local Woodland Officer. Felling of the trees illegally, would obviously breach the requirements of the Forestry Act, but may also be viewed as a breach of cross compliance.