

7th April 2016**FOREST SERVICES: REGULATIONS REVIEW.****Purpose**

1. To seek the Committee's support for Forest Service's, Regulations Review.

Background***Government's commitments***

2. The 'Better regulation' manifesto commitment requires government to deliver £4bn annualised savings by the end of this parliament. This includes £470m from Defra, hence the [Defra's strategy's](#) better regulation cross-cutting theme. Government's [Digital by Default](#) strategy aims to provide services more efficiently and conveniently for users by capitalising on 82% and rising of the UK population now online, saving up to £1.8 billion a year.

Our priorities

3. Better regulation is an important means to achieving our own priorities. Regulation underpins much of our mission to protect, improve and expand England's woodlands and its contribution to the Defra Strategy's impact, delivery and organisational objectives.
4. Improving how we regulate is essential to achieving our ambitions to significantly accelerate woodland creation and management rates. These ambitions require a major increase in activities that we regulate, already underway¹. But as our resources remain limited we risk becoming a regulatory bottleneck. Already our performance in areas such as dependability, speed and consistency can fall below our own standards and customers' expectations. We must therefore increase the efficiency with which we regulate. But ageing legislation and IT systems, constrained change capacity and the low likelihood of legislative change make this a challenging aim.
5. Our 'Being Brilliant at Regulation Review' is therefore analysing how we can streamline and standardise many of our processes and better use IT to focus staff time and expertise on our top priorities and improved customer service.

¹ Increases in regulated activities have already occurred as a result of the increase in woodlands into management stimulated by the Renewable Heat Incentive, continued strong softwood harvesting, more demand for access to regulatory evidence to support the biomass suppliers list and Grown in Britain, more alleged illegal tree fellings. Further increases could arise from a more independent public forest estate and a greater focus on felling licence conditions to secure restocking (due to the withdrawal of restocking grants).

Discussion

6. The following four priorities have been identified from initial analysis of FS's main areas of regulation² with applicants and FS staff. These priorities reflect where we believe most improvement can be made:

- a. Woodland Management Plan (WMP) Approvals
- b. Felling Licence Delivery
- c. Environmental Impact Assessment (EIA): Thresholds for Afforestation
- d. Consultation and Public Register

Woodland Management Plans (WMP)

7. WMP volumes are rising: from 668 in 2014/15 to 805 in 2015/16³ and are expected to reach 1,000 in 2016/17⁴. Approval processes are too detailed, inconsistent and protracted. Applicants want faster, more dependable and consistent approvals.

8. To seek to address this we worked with Westwoods Project to pilot 'earned recognition' whereby plan authors could, through their track record in submitting UKFS compliant WMP's, earn recognition to self-approve their plans subject to regular quality assurance on a sample basis. The pilot experienced issues around:

- a. Complexity and bureaucracy, including development of an additional business process.
- b. The need for a high throughput of plans to benefit
- c. A lack of clear approval criteria for approvals or clear feedback to plan authors
- d. A lack of metrics for approval duration or reiterations
- e. A lack of sanctions for consistently poor plans

Overall the scale of the benefits did not appear to justify its additional administration costs, at least in the form piloted.

While work on 'earned recognition' will continue, we are now prioritising developing a new 'Service Standard' for WMP approvals. This will support an "approval in principle" of first plan submission within 28 days of receipt. Should the plan fail on one or more consistently applied UKFS approval criteria, the author will receive clear feedback and a second review will be undertaken offering a 90 day approval timescale. Should this second review still identify shortfalls against UKFS approval criteria the plan will be rejected and not reviewed again for 6 months. This will be piloted from April 2016 in the South East England and London FS Area to determine its feasibility and refine it if necessary. If successful it would be rolled out nationally.

Felling Licence Delivery

² Consultation, Countryside Rights of Way, The Dedication Scheme, Forestry Act (Licensing and Illegal felling), Woodland Management Plans, Tree Health, Environmental Impact Assessment, Habitat Regulations, Planning and Information Requests.

³ Applications for Woodland Management Grant.

⁴ Countryside Stewardship and EUP workload predictions (A Smith).

9. Our highest volume regulation, we process around 2,500 stand-alone felling licences each year and around 850 linked to grant agreements (in 2014/15, ~600 were linked to WMPs). Numbers will continue to grow with the increased woodland management we want to see.

10. Engagement with the Applicants Focus Group (AFG) and a study of a 'lean' approach's potential to improve felling licencing identified dependability, speed, consistency and ease of application as improvement priorities (Figure 1). The main sources of delay identified were internal waiting for information, waiting for external stakeholders' comments and reworking in light of errors and omissions.

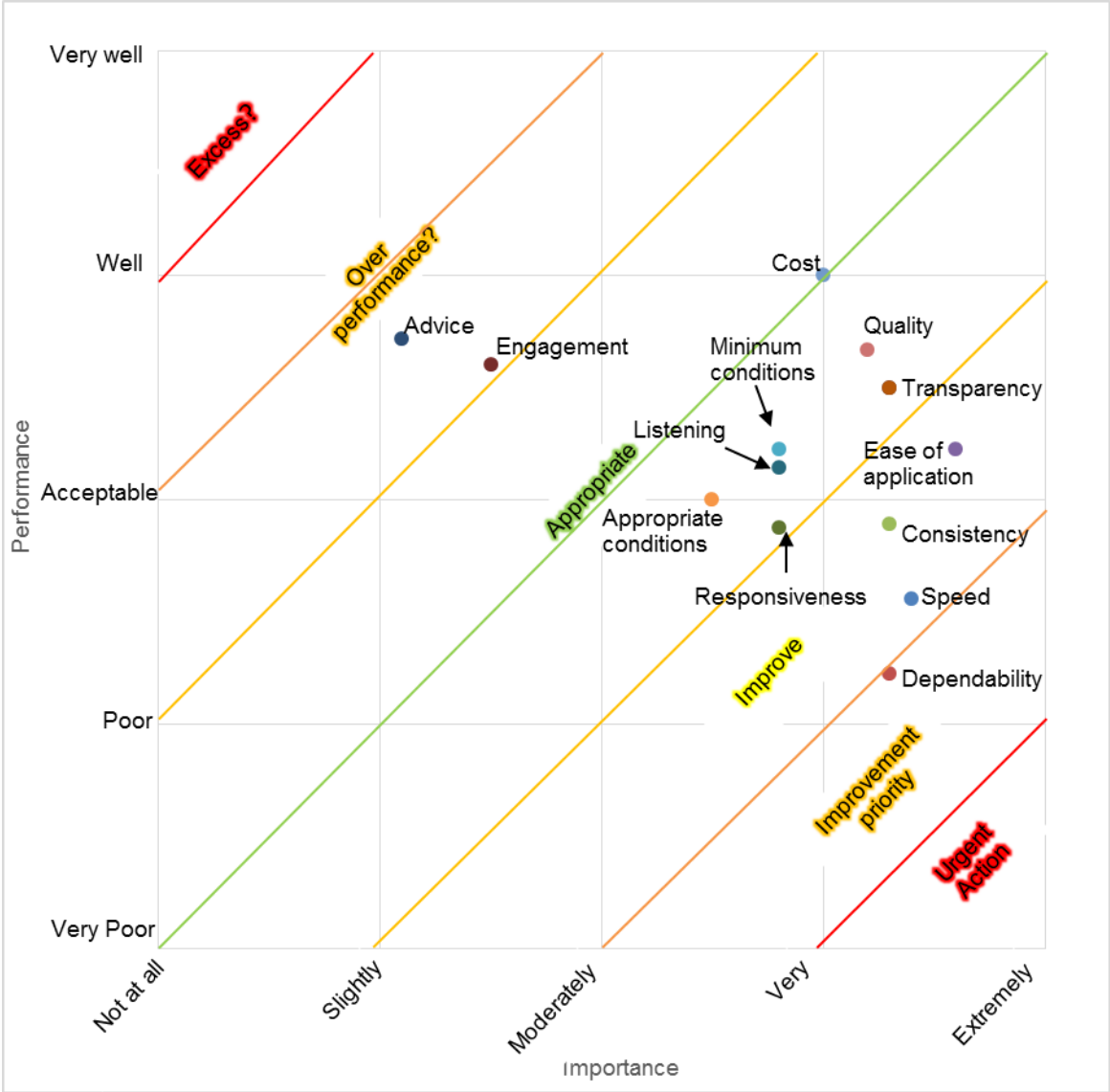


Figure 1 – Importance / performance – external respondents (Greenhous, 2016)

11. We have commissioned work to improve the underpinning IT systems to:
 - a. *Improve the system for internal users* – clarify workloads and responsibilities.
 - b. *Allow applicants to submit and track their applications online* – reducing errors, duplication and queries while increasing speed and transparency.
12. We have secured a short-term trial of the ‘Digi-right’ mapping tool used in the Tree Alert app. supporting the digitising of application maps and a wholly digital felling licence application process.
13. Around 50% of licences issued are for thinning, which if consistent with UKFS are low risk. This is already reflected in thinning proposals’ exclusion from the public register. A risk based approach to approving thinning licences provides options such as:
 - a. *Deemed approval* – where an application meets set criteria⁵, after x days it would be deemed approved and work could start unless before then we actively called it in for consideration.
 - b. *Standard rules licence*⁶ – where applicants declare their application meets set criteria, they receive a licence instantly and ideally automatically.
 - c. *Parallel processes* – where currently they are in series, for example consulting on applications immediately that they are received rather than only once they have been amended by us would reduce approval times by up to 28 days.

Environmental Impact Assessment (EIA): Thresholds for Afforestation

14. We are working with Defra Policy to provide Ministers with initial feedback on whether to increase the size thresholds below which proposals for woodland creation are considered unlikely to need our consent⁷. Stakeholders tell us the uncertainty and potential cost of the EIA process is a major barrier to larger-scale woodland creation, though actual volumes are very low.
15. All stakeholders support more woodland creation, further streamlining and clarification of the EIA process, and agree that, if thresholds were to increase, we should retain our ability to determine whether projects, above or below the threshold, require consent.
16. There are mixed views on whether thresholds should be increased. Organisations such as Confederation of Forest Industries (Confor), Woodland Trust (WT) and all of our Forestry and Woodland Advisory Committee (FWAC) Chairs support a formal consultation on increasing the threshold, especially in low sensitivity

⁵ For example, thinning only which is not within a designated site or high wind zone.

⁶ This applies the approach the Environment Agency use for environmental permits.

⁷ The threshold areas are used as a guideline as to whether proposals are likely to have a significant impact on the environment, and therefore require our consent which requires a detail assessment of the impacts.

areas, and believe that raising thresholds would increase sustainable woodland creation.

17. Organisations such as RSPB and Wildlife LINK consider that increasing thresholds would put small remnants of priority habitat at risk and would not increase woodland creation. AONBs and National Parks see potential for higher thresholds to undermine landscape character and harm the historic environment. Natural England wants small areas of priority habitat and valuable landscapes to remain protected but agree that UKFS would provide adequate protection provided there is monitoring of compliance. A possible solution would be for land managers proposing woodland creation below any increased EIA threshold to demonstrate UKFS compliance, giving them greater control over the EIA process.

18. Without a consensus we support a formal consultation to evidence impacts. EIA is derived from a European Directive our recommendation to Ministers is that any consultation takes place after the EU referendum.

19. In parallel to this work the Department for Communities and Local Government is leading transposition of a refreshed EIA Directive into UK law required by 16 May 2017. Defra is currently working on its approach to the transposition. The new EIA Directive introduces a requirement on applicants to provide information at the start of the EIA process. This aligns with the proposal we have developed with NE but this new approach could also increase burdens on applicants.

How we use the Public Register and Consult

20. A Ministerial Direction and subsequent Ministerial Statement introduced the expectation that we make proposals for felling and woodland creation available for comment through an online Public Register (PR).

21. We currently receive few comments through the PR. This may be because it is little known beyond some local authorities and woodland agents who use it actively. Nonetheless the PR's existence can also be valuable in responding to objections to felling underway. If we stopped publishing felling and restocking proposals on the PR we could, on average, issue 39% of licences up to 28 days faster. Consideration is therefore being given to limiting use of the PR on just woodland creation and deforestation (i.e. not restocking) while potentially also making it better known, to increase transparency around these most significant proposals.

22. We are also considering more rigorous application of deadlines with deemed acceptance where exceeded for responses from statutory consultees on felling proposals and restocking conditions, which currently can be the source of long delays.

Resource implications

23. Much of this work is reflected in FS's business plans and requires ongoing support from Defra Policy and Legal. Additional resource would be needed to develop the IT system sufficiently to achieve our full ambitions.

Risk Assessment

24. This work is one of the controls to address Risk FS/2: FS lacks the resources to meet delivery expectations.

25. Overall any lighter touch to our regulatory approvals puts a greater onus on FS to monitor restocking and felling because the control to address any excessive felling would be to treat it as illegal felling, issuing a restocking notice and/or prosecuting, which is resource intensive so would need careful monitoring.

26. The proposals for higher EIA thresholds introduce a risk that, if they were seen to lead to environmental harm this could damage our role as an effective regulator and forestry's wider reputation. We would mitigate risk through use of UKFS compliance in support of utilising higher thresholds. However, this mitigation could introduce its own risk of becoming a new barrier to woodland creation. The right balance would therefore be required to mitigate both risks.

Equality Impact Assessment

27. The Equality Impact Assessment of FS's overall business plan will seek to identify and take into account any equality impacts of this work.

Communications

28. Communications plans will be developed to help address questions and manage expectations, most immediately for the WMP Service Standard pilot and the potential consultation on EIA thresholds.

Recommendations

29. The Committee is invited to discuss and asked to endorse and advocate this work, subject to any comments it might have at this stage.

Alec Rhodes
29 March 2016