

Operations Note 014

Date: 11th May 2011

Change of Ownership of Land under a Forestry Commission (FC) Grant Scheme

1 Purpose

This Operations Note provides general information on the implications when land, subject to a Forestry Commission (FC) grant scheme, changes ownership or occupancy through sale, re-letting or death. The information in this note applies to all FC grant schemes.

2 Introduction & Background

Forestry Commission Grant Schemes

The Forestry Commission has operated a range of grant schemes over the years to deliver government forestry policy. The general principles of these schemes are similar in their aims, but their rules, and terms and conditions, differ in respect of eligibility, payment rates and liability. Therefore, you must refer to the relevant rules booklet, corresponding Operations Note 14, and your grant scheme contract/agreement, to understand the implications of a change of ownership or occupancy for a specific scheme. The following information is available from our [Operations Notes page](#) or your [local FC Office](#):

- Operations Note 14a: specific information on the English Woodland Grant Scheme (EWGS);
- Operations Note 14b: specific information on the Farm Woodland Premium Scheme 1997 (FWPS 97);
- Operations Note 14c: specific information on the Farm Woodland Premium Scheme 1992 (FWPS 92);
- Operations Note 14d: specific information on the Woodland Grant Scheme (WGS);
- Operations Note 14e: specific information on the Farm Woodland Scheme (FWS);
- The rules booklet for the specific grant scheme, and most importantly;
- The actual grant contract / agreement for the land in question.

The grant contract/agreement

The grant contract includes a plan of operations which is the window within which work must begin. For woodland creation contracts, the plan of operations will normally be less than 5 years i.e. the trees must be planted, protected and maintained within that period.

The grant contract also includes a grant payment period which is the time over which grant payments will be made; this may extend beyond the initial plan of operations.

Finally, and most importantly, the grant contract has a liability period during which the conditions of the contract must be met; this often extends beyond the grant payment period. For example, a woodland creation scheme including farm woodland payments will often have 15 years of grant payments from the year the work was carried out. The liability period for such a scheme is normally 30 years, i.e. the trees must be maintained throughout the 30 year period from the date the planting was carried out and claimed.

The mechanism and rules for transferring liabilities to the buyer varies depending on the grant scheme; please refer to table 1 for further information. **We strongly recommend that sellers ensure contract liability transfer is included in the private land sale, irrespective of the particular grant scheme arrangements.**

Penalties if the contract conditions are not met

If there are problems relating to contract compliance, we will normally require remedial work to put the matter right. If this is unsuccessful or the contract conditions cannot be met for any other reason during the liability period, the Forestry Commission may reclaim grants that have been paid, plus interest.

3 Change of Ownership

The plan of operations is legally terminated on the area sold as soon as the change of ownership takes place. If part of the land is retained by the seller, the contract will still continue on that area.

Notification

The Forestry Commission should be notified of potential sale and the actual date of sale at the earliest opportunity. This allows the FC to provide factual information relating to a grant contract in good time (e.g. approval date, grant payments to date, outcome of any previous inspection reports, any known problems). Please note that the FC does not routinely inspect a scheme at the time of land sale.

We recommend buyers and sellers seek professional forestry and legal advice before buying or selling land on which there is a forestry grant scheme.

The seller

The seller should notify the Forestry Commission about impending land sale at the earliest opportunity, and inform us of the date of land sale.

The seller must notify the Forestry Commission of land sale and submit a claim form within **3 months** if they want to receive any outstanding payments due to them. If so, the FC will make payments provided the terms and conditions of the scheme have been met and grant payment is due. If the FC is not informed within **3 months**, no further grants will be paid to the seller.

The seller remains liable for the repayment of any grants they received with interest, even after the sale; this liability to repay grant remains up until the time the original contract period expires - unless the liability is transferred to the new owner.

The mechanism and rules for transferring liabilities to the buyer varies depending on the grant scheme. Please refer to [table 1](#) or Operations Note 14 a – e for further information. **We strongly recommend sellers ensure contract liability transfer is included in the private land sale**, irrespective of the particular grant scheme arrangements.

The buyer (or beneficiary)

The buyer can choose whether to take on the existing grant contract, subject to what they have agreed to in their private land sale agreement, (or the terms of any will).

The buyer must submit a completed FC Successor Form within **12 months** of land sale to receive remaining grant payments (the rules as to when the 12 month point starts from varies slightly depending on the grant scheme – please refer to [table 1](#)). The FC will issue a new contract that must be signed before any payments are made.

If the buyer does not wish to receive any remaining payments this is possible, though forestry and environmental regulations still apply. This means trees may not be removed without Forestry Commission approval, even if the buyer has not entered a grant scheme with the FC.

4 Forestry & Environmental Regulations

Any landowner is bound by forestry and environmental regulations, irrespective of whether they have a grant scheme in place. There are 2 key regulations to note, designed to protect woodland, environmental and social values:

Environmental Impact Regulations

The Environmental Impact Assessment (EIA) (Forestry) Regulations 1999 (as amended) apply to certain forestry projects, including deforestation and the creation of forest roads and quarries. Depending on the scale and location of any such project you could need a determination as to whether the project will have a significant impact on the environment and potentially our consent before any work takes place.

If we discover that you have carried out work that would have required our consent, or have breached the conditions of consent, we may serve an Enforcement Notice. This will require you to do one or more of the following:

- stop the work;
- apply for consent;

- restore the land to its condition before the work was started;
- carry out work to secure compliance with the conditions of the consent;
- remove or alleviate any damage to the environment that has been caused by the work.

The FC website provides further information www.forestry.gov.uk/england-eia.

Forestry Act

If you wish to fell trees within the woodland you may require permission from us. This is required under the Forestry Act 1967 (as amended). We manage felling permissions through a licensing system. Unless the tree felling constitutes a thinning, the licence will usually have conditions which require replanting after felling. There are exemptions where a felling licence is not required.

The FC website provides further information www.forestry.gov.uk/england-fellinglicences.

Where we find tree felling has taken place without the required permission we will consider further action using the powers provided to us by the Forestry Act 1967. This may be prosecution in the courts where conviction may result in a fine and/or the service of a formal Notice requiring the land to be replanted with trees.

Cross compliance

The 2 forestry regulations above are also linked to cross compliance, so any breaches of the Forestry Act or Environmental Impact regulations are likely to result in Single Payment Scheme penalties. Therefore if land is purchased and trees are removed, the FC would take action under those regulations and inform the RPA so penalties may be applied to SPS payments.

5 Sources of Further Advice

The Forestry Commission website contains all of the information regarding grant schemes and forms/guidance regarding change of ownership, in particular:

- [EWGS document library](#)
- [FC England Grants homepage](#)
- [Successor's form](#)
- [Transfer of Obligations](#)

If you do not have access to the internet, you can request any of the information from your local Forestry Commission office.

We recommend getting professional advice on woodland management and grants. A list of national and regional professional organisations is published at www.forestry.gov.uk/england-advice or available from your local FC office.

6 Versions

ON014 – Change of Ownership of Land under an FC Grant Scheme

Version 1.0 issued 6th December 2006

Version 1.1 issued 1st June 2008 – minor changes including header

Version 1.2 issued 10th February 2009 – clarification that the contract terminates only on the area that is sold, where there is only a part sale

Version 2.0 issued 11th May 2011 – Complete rewrite including addition of ON014 a-e specific scheme guidance

Table 1: summary of grant schemes and their key differences in relation to change of ownership

Specific guidance	Operations Note 14a	Operations Note 14b	Operations Note 14c	Operations Note 14d	Operations Note 14e
Grant Scheme	EWGS	FWPS 97	FWPS 92	WGS	FWS
Period of grant scheme	2005 - present	1997-2004	1992-1997	1988-2004	1988-1992
Period of Plan of Operations	Up to 5 years	Up to 5 years	Up to 5 years	Up to 5 years	Up to 5 years
Grant payment period	FWP: 10-15 yrs Rest: up to 5 yrs	10 – 15 years	10 – 15 years	Up to 5 years	10 – 40 years
Liability period from payment of 1st instalment	up to 30 years	20 - 30 years	20 - 30 years	Up to 10 years	10 - 40 years
Notification Deadline	Within 3 months from date of land sale / occupation change	Within 3 months from date of new occupation	Within 3 months from date of new occupation	Within 3 months from date of land sale / occupation change	Within 3 months from date of new occupation
Successor Deadline	Within 12 months from date of land sale / occupation change	Within 12 months of the previous occupier leaving	Within 12 months of the previous occupier leaving	Within 12 months from date of land sale / occupation change	Within 12 months of the previous occupier leaving
Penalty rules; recovery of grant would be equal to:	Payments equal to the amount of grant payment made to each grant beneficiary under the scheme	Payments equal to the amount of grant payment made to each grant beneficiary under the scheme	All payments from the current successor, including those made to the initial applicant and any intervening successors	Payments equal to the amount of grant payment made to each grant beneficiary under the scheme	All payments from the current successor, including those made to the initial applicant and any intervening successors
Liability Transfer	Liability transfer can only be done via private agreement	Liability transfer can only be done via private agreement	Liability is transferred when the new owner/occupier signs the undertaking	Liability can be transferred via Transfer of Obligations form	Liability is transferred when the new owner/occupier signs the undertaking
Forms	Successor Form	Successor Form	Successor Form	Transfer of Obligations Form	Successor Form

