

EXPLANATORY STATEMENT

THE REGULATORY REFORM (FORESTRY) ORDER 2005

STATEMENT BY THE FORESTRY COMMISSION [ON BEHALF OF THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS]

INTRODUCTION

1. This statement is laid before Parliament in accordance with Section 6 of the Regulatory Reform Act 2001 (“the 2001 Act”) together with the draft of the Regulatory Reform (Forestry) Order 2005 (“the draft Order”) which we propose to make under Section 1 of the 2001 Act. The purpose of the draft Order is to amend the Forestry Act 1967 (‘the Act’) and the Countryside Act 1968 to remove burdens on the Forestry Commission and others.

DESCRIPTION OF THE PROPOSALS

2. The Government proposes to reform the legislation governing the powers of the Forestry Commission (“the Commission”) to:
 - allow the Commission to form or participate/invest in companies, to provide loans and establish Charitable Trusts;
 - allow the Commission to delegate its power to charge in connection with the provision of facilities in the public forest estate;
 - give the Commission the power to commercially exploit forestry research; and
 - allow the Commission to require restocking following unlawful felling without first obtaining a conviction and to enforce restocking requirements against lessees and licensees as well as against freeholders.

EXTENT

3. The proposals consist of amendments to the statutory powers of the Forestry Commissioners (“the Commissioners”). The Commission is a specified cross-border public authority under section 88(5) of the Scotland Act 1998. The Act, which contains its principal statutory powers, extends to Scotland. The draft Order therefore extends to England and Wales and to Scotland. However, with one exception, the proposals will apply only to the Commissioners’ activities in England and Wales.
4. This is because these proposals concern functions of the Commissioners which are exercisable separately in relation to England, Wales and Scotland. Insofar as they are exercisable ‘in or as regards Scotland’ they are within the legislative competence of the Scottish Ministers and outside the scope of the 2001 Act by virtue of section 1(2) of that Act. Options for making these changes in Scotland are being pursued although the requirement to do this through primary legislation will mean that the Commission will have to await the appropriate time.

5. The exception is the proposed power for the Commissioners to exploit forest research. Forest research is essentially knowledge that is owned by the Commission. The Commission is a single legal entity. It cannot therefore own knowledge separately in relation to Scotland (nor would it make any sense to describe ownership of knowledge in such terms). The function of exploiting this knowledge can therefore only be carried out by the Commission in its capacity as a cross border authority – with application throughout Great Britain.

DETAILS OF THE CONSULTATION (Section 5(1) of the 2001 Act)

6. On 14 February 2005 the Government published a Consultation Document on the proposed changes to the statutory powers of the Commission.
7. The Consultation was produced in accordance with the Code of Practice on written consultations. The Consultation Document was published on the Commission's website (www.forestry.gov.uk/forestry/infd-69fk3g) and was the subject of a Commission press notice issued on 17 February 2005. The Consultation Document was circulated to organisations and individuals listed at Annex A to this document. The closing date for the consultation was 11 May 2005 (a period of 12 weeks) but account was taken of all representations received up to and including 18 May 2005.
8. The National Assembly for Wales was consulted as required under section 5(1) of the 2001 Act. The Assembly had no comments. The Department also consulted the Scottish Executive who had no comments.

BACKGROUND

9. The broad reason behind the changes proposed is the Government's policy of securing maximum public benefit from forestry. This includes maximising the opportunities for the public to enjoy forests, and generally using forests to secure social and economic benefits as well as encouraging involvement from stakeholders at a local level. The proposals are also driven by the Government's Public Private Partnerships initiative ("PPP"), which encourages public sector bodies to take advantage of commercial opportunities and private sector funding, and the wider markets initiative, aimed at greater exploitation of public resources.
10. The Commission is a statutory body and non-Ministerial Government Department consisting of a Board of Commissioners and staff of approximately 3,000. As a cross border authority, the Commission exercises its functions throughout Great Britain and gives advice to and implements the separate and distinct forestry policies of the Secretary of State for Environment, Food and Rural Affairs, the Scottish Ministers and the Welsh National Assembly Government, respectively.
11. The Commission's constitution and principal statutory powers and duties are contained in the Act (a consolidation of earlier legislation going back to 1919). Section 1 of the Act charges the Commissioners with a general duty of: -

“..promoting the interests of forestry, the development of afforestation¹ and the production and supply of timber and other forest products..”

A full list of the relevant Statutes is contained in Annex E.

The public forest estate

12. One of the principal functions of the Commission is the management of the publicly owned forests which are vested in the Secretary of State for Environment, Food and Rural Affairs (in England), the National Assembly for Wales (in Wales) and the Scottish Ministers (in Scotland). The Commissioners' general power to 'manage, plant and otherwise use' this land is in section 3(1) of the Act. The power to plant and manage trees on the land for amenity purposes was added by section 24(1) of the Countryside Act 1968. However, the draft Order is primarily concerned with the Commissioners' power under section 23(2) of the Countryside Act 1968 to provide or arrange for or assist in the provision of tourist, recreational or sporting facilities on land in England and Wales and to charge in connection with those facilities.
13. The Commissioners have developed facilities and accommodation for campers, caravanners and others wishing to spend their holidays in the public forest estate. Holiday accommodation is provided by the Forestry Commission as a 'stand-alone' business under the 'Forest Holidays' banner. Forest Holidays currently comprises of 3 cabin sites, 2 in England and 1 in Scotland and 21 Campsites, 4 in Scotland, 1 in Wales and 16 in England. The whole business has a robust future and there are significant opportunities to expand. However, while the cabin sites have recently been modernised using funds provided by the Treasury through the Capital Modernisation Fund, the campsites are in desperate need of modernisation.
14. The main problem is the lack of capital, which could be solved by finding a private sector partner under the Public Private Partnership scheme to assist in funding and running the business. In order to ensure the Commission and public sector gain the most from this arrangement, a formal Joint Venture would need to be entered into with the private sector partner under which the Commission's partner would manage the business with the Commission retaining an equity stake.
15. The most appropriate vehicle for a joint venture of this kind would be a single purpose company. The Commission has no express power to form or participate in companies and it would seem that none can be implied. The draft Order will remove this restriction on the Commission's powers. To undertake such joint ventures the Commission will also need the power to invest in corporate bodies and to provide loans to them. These powers will also be provided by the draft Order.
16. Under the proposed arrangements with a private sector partner, the Commission would concede overall control of the business to the joint venture. One of the areas in which the joint venture will expect to have control will be the setting of

¹ Afforestation is the planting of trees to create forests and woodlands.

levels of charging for the cabins and campsites. The Commission therefore wants to have the flexibility of being able to delegate to the joint venture company or partnership its power to charge in connection with these facilities. The draft Order will remove this restriction on the Commission's powers.

Woodland creation and management on other land

17. The Commissioners have the power under section 3(2) of the Act to manage woods or forests belonging to other people, including public bodies, or to give assistance or advice in relation to the planting or management of such woods or forests. They also have a specific power under the Forestry Act 1979 to make grants and loans to owners and lessees of land, for and in connection with the use and management of the land for forestry purposes. The Commission has relied upon these powers to participate in a number of projects with the private and public sector. The Commission has been involved in a number of initiatives developing woodland on brownfield land in and around major cities (London, Liverpool, Manchester, Nottingham and Sheffield). This has been achieved with a range of partners from the public sector and significant areas of woodlands, over 1,500 ha, have been established in deprived areas, providing landscape relief, areas of recreational and access value and a better environment for people to live in and for economic development and growth. The existing powers have been found to be insufficient to allow the Commission to be full partners in these projects and to recognise the value the Commission has contributed to the projects.
18. So the effectiveness of the Commission's input in such projects is often hampered by the restrictions on its powers to form or participate in companies or trusts – which represent the main delivery mechanisms for these initiatives. The draft Order will remove these restrictions.

Forest Research

19. Under section 8 of the Act the Commissioners have a specific power to gather and disseminate information, and to conduct research for the purpose of promoting forestry and forestry training. The majority of the Forestry Commission's research is carried out by its dedicated Executive Agency, known as Forest Research and all powers requested for the Forestry Commission within this document will apply to Forest Research. To complement and assist its work for the Forestry Commission, Forest Research also carries out research projects for a wide range of organisations including UK government departments, other public sector bodies, the European Commission and private sector clients. Its research findings are generally made available free to industry. This is much valued and will not be altered by these proposals.
20. However, Forest Research requires this draft Order to remove restrictions imposed by the Forestry Act in order to strengthen its research resources and to exploit innovative opportunities which arise as a result of its research. Specifically, it requires the freedom to participate in joint venture companies and to form spinout companies.

21. Opportunities frequently arise to undertake joint research with private sector partners, which offer the forestry and environmental services sectors access to new sources of research funding. The restriction on the Commission's power to form or participate in companies currently restricts Forest Research from taking advantage of these opportunities.
22. Forest Research also requires the freedom to form or participate in companies in order to manage its intellectual property. Government policy explicitly recognises the important role which new knowledge plays in creating economic wealth. All UK research institutions are required to act to ensure that new knowledge is converted into new products, services and policies which generate wealth for the UK. Commercial exploitation often requires organisations to combine their skills in order to refine an idea and bring it to market. Markets are often global rather than national and economic benefits can accrue in sectors far removed from the original research. For example, the Forestry Commission's Plant Health group is benefiting from a collaboration between Forest Research and a world class UK University, which is enabling advances in fluid dynamics modelling, originally commissioned by the oil industry, to be applied to wood used as packaging materials. The research has produced software which reduces energy costs as well as increasing confidence that plant health regulations are being met. This is creating international interest. However, without the ability to form a joint venture company it will be difficult to fully exploit the commercial opportunities arising from this innovation. In the example discussed above, it will be harder to secure commercial royalties from North American users if these bodies need to negotiate with two separate legal entities.
23. The draft Order will remove restrictions imposed by the Forestry Act, enabling Forest Research to undertake joint research and manage its intellectual property in line with current best practice in the UK research community.

Restocking

24. Under Part II of the Act, the Commissioners are responsible for regulating felling by dealing with applications for felling licences, imposing restocking requirements² where appropriate, and taking any necessary enforcement action. The proposals are concerned with restrictions on the Commissioners' powers to impose and enforce restocking requirements.
25. Under the Act the Commissioners may only serve a restocking notice on a person who has been convicted of the offence of felling a tree without the authority of a felling licence. This means that the Commissioners bring prosecutions in circumstances in which they would not normally wish to prosecute, as this is the only way they can obtain an enforceable requirement to restock.
26. As the offence of felling without a licence is a strict liability offence, there are cases in which the person who has committed the offence has done so

² Licences for felling trees are granted on condition that the land will be replanted (restocked) after felling

unintentionally. For example, he may have reasonably thought that his experienced contractor would have assumed responsibility for securing any necessary permissions. In such cases, were it not for the restriction on their current power, the Commissioners would impose the restocking requirement on the offender without prosecuting him for the offence. Prosecutions would still be brought against persistent offenders or in the case of serious breaches.

27. The powers of the Commissioners to serve notices requiring works to be undertaken to remedy non-compliance with conditions of felling licences or with restocking notices may only be exercised in relation to a freehold owner of the land. By contrast, the person responsible for the non-compliance need only have sufficient interest such as to enable him, with or without the consent of another person, to fell the trees. This means that, unless a person who has breached the restocking requirements is also the freehold owner of the land, the Commissioners cannot enforce these requirements against him. This restriction on the Commissioners' powers therefore represents an anomaly in the law.
28. The draft Order will remove the restriction on the Commissioners' power to serve a restocking notice which requires them to first secure a conviction for unlawful felling and the restriction on their ability to enforce restocking requirements against lessees and licensees, thereby removing the anomaly described in the preceding paragraph.

BURDENS OF EXISTING LEGISLATIVE PROVISIONS (Section 6(2)(a) of the 2001 Act)

Power to participate in Companies or Trusts

29. Under the Act the Commission has no express power to enter into, participate in or form corporate bodies or charitable trusts. Neither does it have an express power to invest in companies or to make loans. It appears that no such powers can be implied. This restricts the ability of the Commission to enter into Joint Ventures with both public and private sector partners to provide facilities on the public forest estate under Countryside Act powers, to manage and create woodland on other land, to exploit forest research and to generally use modern mechanisms to achieve the Government's vision of a multi purpose forest estate.
30. This restriction, while adversely affecting the Commission in delivering objectives under its statutory powers, also adversely affects potential partners with whom arrangements would otherwise be made.

Power to delegate charging

31. There is no express power for the Commission to delegate its power to charge in connection with facilities provided under section 23(2) of the Countryside Act 1968 and it would seem that none can be implied. The Commission must therefore retain a degree of control over charging which would not be consistent with allowing that power to be exclusively controlled by a joint venture vehicle where that vehicle provided such facilities. This restriction therefore also

adversely affects potential partners in such ventures in that they will not have control over setting charging levels for the facilities.

Power to exploit Research

32. There is no express power in section 8 of the Act for the Commission to exploit forest research it would again seem that none can be implied. This restriction, therefore, like the absence of a power to form companies, also adversely affects potential partners in joint research ventures.

Power to require restocking without a prior conviction

33. Section 17A(1) of the Act requires the Commission to secure a conviction for unlawful felling before it can serve a restocking notice. This means that it is not possible for the Commission to secure restocking following an occurrence of unlawful felling in which public policy would not otherwise dictate pursuing a prosecution. As a result, prosecutions have to be brought solely to secure restocking. The restriction, while burdening the Commission, also adversely affects persons prosecuted solely for this reason.

Power to enforce restocking requirements

34. Under Section 24 of the Act restocking requirements can only be enforced against a freeholder – even where it is the lessee or licensee who is responsible for the breach of these requirements. The burden therefore adversely affects freeholders who are not responsible for the breach but are enforced against because this is the only option to secure restocking.

HOW THE PROPOSALS REMOVE OR REDUCE EXISTING BURDENS (Section 6(2)(b) of the 2001 Act)

35. The draft Order amends the Act and the Countryside Act 1968.
36. Articles 2 and 6(3) remove the restriction on the Commissioners' powers to form and participate in bodies corporate and charitable trusts and to provide loans. Article 2 gives the Commissioners these incidental powers for the purpose of exercising their functions under the Act. The exercise of the incidental powers is generally limited in application to functions relating to land in England and Wales. The exception is the Commissioners' function of undertaking and exploiting forest research. As this function is exercisable by the Commission in its capacity as a cross border authority (see paragraph 3), it can be exercised throughout Great Britain.
37. Article 6(3) gives the Commissioners the same incidental powers for the purpose of exercising their functions under sections 23(2) (provision of facilities) and 24(1) (planting and management of trees in the interests of amenity) of the Countryside Act 1968 in relation to land placed at the disposal of the Commissioners in England and Wales.

38. The powers to invest in bodies corporate and to provide loans are exercisable only with Treasury consent.
39. The incidental powers given to the Commissioners for the purpose of exercising their functions under the Act will allow them to participate in joint ventures with public sector partners in relation to the planting and management of land owned by others (in carrying out their functions under section 3(2) of the Act) and, together with the power introduced by article 3, in relation to the carrying out and exploitation of forest research (under section 8 of the Act).
40. Used in connection with their power in section 23(2) of the Countryside Act 1968 to provide facilities in the public forest estate, the incidental powers, together with the power to delegate their power to charge in connection with these facilities, will allow the Commissioners to form joint ventures with private sector partners and provide recreational facilities in publicly owned forests.
41. Article 3 removes the restriction on the Commissioners' power to exploit intellectual property or intangible assets resulting from forest research undertaken pursuant to their power in section 8 of the Act.
42. Article 4 removes the restriction on the Commissioners' powers which requires them to obtain a conviction for unlawful felling before they can serve a notice requiring the person responsible for felling trees without a licence to restock. It amends section 17A of the Act so as to allow the Commissioners to serve a restocking notice on a person where it appears to them that he has committed the offence of unlawful felling under section 17 of the Act.
43. The requirement that the person served with a restocking notice has an interest in the land as described in section 10 of the Act (namely, one sufficient to entitle him to fell the trees) and the ability to appeal against the notice (in section 17B) are unchanged. The amendment only applies to unlawful felling on land in England and Wales.
44. Article 5 removes the restriction on the Commissioners' ability to enforce restocking requirements imposed by a restocking notice or by conditions on a felling licence against any person other than the freeholder of the land. It amends section 24 of the Act so as to require an enforcement notice to be served on the applicant for the felling licence or the person served with a restocking notice provided that person has an interest in the land as described in section 10 of the Act at the time the notice is served. It is only if that person no longer has such an interest that the Commissioners may take enforcement action against the freeholder. The amendment applies only to land in England and Wales.
45. Article 6(2) removes the restriction on the Commissioners' ability to allow another person to exercise their power to charge in connection with tourist, recreational or sporting facilities provided on the public forest estate in England and Wales under their power in section 23(2) of the Countryside Act 1968. Together with the power to participate in corporate bodies, this power will enable the Commissioners to enter into joint ventures with private sector partners for the purpose of providing recreational facilities in the public forest estate. Such

arrangements, where they involve the sharing of profits, are subject to Treasury approval.

HOW THE PROPOSALS REMOVE INCONSISTENCIES AND ANOMALIES (Section 6(2)(c) of the 2001 Act)

46. The current position whereby the Commissioners have no power to enforce restocking requirements against the person upon whom those requirements were imposed (the applicant for a felling licence or the person on whom a restocking notice was served) unless he is also the freeholder of the land, is considered to be an anomaly in the legislation. It would seem that the enforcement provisions should be consistent with those governing who can apply for a felling licence. In the latter case, this is anyone who has sufficient interest, whether or not subject to another's consent, to fell the trees.
47. Article 5 removes this anomaly by providing that enforcement action should be taken against the person against whom the restocking requirements were imposed, namely the person in breach of those requirements, unless he no longer has sufficient interest in the land to fell trees (and, by implication, to carry out the restocking requirements). Only in the latter case may enforcement action be taken against the freeholder of the land.

MAINTENANCE OF NECESSARY PROTECTION (Section 6(2)(d) of the 2001 Act)

Removing the restriction on the Commissioners' power to provide loans

48. The Commissioners' power to give grants and loans in connection with the management and planting of land to owners and lessees of that land in section 1 of the Forestry Act 1979 is subject to Treasury approval. This safeguard is mirrored in the powers introduced by articles 2 and 6(3) in which Treasury approval is required to exercise the incidental power to make loans.

Removing the restriction on the Commissioners' power to invest in corporate bodies and the restriction on delegating their power to charge in connection with the provision of facilities on the public forest estate

49. Section 41(8) of the Act provides a safeguard in relation to receipts of the Commissioners by allowing the Minister, with Treasury approval, to require such receipts to be paid into the Consolidated Fund instead of being retained by the Commissioners and used to meet their expenses. Any shortfall in the Commissioners' expenditure, namely that which is not met from their receipts, is met by the taxpayer. This safeguard would provide a degree of control over any 'excessive' receipts.
50. The power to invest in a corporate body and the power to delegate charging in connection with facilities provides the Commissioners with opportunities to enter into profit sharing ventures with others. The nature of such joint ventures is such that the Commissioners will not always have control over what happens to profits of the business. This will be determined by the company or by the terms of any

agreement. As a result, receipts of the joint venture would not be subject to the power in section 41(8) of the Act.

51. The proposals maintain necessary protection by making investment by the Commissioners in corporate bodies (articles 2 and 6(3)) and entering into profit-sharing arrangements in the exercise of their power to provide facilities in section 23(2) of the Countryside Act 1968 (article 6(2)(b)) subject to Treasury approval. This will ensure that the basis of such investment and the terms under which such arrangements are entered into are an acceptable use of taxpayers' money.

Removing the restriction on the Commissioners delegating their power to charge in connection with the provision of facilities on the public forest estate

52. At the moment the Commissioners have complete discretion as to the level of charges they impose in connection with facilities which they provide, or arrange for or assist in the provision of, in state owned forests. It is generally their policy to charge what the market will bear. Moreover, the Commissioners need not provide facilities themselves but can arrange for or assist in the provision of the facilities by others. In practice therefore, charges made, for example, in connection with the use of camping and caravanning facilities or for goods sold in forest-based shops, are determined by those responsible for the direct provision of these goods and services.
53. Nevertheless, it is recognised that, under their current power, the Commissioners must retain a degree of control over charging and that this provides (at least potentially) protection to users as to the level of charges made. Removing the restriction on the Commissioners' ability to delegate their charging power would remove this potential safeguard.
54. It is nonetheless considered that sufficient protection will be offered to users as to the level of charges made for facilities by virtue of the operation of market forces. The fact that the facilities will have to compete with similar recreational facilities offered by other providers should ensure that charges are reasonable and that users are offered value for money. Moreover, in entering into arrangements with others for the provision of facilities, the Commissioners have a duty to consider the public interest in securing improved facilities that will be available to forest users (and therefore which must be priced accordingly).

Removing the restriction on the Commissioners' power to exploit forest research

55. Allowing the Commissioners to derive commercial benefit from forest research raises the issue of whether any protection is necessary for competitors in the forest research industry or for those in the market for the products of that research as to prices charged for those products.
56. Although the Commissioners' research activities are publicly funded, their facilities compare poorly with those of competitors which include large commercial and industrial concerns with both substantial resources and marketing networks. Indeed, the purpose of the proposal to remove this restriction is to give the Commissioners access to additional sources of funding to carry out research, both

directly and by enabling them to enter into joint research ventures with private sector partners, thereby giving them access to those partners' resources.

- 57 It is therefore considered that removing this restriction on the Commissioners' powers will not give them any particular advantage over, or result in unfair competition with the forest research industry.
- 58 By the same token, since it is not expected that the removal of the restriction will result in the Commissioners acquiring a special position in the market for the provision of the products of research, any prices they charge for those products should be kept at a reasonable level through the operation of market forces.

Removal of the restriction on the Commissioners' power to serve a restocking notice without first obtaining a conviction for felling without a licence

59. The protection provided by the current legislation is the requirement for the Commissioners to obtain a conviction against a person for unlawful felling before they can require that person to restock. The proposed amendment will replace the need to obtain a conviction, with a different procedure for establishing that a person has felled trees without a licence. This new procedure is more appropriate to its purpose of securing restocking.
60. It is important to emphasise that the aim of the proposed amendment is not to avoid the 'evidential test' so as to allow the Commissioners to serve a restocking notice in cases where it was thought they could not secure a conviction. Before they could serve a notice, the Commissioners would need to be satisfied that the offence had been committed, namely, that the person to be served had felled trees, that a licence should have been obtained for that felling and that no such licence had been granted. The judgements that must be made are therefore essentially judgements of fact, which the Commissioners would be qualified to make.
61. The amendment preserves the right of appeal to the Minister against service of a restocking notice in section 17B of the Act. The grounds on which such an appeal could be made would include the grounds that a person served with the notice had not in fact felled a tree without a licence, or that no licence was required in respect of the felling. It is considered that the right of appeal provides the necessary protection for the landowner on whom a restocking notice is served.
62. The effect of the current need for a prior conviction before restocking can be required has meant that the existing provisions have not been an effective or appropriate means of securing restocking of trees felled without a licence. Prosecutions are only brought where it is in the public interest to do so. In many cases landowners have committed the offence of felling without a licence but the circumstances are such that, leaving aside the question of restocking, it would not be in the public interest to bring a prosecution. For example, the landowner may have reasonably relied on the advice of someone, such as an experienced contractor, that no permissions were required.

63. If another means of securing an enforceable restocking requirement were available in such circumstances, prosecutions would not be brought. However, where restocking is considered sufficiently important, a conviction is sought for this purpose alone, regardless of the likely penalty (which can be a fine of up to £2500 or twice the value of the trees). There are also cases where, although restocking is desirable, the public interest militates against bringing a prosecution.
64. Moreover, other legislation that provides for action to be taken to reverse the effects on the environment of unlawful acts in similar circumstances suggests that the Act's provisions may be out of step. In regulation 24(1) of the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001 (SI 2001/3966) the Secretary of State is permitted to take enforcement action on being satisfied that an offence has been committed. Regulation 20 of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 2228) provides a civil remediation scheme with no requirement for a prior conviction. Similarly, Tree Replacement Orders may be served under section 206 and 207 of the Town and Country Planning Act 1990 requiring the landowner to replant trees felled whilst subject to Tree Preservation Orders. (This is separate from the offence in section 210 of the Act.) By virtue of section 206(5) the obligation to replant runs with the land. Our proposal to remove the requirement for there to be a conviction before a restocking notice can be served would therefore bring the Act into line with the approach taken by the legislation noted above.

EXPECTATION AS TO EXERCISE OF RIGHTS AND FREEDOMS (Section 6(2)(e) of the 2001 Act)

65. The proposals to remove restrictions on the Commissioners' ability to delegate their power to charge in connection with the provision of facilities, to form and participate in corporate bodies and charitable trusts and to exploit forest research are not considered to prevent anyone from exercising an existing right or freedom. By contrast, they will provide greater freedom to potential partners of the Commissioners who will be enabled to set charges for facilities provided with the assistance of the Commissioners in the public forest estate; participate in corporate bodies or charitable trusts with the Commissioners or enter into joint ventures with them for the development and exploitation of forest research.
66. Facilities for which a partner of the Commissioners can make charges will be available for use by the public in the same way as facilities are currently charged for in publicly owned forests. This will not in any way affect the Commissioners' policy of allowing the public general access to these forests. Similarly, those who wish to acquire rights in respect of forest research may do so on a purely voluntary basis.
67. By allowing the Commissioners to serve them with a restocking notice, the proposal to remove the restriction on the Commissioners' ability to serve a restocking notice without first securing a conviction for unlawful felling would affect the rights and freedoms of persons who had not been convicted for this offence. However, in a case where the Commissioners are satisfied that the offence has been committed and the person served with the notice has the

opportunity of appealing to the Minister, we do not consider that that person can reasonably expect that the Commissioners should be required to secure a conviction against him for the offence of illegal felling before they can serve him with a notice. (This is discussed further in relation to necessary protection.)

68. Moreover, by allowing the Commissioners to impose a restocking requirement on a person without prosecuting him, the proposed amendment will have the effect of reducing the restriction on the freedom of that person if he would currently be prosecuted purely to enable restocking to take place.
69. The proposal to remove the restriction on the Commissioners' power to enforce restocking requirements against lessees or licensees who had breached the requirements of a felling or restocking licence would affect the rights of those persons because it would allow the Commissioners to take enforcement action against them. As these persons will have breached statutory requirements, we do not consider that they can reasonably expect to continue to enjoy their current immunity from enforcement action, which is considered to be an anomaly in the legislation.
70. Moreover, the changes we propose would lessen the restrictions on the rights of freeholders who currently can be the subject of enforcement action even when they did not fell the trees to which the restocking requirements relate. Under the amended power, such freeholders could only be required to restock if the person responsible for the felling no longer had sufficient interest in the land.

NEW BURDENS TO BE IMPOSED AND PROPORTIONALITY (Section 6(2)(f) section 1(1)(c) of the 2001 Act)

71. This section deals with new and re-enacted burdens and their proportionality to the benefit expected to result.

Requirements for Treasury approval

72. The proposals require the Commissioners to obtain Treasury approval to make arrangements for sharing profits in connection with the provision of facilities, to invest in corporate bodies or to make loans. These requirements impose a legal burden upon the Commissioners.
73. The requirements for Treasury approval have been included as a safeguard to the exercise of the Commissioners' powers to which they relate (discussed in relation to necessary protection. This is the ability to make arrangements for sharing profits in connection with the provision of facilities is made possible by the removal of the restriction on the Commissioners' power to delegate their power to charge in connection with these facilities.) These requirements therefore enable the removal of restrictions on the Commissioners' powers to take place and are considered to be proportionate to the benefits that result from such removal.
74. The removal of all three restrictions (investing in corporate bodies, making loans and delegating the power to charge) is necessary to allow the Commissioners to enter into arrangements with the private sector for the provision of facilities on

land placed at their disposal. This will allow the Commissioners to tap into the resources and expertise of the private sector which is expected to result in improved recreational facilities in the public forest estate which will be available for use by the public.

75. The ability to invest in companies and to make loans will give the Commissioners the necessary flexibility to enter into arrangements with partners in the forest research industry for the development and exploitation of research. Again, this will give the Commissioners access to additional resources and expertise which is expected to augment their forest research capability.

Delegation of power to charge

76. By authorising the Commissioners to delegate their power to charge in connection with facilities, this proposal creates a new burden (within the meaning of the 2001 Act) on the public who wish to use the facilities. A third party, providing facilities on Commission land, and making charges for the use of them will be making an impact on the public wanting to use that land and facilities.
77. Imposing this burden is considered to be proportionate to the benefit which is expected to result from its creation in the form of the provision of enhanced facilities in forests which the public will have the opportunity to use. As the new burden does not result from the ability to impose charges for use of facilities but rather from the ability of persons other than the Commissioners themselves to impose charges, there is likely to be no practical impact as a result of the change. The protection offered to the public that such charges will be reasonable is discussed in connection with the issue of necessary protection.

Re-enacting provision imposing legal burdens

78. Article 4 of the draft Order re-enacts section 17A(1) of the Act. This includes a restatement of the provision that restricts the service of a restocking notice to service on a person having the same estate or interest in the land as is required under section 10(1) of the Act. This imposes a legal burden on the Commissioners.
79. The purpose of limiting the persons against whom restocking notices can be served to those who have such an estate or interest in the land on which the trees were felled as would have enabled them, with or without the consent of any other person, to fell the trees is to ensure that such persons have sufficient interest in the land to comply with the restocking requirements. The re-enactment of this provision is therefore considered to be proportionate to the benefit expected to result from the re-enactment.

FAIR BALANCE AND DESIRABILITY OF THE DRAFT ORDER (Sections 3(2) of the 2001 Act)

80. The proposed changes will serve the public interest by helping to provide enhanced recreational facilities in the public forest estate, greater opportunities for creating and managing forests with public sector partners and increased

resources for use in the carrying out of forest research (thereby benefiting the forest industry and the environment) and by securing more effective re-stocking following felling. It is therefore considered that the Order, taken as a whole, strikes a fair balance between the public interest and the interests of the persons affected by the new and restated burdens described above.

81. The purpose of the draft Order is to remove restrictions on the Commissioners' powers which prevent them from taking advantage of opportunities to perform their functions in particular ways. To the extent that the provisions removing these restrictions impose on the Commissioners new burdens, these represent the safeguards necessary to allow these restrictions to be removed. Insofar as the draft Order will impose a new burden on the public, this is considered to be outweighed by the public benefits, described above, that are expected to result from the changes to be made by the order as a whole. It is therefore considered desirable that the draft Order be made.

SUBORDINATE PROVISIONS (Section 6(2)(g) of the 2001 Act)

82. The proposal does not contain any.

SAVINGS (Section 6(2)(h)(i) and (ii) of the 2001 Act)

83. A final Regulatory Impact Assessment is attached at Annex D.

OTHER BENEFITS (Section 6(2)(i) of the 2001 Act)

84. There are a number of other benefits which each proposal will deliver, and which in particular will allow the more effective delivery of multi-purpose forestry both on the public estate and to the wider public. These are more fully expanded in the RIA but they can be summarised as follows:
- improved facilities will be offered on the forest estate, giving the public greater opportunity to visit and explore the estate and partake in activities promoting the Government's Health and Education agendas;
 - there will be greater opportunities to create and manage new woods and forests in locations which are near towns and cities on brownfield and other degraded land improving the landscape and environment for people living in underprivileged communities;
 - there will be improved research through the increased funds being created which will lead to better forestry practice and improvements to the environment and social interaction with forests and woods;
 - there will be an increased ability to secure restocking of felled woodlands which will benefit the environment and landscape.

THE CONSULTATION (Section 6(2)(j) of the 2001 Act)

85. The details of the consultation process are given at paragraphs 6 to 8 above.
86. The Consultation Paper invited comments on proposals to amend the powers of the Commission by way of a Regulatory Reform Order. A full list of recipients and respondents are attached at Annex A and Annex B respectively.

REPRESENTATIONS RECEIVED IN RESPONSE TO THE CONSULTATION (Section 6(2)(k) of the 2001 Act)

87. There were 26 responses to the Consultation Document received by the Commission by 18th May 2005. Although the consultation closed on the 11th May, the Commissioners saw no reason not to accept responses after this date. Representations were received from a wide range of the consultees, including the statutory agencies, local government, countryside bodies and the private forestry sector.
88. The majority of the respondents agreed that the proposals for the Regulatory Reform Order were appropriate and supported the proposed changes to the Act. The specific issues raised by respondents are dealt with in more detail at Annex C to this document.
89. In the Consultation Document respondents were asked to identify any information they did not wish to be disclosed. No respondents asked for this protection.

CHANGES MADE IN LIGHT OF THE CONSULTATION (Section 6(2)(l) of the 2001 Act)

90. No changes have been made to the Government's proposals in the light of the Consultation.

COMPATABILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS

91. The Government considers that the provisions of draft Order are compatible with the Convention rights.

PLAIN ENGLISH

92. The draft Order has been clearly drafted in plain English and follows closely the proposals contained in the Consultation Document, which consultees have understood and responded to.

CHARGES ON PUBLIC REVENUE

93. The draft Order does not impose on the public revenues and does not require any payments to be made to a Public Authority.

RETROSPECTION

94. The draft Order is not retrospective.

EUROPEAN UNION

95. The draft Order is not incompatible with any obligation resulting from the membership of the European Union.

THE FORESTRY COMMISSION ON BEHALF OF THE SECRETARY OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

24 June 2005

Annex A List of Consultees

Annex B Representations Received

Annex C Government's Response to Representations Received

Annex D Final Regulatory Impact Assessment

Annex E Relevant Statutes

List of Consultees

Annex A

Nick Atkinson, Chief Executive Association of National Park Authorities Dartmoor National Park Authority Parke, Haytor Road Bovey Tracey Devon, TQ13 9JQ
Mr Phillip Webb Association of Professional Foresters Gamekeepers Cottage Dulas Court Herefordshire HR2 0HL
Mr Robert Hopwood Bidwells Trumpington Road Cambridge Cambridgeshire CB2 2LD
Mr John Davis, Treasurer, British & Irish Hardwoods Improvement Programme Woodland Improvement & Conservation Ltd Newent Lane, Huntley Gloucestershire, GL19 3HG
Mr Tim Russell Director of Conservation British Association for Shooting and Conservation Marford Mill Rossett Wrexham, LL12 0HL
Mrs E Egerton Administrator, British Association of Landscape Industries Landscape House, 9 Henry Street Keighley West Yorkshire, BD2 3DR
Mr Tim Bartlett General Secretary British Association of Leisure Parks and Piers 25 Kings Terrace London NW1 0JP
British Association of Nature Conservationists c/o The Wildlife Trust for Northampton Lings House Billing Lings Northampton NN3 8BE

<p>Mr Michael Squire British Deer Society Fordingbridge Hampshire SP6 1EF</p>
<p>Professor Brian Moss British Ecological Society 26 Blades Court Deodar Road Putney London, SW15 2NU</p>
<p>The Chief Executive British Equestrian Federation National Agricultural Centre Stoneleigh Park Kenilworth Warwickshire, CV8 2RH</p>
<p>The Chief Executive British Equestrian Trade Association Stockeld Park Wetherby LS22 2AW</p>
<p>The President British Equine Veterinary Association Wakefield House 46 High Street Sawston Cambs, CB2 4BG</p>
<p>The Secretary British Field Sports Society 59 Kennington Road London SE1 7PZ</p>
<p>British Holiday & Home Parks Association Chichester House 6 Pullman Court Great Western Road Gloucester GL1 3ND</p>
<p>The Chairman British Horse Industry Confederation c/o The British Horseracing Board 42 Portman Square London W1H 6EN</p>

<p>The Chief Executive British Horse Society Headquarters Stoneleigh Deer Park Kenilworth Warwickshire CV8 2XZ</p>
<p>The Secretary General British Horseracing Board 42 Portman Square London W1H 6EN</p>
<p>Mr Bill Renshaw British Mountaineering Council 177-179 Burton Rd Manchester M20 2BB</p>
<p>Mrs P White British Naturalists Association Hon. General Secretary PO Box 5682 Corby Northants, NN17 2ZW</p>
<p>British Orienteering Federation Riversdale, Dale Road North Carley Dale Matlock Derbyshire DE4 2HX</p>
<p>Ms Jeanette Scott British Tourist Authority Thames Tower Black's Road Hammersmith London, W6 9EL</p>
<p>Mr Mark Gibson, Director British Trust for Conservation Volunteers Bessemer House 59 Carlisle Street East Sheffield South Yorkshire, S4 7QN</p>
<p>Mr Jeremy Greenwood, Director British Trust for Ornithology The National Centre for Ornithology The Nunnery Thetford Norfolk, IP24 2PU</p>

<p>Ms Kirsty Leason British Urban Regeneration Association 33 Great Sutton Street London EC1V 0DX</p>
<p>British Waterways Willow Grange Church Road Watford Hertfordshire WD1 3QA</p>
<p>Mr Simon Humphreys BTCV Conservation Contacts Ltd Unit 2, Briston Orchard St Mellion Saltash Cornwall, PL12 6RQ</p>
<p>Mr B Simmonds Chief Executive Business in Sport and Leisure 17a Chaitfield Avenue Putney London, SW15 6DX</p>
<p>The Director Business in the Community 227A City Road London EC1V 1LX</p>
<p>Cabinet Office 22 Whitehall London SW1A 2WH</p>
<p>The Camping & Caravan Club Greenfields House Westwood Way Coventry CV4 8JH</p>
<p>The Caravan Club East Grinstead House East Grinstead West Sussex RH19 1UA</p>

<p>Mr Robert Pettigrew Central Council of Physical Recreation Francis House Francis Street London SW1P 1DE</p>
<p>Confederation of British Industry Centre Point 103 New Oxford Street London WC1A 1DU</p>
<p>Consortium of Rural TECs 12 York Road Leicester LE1 5TS</p>
<p>Ms Vicki Elcoate Director Council For National Parks 246 Lavender Hill London SW11 1LJ</p>
<p>Ms Kate Parminter Director Council for the Protection of Rural England 128 Southwark Street London SE1 0SW</p>
<p>Mrs Judith Webb Woodlands & Forestry Adviser Country Land and Business Association 16 Belgrave Square London SW1X 8PQ</p>
<p>Mr Richard Lloyd Head of Enterprise, Land Management & Tourism Countryside Agency John Dower House, Crescent Place Cheltenham Gloucestershire, GL50 3RA</p>
<p>Countryside Council for Wales Maes-Y-Ffynnon Penrhosgarnedd Bangor Gwynedd LL57 2DW</p>

<p>Mr John Thompson, Chairman Countryside Recreation Network c/o Scottish Natural Heritage, Caspian House 2 Marler Court, 8 South Avenue Clydebank Business Park Glasgow, G81 2NR</p>
<p>Crown Estate 16 Carlton House Terrace London SW1Y 5AH</p>
<p>Mr Mick Ives Cyclists Touring Club Offroad Development Officer Cotterell House 69 Meadow Road Godalming Surrey, GU7 3HS</p>
<p>Dr Keith Kirby English Nature Northminster House Northminster Road Peterborough Cambridgeshire, PE1 1UA</p>
<p>Mr Stephen Trow Head of Countryside Policy English Heritage 23 Savile Row London W1X 1A</p>
<p>Mr Kurt Janson English Tourist Board Head Office Thames Tower, Black's Road Hammersmith London, W6 9EL</p>
<p>Mr Emyr Poole Environmental Policy Officer English Partnerships Corporate Headquarters 110 Buckingham Palace Road London, SW1W 9SA</p>
<p>Mr R Robertson Federation of Small Businesses 2 Catherine Place Westminster Place London SW1E 6HF</p>

<p>Mr Mark Kibblewhite, Head of Land Quality Environment Agency Rio House, Waterside Drive Aztec West Almondsbury Bristol, BS12 4UD</p>
<p>Mr Barry Gamble Chairman Fountains plc. P.O. Box 307 Malthouse Walk Banbury Oxfordshire, OX16 8PU</p>
<p>Mr Jim Ward Head of Rural Property Research FPD Savills 20 Grosvenor Hill London W1K 3HQ</p>
<p>Ms Ann Jones Gloucestershire County Council Shire Hall Westgate Street Gloucester GL1 2TG</p>
<p>Ms Liz Meek Director for Government Office in London Government Office for London 10/1 Riverwalk House 157 - 161 Millbank London, SW1P 4RR</p>
<p>Mr Neil Cumberlidge Director of Food & Rural Affairs Group Government Office for North West and Merseyside Sunley Tower Piccadilly Plaza Manchester, M1 4BE</p>
<p>Ms Alison Parker Rural Director Government Office for South East Bridge House 1 Walnut Tree Close Guilford GU1 4GA</p>
<p>Mr David Ball Team Leader Government Office for South West 2 Rivergate Temple Quay Bristol, BS1 2PB</p>

<p>Mr Graham Norbury, Rural Director Government Office for the East Midlands The Belgrave Centre Stanley Place Talbot Street Nottingham, NG1 5GG</p>
<p>Ms Jane Rabagliati Director of Sustainable Development & Rural Affairs Government Office for East of England Eastbrook Shaftesbury Road Cambridge, CB2 2DF</p>
<p>Mr John Bainton Functional Director Government Office for the North East Wellbar House Gallowsgate Newcastle-upon Tyne, NE1 4TD</p>
<p>Mr Brin Davies Functional Director Government Office for West Midlands 77 Paradise Circus Queensway Birmingham, B1 2DT</p>
<p>Mr Gordon Kingston, Director Rural Government Office for Yorkshire and Humber City House PO Box 213 New Station Street Leeds, LS1 4US</p>
<p>Groundwork UK 85-87 Cornwall Street Birmingham B3 3BY</p>
<p>HM Treasury 1 Horse Guards Road London SW1A 2HQ</p>
<p>Mr David Gwyther, Director General Horticultural Trade Association 19 Hgh Street Theale Reading Berkshire, RG7 5AH</p>

<p>Mr Neville Elstone Technical Services Officer Institute of Chartered Foresters 7A St. Colme Street Edinburgh EH3 6AA</p>
<p>JNCC Monkstone House City Road Peterborough Cambridgeshire PE1 1JY</p>
<p>Ms Gill Chapman Planning and Development Manager National Caravan Council Catherine House, Victoria Road Aldershot Hampshire, GU11 1SS</p>
<p>Local Government Association Local Government House Smith Square London SW1P 3HZ</p>
<p>Northern Ireland Tourist Board St Annes Court 59 North Street Belfast BT1 1NB</p>
<p>Ms Nerys Jones Chief Executive National Urban Forestry Unit The Science Park Stafford Road Wolverhampton West Midlands, WV10 9RT</p>
<p>Mr Ian Woodhurst Ramblers Association - London Office 2nd Floor, Camelford Lane 87-90 Albert Embankment London SE1 7TW</p>
<p>Mr Steven Broomhead Chief Executive North West Development Agency Renaissance House, P.O. Box 37 Centre Park Warrington, WA1 1XB</p>

<p>Ms Vicky Swales Royal Society for the Protection of Birds The Lodge Sandy Bedfordshire SG19 2DL</p>
<p>Mr Kenneth Bartlett BSc (Hons) MRICS Royal Institution of Chartered Surveyors Surveyor Court Westwood Way Coventry CV4 8JE</p>
<p>Mr Alex Abbott Sports England National Sports Centre Crystal Palace P.O. Box 480 London, SE19 2BQ</p>
<p>Mr Adrian Martin Assistant Director - Rural Issues Section Small Business Service St Mary's House, c/o Moorfoot Sheffield South Yorks, S1 4PQ</p>
<p>Mr Mark Tucker Sustrans 35 Kings Street Bristol BS1 4DZ</p>
<p>Mr James Bridgland BSc MRICS Strutt and Parker 55 Northbrook Street Newbury Berkshire RG14 1AN</p>
<p>Mr R Hawes The National Trust 33 Sheep Street Cirencester Gloucestershire GL7 1RQ</p>
<p>Mr Alvin Houchen The Crown Estate Loxhole Sawmill Dunster Minhead Somerset, TA24 7BL</p>

<p>Mr David Sulman, Executive Director UK Forest Products Association Office 14, John Player Building Stirling Enterprise Park Springpark Road Stirling, FK7 7RP</p>
<p>Mrs Trisha Presland TRADA Chiltern House, Stocking Lane Hughenden Valley High Wycombe Buckinghamshire, HP14 4ND</p>
<p>Mr Richard Perkins World Wide Fund for Nature UK Panda House – Weyside Park Catteshall Lane Godalming Surrey, GU7 1XR</p>
<p>VisitScotland 23 Ravelston Terrace Edinburgh EH4 3TP</p>
<p>P Irving & Sons Ltd Hutton Roof Sawmills Kirkby Lonsdale Carnforth Lanes LA6 2PE</p>
<p>Mr David Duke-Evans Director General Wood Panel Industries Federation 28 Market Place Grantham Lincs. NG31 6LR</p>
<p>Craig Leitch Kronospan Ltd Maesgwyn Farm Chirk Wrexham Clwyd, LL14 5NT</p>
<p>Ms Sue Cassell Youth Hostels Association YHA National Office 8 St Stephen's Hill ST ALBANS Hertfordshire, AL1 2DY</p>

<p>Buccleuch Estates Ltd Drumlanrig Mains Thornhill Dumfriesshire DG3 4AG</p>
<p>J Kingan & Sons Ltd New Abbey Dumfries DG2 8BY</p>
<p>John Clegg & Co 2 Rutland Square Edinburgh EH1 2AS</p>
<p>R Baty & Son Gibbhill Sawmill Borgue Road Kirkcudbright DG6 4TJ</p>
<p>Euroforest Ltd Mead House Bentley Farnham Surrey GU10 5HY</p>
<p>D H Bewley T/A Bewley Forestry Contractors Old Lonsdale Works Cumwhinton Carlisle CA4 0AX</p>
<p>D Lamont Highland Forest Products Murrayhill Inverness IV1 2JQ</p>
<p>J Callander & Son Ltd Abbotshaugh Sawmill Bainsford Falkirk FK2 7XU</p>

<p>W & P Murray Ltd Victoria House 8 Centenary Gardens Coatbridge ML5 4BY</p>
<p>John Gordon & Sons Timber Merchants Balblair Road Nair IV12 5LT</p>
<p>Doctor David Wood A W Jenkinson Forest Products Clifton Moor Clifton Penrith Cumbria, CA10 2EY</p>
<p>Egger (UK) Ltd Weyrock Anick Grange Road Hexham Northumberland NE46 4JS</p>
<p>Caledonian Paper Co Ltd Meadowhead Road Irvine Ayrshire KA11 5AT</p>
<p>Tilhill Economic Forestry Kings Park House Laurelhill Business Park Stirling FK7 9NS</p>
<p>Shotton Paper Co Plc Weighbridge Road Deeside Industrial Park Deeside Clwyd CH5 2LL</p>
<p>Forthvale Contractors Corriebeag Kinlochard Aberfoyle FK8</p>

<p>Chris Inglis Forestry & Timber Association Ltd 5 Dublin St Lane South Edinburgh EH1 3PX</p>
<p>BSW Timber Group Headquarters East End Sawmills Earlston Berwickshire TD4 6JA</p>
<p>Kielder Forest Products Molesdon House Milford Morpeth Northumberland NE61 3QF</p>
<p>Scottish Woodlands Ltd 60 Research Avenue North Riccarton Campus Currie EH14 4AP</p>
<p>G Seatherton Molton Softwood Harvesting 34 Aclands South Molton Devon EX36 4AX</p>
<p>J Coleman Fencing & Forestry Contractor The Sand Pit Clophill Bedford MK45 4BQ</p>
<p>Thomson Sawmills Ltd The Sawmill Holt Road Felthorpe Norfolk NR10 4DB</p>
<p>The Secretary Iggesund Paperboard (Workington) Ltd Workington Cumbria CA14 7JT</p>

<p>Scottish Rural Property and Business Association Ltd Stuart House Eskmills Business Park Musselburgh EH21 7PB</p>
<p>Mendip Forestry Ltd Quarry Bank 29a Berkley Road Frome Somerset BA11 2ED</p>
<p>Peter Wilson FIDC 53 George Street Edinburgh EH2 2HT</p>
<p>Mike Henderson, Harvesting Dept. St Regis Paper (Sudbrook) Ltd Sudbrook Mill Sudbrook Caldicot Monmouth, NP26 5XT</p>
<p>Sara Roberts FCA Ltd Dalfling Blairdaff Inverurie Aberdeenshire, AB51 5LA</p>
<p>TRB Sutton (Timber) East Farm Tretio St David's Dyfed SA62 6DE</p>
<p>Dr John Jackson Director The Royal Forestry Society 102 High Street TRING Hertfordshire, HP23 4AF</p>
<p>James Jones & Sons Ltd Broomage Avenue Larbert Stirlingshire FK5 4NQ</p>

<p>Russell Rowley Smallwoods Association The Old Bakery Pontesbury Shropshire SY5 0RR</p>
<p>VisitBritain Thames Tower Black's Road Hammersmith London W6 9EL</p>
<p>Tourism Alliance Centre Point 103 New Oxford Street London WC1A 1DU</p>
<p>Northwest Regional Development Agency PO Box 37 Renaissance House, Centre Park Warrington, Cheshire, WA1 1XB</p>
<p>Yorkshire Forward Victoria House 2 Victoria Place Leeds LS11 5AE</p>
<p>Onenortheast Stella House Goldcrest Way Newburn Riverside Newcastle Upon Tyne NE15 8NY</p>
<p>Advantage West Midlands 3 Priestley Wharf Holt Street Aston Science Park Birmingham B7 4BN</p>
<p>East Midlands Development Agency Apex Court City Link Nottingham NG2 4LA</p>

<p>East England Development Agency The Business Centre Station Road Histon Cambridge CB4 9LQ</p>
<p>South West of England Regional Development Agency Sterling House Dix's Field Exeter Devon, EX1 1QA</p>
<p>London Development Agency Devon House 58 - 60 St Katharines Way London E1W 1JX</p>
<p>South East England Development Agency Cross Lanes Guildford Surrey GU1 1YA</p>
<p>Steve Webb Director of Strategy and Communications Wales Tourist Board Brunel House 2 Fitzalan Road Cardiff, CF24 0UY</p>
<p>Welsh Development Agency Land Development and Legal Services Welsh Development Agency 5 Fitzalan Place Cardiff CF24 0ED</p>
<p>Ian Brodie Friends of the Lake District Murley Moss Oxenholme Road Kendal Cumbria, LA9 7SS</p>
<p>G R Watt John Clegg & Consulting Ltd 1 Ravelston House Loan Edinburgh EH4 3LY</p>

RRO Consultation Exercise – Response Log

No.	Consultee	Date response received
1	Jane Karthaus, FTA	10 May 2005
2	Barry Gamble, Chairman, Fountains plc	6 May 2005
3	Michael Clarke, CE, Buccleuch Group	5 May 2005
4	Sandy Lewis, CE, Seafield Estates	10 May 2005
5	Mike Henderson, St Regis Paper Co Ltd	2 March 2005
6	Alison Harris, Assoc of National Park Authorities	4 May 2005
7	Emma Arthurs, NI Tourist Board	3 May 2005
8	J Greenwood, British Trust for Ornithology	16 Feb 2005
9	T Russell, Director of Conservation, British Assoc for Shooting and Conservation	9 May 2005
10	Georgina Mills, Office of Fair Trading	18 April 2005
11	Mike Wood, UK Forestry Policy Officer, RSPB	11 May 2005
12	Jonathan Hall, Head of Rural Policy, Scottish Rural Property and Business Association	3 May 2005
13	Kate Conto, Ramblers' Association	10 May 2005
14	Ruth Chambers, Deputy CE, Council for National Parks	29 Mar 2005
15	Hannah Cohen, British Horse Society	11 May 2005
16	Ian Brodie, Director of Policy, Friends of the Lake District	17 Mar 2005
17	Keith Kirby, English Nature	14 Mar 2005
18	Dr Hilary Allison, Policy Director, Woodland Trust	11 Apr 2005
19	Roger Thomas, CE, Countryside Council for Wales	6 May 2005
20	Nick Dusic, British Ecological Society	11 May 2005
21	Denise Fletcher, Bridgend County Borough Council	9 May 2005
22	David Lewis, Vice Chair, Snowdonia Society	11 May 2005
23	Catherine Cook, Byways & Bridelways Trust	May 2005
24	Gary Battell, Smallwoods Association	18 May 2005
25	Richard Morgan, Wales Tourist Board	11 May 2005
26	Mark Tucker, National Cycle Network Centre	May 2005

RRO Consultation Analysis

The list of consultees is attached at Annex A. Out of the total of 125 consultees, 26 responded, a percentage return of 21%. However, several responses were simply offering general support with no specific comments made. A list of those who responded is attached at Annex B (to follow). Each consultee who responded received an initial acknowledgement and a further individual reply addressing the points they had made. No further correspondence has been received. In addition to the list of consultees, the three Rural Affairs Departments had no comments to make on the proposals.

The majority of those who responded were supportive of the proposals and accepted the rationale behind them. Rather than raising serious objections, responses focussed on seeking assurances as to how the proposals were intended to be implemented.

The responses to the consultation exercise focussed on the following themes:

Conflicting Objectives

Several organisations raised concerns that the proposals would lead to an increased focus by the Forestry Commission on commercial endeavours and raising funding and decreased focus on biodiversity and sustainability.

The RRO proposals are about being able to deliver public benefits on the estate more effectively and efficiently. They do not replace, or indeed affect, the Commissioners' general statutory duties or policy objectives, in particular, the existing Forestry Strategies approved by Ministers. Moreover, the FC has specific statutory obligations with regard to the protection of the environment. These, too, will remain unchanged.

In addition, any new commercial developments would be subject to the stringent examination such proposals receive under the Planning Acts and Environmental Impact Assessment Regulations and any other relevant statutory controls designed to offer protection to areas or features of environmental or cultural value.

This means that the mechanisms that are in place, both within the statutory framework of the FC and the more general statutory framework for regulating the countryside and activities within it will ensure that the FC's activities will continue to deliver economic, environmental and social benefits.

Reducing public benefit from the work of Forest Research

Concern was expressed that commercial income generation should facilitate and not conflict with the delivery of public benefits and continue to meet the objectives of the Forest Research Agency. The work of Forest Research is directed by the Forestry Commission to support the development of forestry policy. There is no intention to favour commercial research at the expense of social and environmental research. However, by enabling Forest Research to more effectively exploit any business opportunities arising from its work, the proposals will enhance our ability to deliver the public benefits. This will

also enable the FC to better meet the Government's objective to enable public sector research establishments to develop their capacity to exploit their science and technology potential.

There is no intention to inhibit the free exchange of information that currently exists between Forest Research and other research and countryside organisations, but rather to put Forest Research on the same footing as other research establishments by allowing commercial exploitation of research where there is a clear benefit to the FC and wider stakeholders.

Equal Opportunities in Selecting Joint Venture Partners

A couple of consultees raised the issue of possible problems in selecting joint venture partners. As the proposed extension of the Forestry Commission's powers does not discriminate and is open to everyone within the relevant business sector e.g. leisure to bid to be a partner, it will not place any restrictions on any markets and will stimulate open competition. In other words, business partners will be selected via an open tendering process.

Protection of Interests of User Groups

Some respondents raised concern about increased commercial development of the estate possibly leading to restrictions on access to Forestry Commission land for traditional users. The Forestry Commission is committed to free access to the forests for walkers, cyclists and others using the forest for informal recreation. Indeed, we intend to dedicate all our freehold land under section 16 of the Countryside and Rights Of Way Act to preserve this right of access in perpetuity. Therefore, these concerns are unfounded.

As for unreasonable charges, the Commission's policy remains and has always been clear; that charges are levied where facilities or resources are provided. Charges are generally set at market levels although there are cases where the Commission only seeks to recover the administrative costs of issuing a permission or licence.

Further Suggested Changes Beyond the Scope of the RRA

Several of the consultees raised possible issues beyond the current proposals or expanded somewhat on them. For instance, there were queries about the status of the Forestry Commission and its dual role as industry regulator and participant in the timber market. We have drafted replies to those consultees and are engaging with them on these issues through existing mechanisms and alternative routes. These points were noted for future strategic discussions or consideration but are well beyond the scope of the RRA and the consultation exercise.

Summary

No specific objections were received regarding the consultation proposals. However, some did refer to issues well beyond the scope of the consultation exercise. Consultees focussed on seeking assurances that the proposals would not lead to changes in the existing practices or policies of the FC. The FC was able to provide such assurances, both as regards its own practices and policies and by virtue of the overriding statutory framework which governs the scope and purpose of its functions and ensures protection for the environment and communities.

Regulatory Impact Assessment

1. Title of Proposal

AMENDMENTS TO THE FORESTRY ACT 1967

2. Purpose and Intended Effect

2.1 Objective

To enable the Forestry Commission:

- to enter into joint ventures with the private sector to provide recreational facilities within publicly owned forests;
- to have wider powers to participate in projects with others for the purposes of delivering its objectives;
- to exploit commercially the results of forest research;
- to use powers to require restocking more effectively.

2.2 Background

The Commissioners' current powers to provide recreational facilities in public forests and to charge for the use of those facilities are not sufficient to enable them to enter into joint ventures with the private sector on a true risk-sharing basis. This means that the Commissioners cannot give effect to Government policy to work in partnership with the private sector to provide facilities, thereby taking advantage of commercial opportunities and drawing finance from sources other than Government.

A further restriction on the Commissioners' powers, preventing them from participating in a range of joint initiatives with partners from the private and public sectors, is the absence of a power to form or participate in companies or charitable trusts.

Whilst the Commissioners have a specific power to conduct forest research, they have no power to sell the results of this research or arrange for its use on a commercial basis. This restriction on the Commissioners' powers therefore prevents them from accessing the value of this research. Removing this restriction would not only directly provide them with additional funding to carry out further research but, by allowing them to enter into joint research ventures with the private sector, would also allow access to other sources of funding. Furthermore, the absence of this power is preventing delivery of the Government policy to secure the value of this research for the public purse.

Two restrictions have been identified that relate to the ability of the Commissioners to require restocking of felled trees and thereby prevent woodland loss. The first is the requirement to obtain a conviction for unlawful felling before a restocking notice can be served on the person responsible. It is proposed to remove this requirement. The second is the current restriction on the power to enforce restocking requirements, which

prevents it from being exercised against persons other than freeholders. It is proposed to extend this power to allow enforcement action to be taken against lessees or licensees.

2.3 Rationale for Government Intervention

The rationale for the changes proposed is the Government's policy of securing maximum public benefit from forestry. This includes maximising the opportunities for the public to enjoy forests and generally using forests to secure social, environmental and economic benefits. The proposals are also driven by the Government's Public Private Partnerships initiative ("PPP"), which encourages public sector bodies to take advantage of commercial opportunities and private sector funding, and the wider markets initiative, aimed at greater exploitation of public resources. They will also result in the freeing up of competition by allowing the private sector to invest in facilities on the public forest estate and work with the Forestry Commission's agency, Forest Research, in developing value for the results of research.

If the proposed changes are not accepted and implemented, the Forestry Commission will not be able to take full advantage of business opportunities and therefore be unable to maximise the development of the public forest estate as a means of delivering Government policies.

The changes to the felling regulations will increase the efficiency and effectiveness of ensuring that illegal felling does not lead to loss of woodland area.

3. Consultation

3.1 Within Government

These proposals have been the subject of discussion with a number of Government departments including the Treasury, DEFRA and Cabinet Office. In addition DTI (Small Business Unit) and OFT have been consulted, during the process of preparing the proposals and RIA. The devolved administrations in both Scotland and Wales have been consulted.

3.2 Public Consultation

A public consultation of the proposals was started on the 14th February 2005 and concluded on the 11th May 2005 but account was taken of all representations received up to and including 18 May 2005. Out of the total of 125 consultees, 26 responded, a percentage return of 21%. However, several responses were simply offering general support with no specific comments made. The majority of those who responded were supportive of the proposals and accepted the rationale behind them. Rather than raising serious objections, responses focussed on seeking assurances as to how the proposals were intended to be implemented.

The consultation invited views on whether the partial RIA accurately identified the costs and benefits arising from the proposals and whether recipients agreed that the extent of their impact makes detailed quantification impractical and unnecessary. The consultation also asked recipients for any quantitative information they could provide.

There was a limited response to the question of regulatory impact. However, respondents were content with the approach proposed in the consultation. Respondents were not able to provide quantitative information on the costs or benefits resulting from the proposals. Could you be more specific about the number of responses and whether any disagreed with the proposals?

4. Options

Each proposal has been subject to scrutiny under a number of policy options and these are set out below.

- (i) **Proposal 1 - To allow the Forestry Commission to enter into joint ventures with the private sector to provide recreational facilities in publicly owned forests.**

Background

The Forest Holidays business, which the Forestry Commission operates across Great Britain, is currently successful in producing a surplus of nearly £1m. There are 3 cabin sites (141 cabins) and 21 camping and touring sites which currently provide over 750,000 visitor nights. Two cabin sites and 16 campsites are in National Parks. The cabin sites have been modernised, following a successful Capital Modernisation Fund bid, but there is an urgent need for re-investment in the campsites that the Commission cannot fund. There are also significant opportunities for the expansion of the number of sites and Brand.

The options that have been considered are:

- (a) ***Forestry Commission continues to run the Forest Holidays business (do nothing)***

Without significant investment in the business, which cannot be generated internally in the Commission, the state of the current sites will deteriorate and the profitability of the business will decline. Sites will have to be closed with a resulting loss of revenue and customers will become increasingly dissatisfied leading to the business becoming no longer viable. This option will also restrict competition, with the private sector not being given access to entrepreneurial opportunities or being able to bring their expertise to bear to allow the business to grow.

This option has been rejected. It will not allow the Forestry Commission to deliver any of the Government's objectives both financial and non-financial, for example, promoting sustainability, rural development and economic regeneration, recreation and healthy lifestyles.

4.1 Risks

The risks with this option can be summarised as:

- decline in the Forestry Commission's capacity to deliver Government objectives
- loss of value for the business

- loss of customers and dissatisfied customers
- eventual demise of the business – need to close sites
- loss of reputation for the Commission

4.2 Compliance and Enforcement

There are no issues of compliance and enforcement with this option.

4.3 Unintended Consequences

The unintended consequences will be the risk to the Commission's reputation in running substandard accommodation and then closing sites in fragile rural areas or in areas where there is very high demand, such as the New Forest.

If, through under-investment, this led to the closure of all overnight accommodation sites on the public forest estate, there would be a major loss in the public recreation offering and the chance for the public to stay and camp on the estate. Currently there are 750,000 camper nights on the estate, providing the opportunity for a wide range of people to enjoy the freedom of staying in their forests and woods. There would also be a loss to local communities because customers made use of local facilities, shops, petrol stations and visitor attractions.

4.4 Implementation and Delivery Plan

The 'do nothing' option would have to be carefully managed to minimise the negative impacts on the Forestry Commission's financial and reputational status. This would involve careful planning of closure of sites, consulting with local stakeholders and customers as early as possible and looking at any alternative uses or management solutions that could be found for them.

(b) ***The sites are sold and the Forest Holidays business is closed***

The Forestry Commission has not got sufficient internal funds to invest in the business by improving the sites, developing additional sites and growing the Forest Holidays brand. One of the options therefore is to sell the business either as a whole as a going concern or to sell the sites individually. This would be dependent on resolving a number of legal title issues as some sites are held on leases. It would be extremely difficult to sell the 10 New Forest sites, which represent 45% of the business because they are subject to the rights of commoners. If the legal difficulties could be overcome, this would produce a one-off capital receipt of no more than £14m.

The business currently provides direct financial benefit to the Forestry Commission and provides a wide range of non-market benefits that would be lost by the direct sale of the sites. While the sites may well continue as going concerns they could become divorced from the surrounding forest because there would no longer be integration of management. All the sites are located in woodland areas, they are unfenced and the surrounding forest is managed to provide a gradual transition from areas with high recreational use to wilder countryside beyond. There is free access into the surrounding

areas for Forest Holidays customers for walking, cycling and many other countryside activities.

While new owners would be expected to continue to operate the sites, they might well change the style of the sites, create more heavily developed sites which would seek to retain customers on the sites rather than the current quiet enjoyment which characterises the sites at the present. They might wish to fence the sites for ownership and liability reasons, restricting the opportunities for customers to enjoy the full range of opportunities for healthy exercise in the surrounding forests. Local people and other visitors would also lose access to these areas.

There are of course excellent private sector managers that maintain high environmental standards. While the Commission could control some of the activity on the sites after sale to ensure standards are maintained this is a difficult legal area which, if the new owner were unco-operative, would be confrontational and difficult to manage. There would be particular difficulties in securing control as sites were sold on.

Again this option does not meet the Commission's objectives to deliver Government policy and so has therefore been discarded.

4.5 Risks

The risks with this option can be summarised as:

The Forestry Commission would have no control of how the sites were managed leading to the risk of a poor match between the values of the site owner and the public benefit ethos of the FC. For example, if sites were to be poorly managed, it would result in the sites deteriorating and reputation risks and damage to the Forestry Commission. If the Brand was sold with the sites, there could be reputational risks for the FC by virtue with being associated with the Brand and sites.

A further risk is that the new owner might choose to close sites which are currently profitable and delivering public benefits because they have set themselves much higher financial targets.

4.6 Compliance and Enforcement

Not aware of any issues.

4.7 Unintended Consequences

If this option led to the closure of overnight accommodation sites on the public forest estate there would be a major loss of opportunity for a wide range of people to enjoy the freedom of staying in forests and woods and carry out active pursuits such as walking and cycling. It could also lead to a rise of camping in unauthorised areas, creating environmental problems.

If the sites were sold individually, customers would no longer have the security of a brand with a high public benefit ethos nor the flexibility which comes from accessing a centralised booking system.

There could also be a loss of income to local communities because customers make use of local facilities, shops, petrol stations and visitor attractions.

It would be expected that there would be a public reaction to such closure or even major sell off of the sites which would have the potential to be an embarrassment to the Forestry Commission and the Government.

The loss of Forestry Commission involvement in the sites means that their management and development would no longer be directly linked to the delivery of Government policies.

4.8 Implementation and Delivery Plan

Any programme of sale would have to be conducted in accordance with normal Government rules and local stakeholders and communities would require to be consulted. A clear project plan would need to be put in place to ensure that the business was transferred (in the case of sale as going concern) as efficiently as possible to ensure best value or was closed down in an effective manner without affecting customers. Clearly in this event, customers would be seriously affected and early communication and publicity would be required.

(c) ***Enter into a Joint Venture with a partner through the PPP process in order to develop the Forest Holiday's business***

The proposal for a partnership with the private sector would meet the need for the sites to be developed and expanded. Significantly, it would allow the Forestry Commission to remain involved in the business. The brand will be protected and the sites will benefit from the surrounding forest also being managed in the public interest. There will be no loss or restriction of access to the surrounding areas and customers will be able to make full use of the facilities.

The Commission and the public purse will benefit from the investment by the private sector to give high quality sites, which are valued by customers and produce a good rate of return.

The RRO will give the Forestry Commission the power to enter into a Joint Venture (JV) and so develop this option.

4.9 Risks

The risks can be summarised as:

- partnership and Joint Venture Company (JVCo) does not develop as expected with loss of value for FC;
- damage to FC's reputation as result of partner being unsuitable or carrying out unsuitable developments.

These risks have been recognised and the rigour of the PPP and selection process will ensure a suitable partner is chosen and the legal agreement between the partner will protect the Commission's, and therefore the public's, interests.

4.10 Compliance and Enforcement

The ability for the Commission to enter into a partnership via the PPP process does not have any compliance or enforcement issues.

4.11 Unintended Consequences

Apart from the identified risks above, there are not thought to be any. A beneficial unintended consequence might be that the JV partner transfers some of the public benefit ethos to its wider business interests.

4.12 Implementation and Delivery Plan

The Commission will follow the PPP procedures as laid down by the Treasury and will ensure that the project is managed professionally in accordance with normal project management guidelines. External assistance in the form of Partnerships UK and consultants will be used as appropriate.

- (ii) **Proposal 2 - To provide the Forestry Commission with wider powers to participate in projects with others for the purpose of delivering its objectives**

Background

The Forestry Commission increasingly is working in partnership with other Government Departments, local authorities, private companies and NGOs to deliver Government objectives. However, its existing statutory powers prevent it from being a full partner in a number of initiatives. This has become particularly acute in restricting the Forestry Commission's capacity to be fully involved in projects aimed at greening urban areas. The options outlined below concentrate on the impact of Proposal 2 on this particular area of work.

The options that have been considered are:

(a) ***Do nothing***

The Forestry Commission has many opportunities to contribute to Government Policy through creating and managing woodlands on under-utilised or brownfield sites particularly in deprived urban and post-industrial areas. The "do nothing" option is limiting the benefits which could be realised because the Commission does not have the financial resources nor the breadth of remit to carry out this work on its own. However, its staff have considerable expertise both on the technical aspects of using trees to improve the environment of these areas and in working with the local communities to gain their commitment and engagement.

Normally these projects are run and managed by partnerships, joint ventures, Companies or Trusts. At present, the Commission can only act as a 'contractor' to other bodies, e.g.

English Partnerships, RDAs and Land Restoration Trust, in carrying out the work of planting and managing these sites. The “do nothing” option means these bodies and others are not able to benefit from the full involvement of the Forestry Commission and its associated expertise.

This option, therefore, seriously underplays the benefits that the Commission can contribute to this work. Hence, this option has been discarded.

4.13 Risks

The risk with this option is that these projects are sub-optimal because the Forestry Commission is unable to fully contribute its expertise and knowledge.

4.14 Compliance and Enforcement

Not expected to be any issues.

4.15 Unintended Consequences

Not aware of any.

4.16 Implementation and Delivery Plan

As a rejected option no plans have been prepared.

(b) ***Obtain greater powers to become the promoter of these schemes***

This option would fundamentally change the Commission’s role by requiring it to lead on issues which are concerned with broader development aims well beyond the accepted definition of forestry. This is the role of others e.g. English Partnerships and RDAs, who have statutory powers to do this and a considerable track record of relevant experience,

This option, which would require a change in the Forestry Commission’s statutory position, would require primary legislation which will not be possible within the foreseeable future.

This option has, therefore, been discarded.

4.17 Risks

The risks can be summarised as:

- The fundamental change to the Commission’s objectives and role.
- The potential for overlap with other bodies and dilution of benefits.
- Risk of obtaining primary legislation to amend the Forestry Act to allow the FC to take on this role;

4.18 Compliance and Enforcement

This option would not have any compliance and enforcement issues.

4.19 Unintended Consequences

If the Commission took on this lead role then it would be acting in competition with the current statutory regeneration agencies. It could result in a public perception that there was a lack of focus by the Government.

4.20 Implementation and Delivery Plan

The first requirement for this change would be for Ministers to re-allocate responsibilities in this area. If this were to come about, then a full implementation and delivery plan would be set out.

(c) ***The Forestry Commission obtains wider powers to participate in projects with others.***

This will enable the Forestry Commission to bring its strengths to the process and engage with partners who have the financial resources, complementary skills and statutory powers to achieve a range of Government objectives in these areas. This would result in a very important contribution to any partnership, Company or Trust which is formed to achieve these objectives. This is the preferred option.

4.21 Risks

The Forestry Commission enters into projects which are unsustainable or do not achieve their objectives and this damages the Forestry Commission's reputation.

4.22 Compliance and Enforcement

There are no issues.

4.23 Unintended Consequences

If the Commission was a minority partner or shareholder in projects which are very complicated or have a high level of risk, the Commission could find itself in a difficult situation being asked to work in areas in which it has no expertise or knowledge. Although the Commission would always be able to withdraw from a project in such circumstances, it could not erase its former association with it. This could result in public relations issues or political embarrassment.

4.24 Implementation and Delivery Plan

Any proposal to enter into a partnership would be managed as a project with the appropriate safeguards built into the project plan. Guidance already exists for staff on partnership working and this would be modified to cover the new legal position.

- (iii) **Proposal 3 - To enable the Forestry Commission to exploit commercially the results of forest research.**

Background

Forestry Commissioners have a specific power to conduct forest research and commission research to support the development of forestry policy. This is funded, by agreement with the devolved administrations, from the GB element of the Westminster vote. The results of the research are made freely available to land managers, the forestry sector, scientific and educational institutions.

The key research themes, which have arisen from consultation with a wide range of stakeholders, are:

- Social and economic development
- Products and resources
- Environment, ecosystems and biodiversity
- Sustainable management and protection
- Biometrics, monitoring and data management

The Forestry Commission carries out 90% of its research through its public sector research establishment, Forest Research.

The objectives of the Agency are:

- To inform and support forestry's contribution to the development and delivery of the policies of the UK government and the devolved administrations.
- To provide research, development and monitoring services relevant to UK forestry interests;
- To transfer knowledge actively and appropriately.

There are occasions when this research gives rise to clear commercial opportunities to develop products, solutions or methodologies. At the present time, the Forestry Commission, and therefore Forest Research, is not able to take advantage of any such opportunities because it is not able to licence development or enter into partnerships or joint ventures to facilitate development. It therefore cannot retain some of the benefits for the public purse and Forest Research. Nor can Forest Research meet the Government's objective to enable public sector research establishments to develop their capacity to exploit their science and technology potential.

The following list illustrates a few examples where potential commercial opportunities could emerge:

- modelling systems to underpin decision making (eg carbon trading and carbon life cycle);
- brownfield remediation technologies and land reclamation;
- machinery and tool development;
- biotechnology inventions and discoveries;
- decision support software developed to aid managers;
- improved genotypes (eg higher yields of wood or chemical products);

- development of processes, biological and otherwise, for pest and disease management.

The opportunity to enter into partnerships to develop these products would result in increased benefits for Forest Research and increased funding for wider areas of research. It would also give increased opportunities for the private sector to join in such projects by more active promotion of the opportunities to develop products rather than relying on the private sector “picking up” opportunities. This would result in increased funding for forestry research and to support the development of the whole sector.

There are two options available, either do nothing or amend the Forestry Commission’s powers to allow it to capitalise on the results of the research.

(a) ***Do Nothing***

This option would be the status quo, in which the Commission would continue to make all its research knowledge available to the public, but it would not seek to exploit any of the commercial opportunities. This would result in no commercial gain to the Commission and, thereby, the opportunity to expand resources for research would be lost.

4.25 Risks

- Other parties would develop commercial opportunities without the Commission’s benefiting from any of the proceeds.
- The Commission would lose the opportunity to enter into dynamic partnerships with third parties to develop opportunities.
- Research users would undervalue the results of research.

4.26 Compliance and Enforcement

None

4.27 Unintended Consequences

None

4.28 Implementation and Delivery Plans

Not applicable for a ‘do nothing’ option.

(b) ***Develop commercial opportunities by selling results of research on open market as the sole beneficiary or in partnership with other interested parties.***

Where developments from research are seen to have commercial potential then the Commission would seek to find a private sector partner. This would be carried out by an open and transparent offer to the private sector of the appropriate opportunities and would be under normal public procurement rules. Such an arrangement would ensure that the intellectual property rights were retained by the Commission and it benefited from

the development of the product. However, it would allow access to private sector capital and expertise in bringing research to the market.

4.29 Risks

- That the private sector was not interested in the opportunities;
- That the partnerships failed because there was no commercial return from the opportunity.

4.30 Compliance and Enforcement

No issues foreseen.

4.31 Unintended Consequences

The Commission's research programme was unduly influenced by the commercial opportunities to the detriment of other research which did not have commercial prospects.

4.32 Implementation and Delivery Plans

In the event of this option being pursued, a full implementation and delivery plan would be prepared, drawing on experience in other research establishments and in accordance with normal procurement rules.

- iv. **Proposal 4 - To enable the Forestry Commission to use powers to require restocking more effectively by removing the requirement to convict a person before serving a restocking notice and enforce restocking requirements against lessees and licensees as well as freeholders.**

Background

The main aim of this regulatory change is to reduce the burden of bureaucracy associated with ensuring woodlands that have been felled without a licence are replanted, thereby ensuring the Forestry Commission meets one of its key objectives - the sustainable management of woodlands and trees. There are particular concerns about the loss of ancient semi-natural woodland, which is irreplaceable. Maintaining woodland area is one of the "UK Indicators of Sustainable Forestry"³, linked to international criteria and indicators.

Felling of trees without the requisite permissions is an offence under the Forestry Act. Currently, the only means of ensuring that a landowner replants a woodland that has been felled illegally (ie without a licence and not exempt from one) is to secure a prosecution and then serve a restocking notice to secure replanting. This is a bureaucratic, time consuming and resource intensive process perhaps best demonstrated by the following statistics (2003/04 in England and Wales):

- Total of 215 reported alleged illegal fellings

³ See: [http://www.forestry.gov.uk/website/pdf.nsf/pdf/fullsfi.pdf/\\$FILE/fullsfi.pdf](http://www.forestry.gov.uk/website/pdf.nsf/pdf/fullsfi.pdf/$FILE/fullsfi.pdf)

- 76 were fully investigated by FC staff and reports submitted to FC Country Directors.
- 15 went to court (via Defra Legal), 14 successful prosecutions. Restocking Notices were issued in all successful cases.
- Of these prosecutions, only 7 were seen as malicious while the rest were purely accidental but the FC needed to prosecute to ensure restocking.
- The FC would have liked to pursue a larger proportion of those investigated (to gain restocking) but did not on the advice of Defra Legal. In 23 cases Warning or Advisory Letters were issued by the FC. Because we were not able to serve a Restocking Notice to enforce replanting of the woodland, we had to accept that that it would be lost.
- A total of approximately 675 man-days of FC time were used to undertake the 76 full investigations. An additional 245 man-days of FC time was employed in follow up work in connection with Defra Legal investigations.

In essence, this proposal is in 2 parts:

- (i) removing the requirement to convict a person before serving him with a restocking notice
- (ii) removing the anomaly which prevents the FC enforcing restocking requirements against lessees and licensees as well as freeholders

Both these proposed changes would improve the effectiveness of enforcement of restocking and reduce bureaucracy and costs. The options for delivery for both are the same, so they are considered together in the analysis of options below.

(a) ***Do nothing***

The current situation has been shown through experience to create time-consuming and expensive bureaucracy with costs to the public, the Forestry Commission and, in many cases, other public bodies. Moreover, it is frustrating the intent of the Forestry Act and forestry policy to maintain woodland area and secure the restocking of areas of felled trees for the benefit of the public. Therefore, this option has been dropped.

4.33 Risks

- Policy objectives not achieved
- Time consuming and expensive
- Loss of woodland
- Undermining the credibility of felling controls

4.34 Compliance and Enforcement

There would be no new compliance and enforcement issues.

4.35 Unintended Consequences

Not aware of any.

4.36 Implementation and Delivery Plan

The current practice would continue.

(b) *Seek primary legislation (i) to remove the requirement to secure a prior conviction for illegal felling and to permit service of a restocking notice on the current owner of the land and (ii) to allow restocking requirements to be enforced against lessees and licencees*

(i) The advantage of this option is that, in addition to the benefits to be secured from option (c), it will prevent owners of land who have illegally felled trees transferring the land to a third party before the FC has the chance to serve a restocking notice. We rejected this option because this type of change would not be possible under the RRA and would require primary legislation.

(ii) By making a change which allows the FC to serve the restocking notice on a lessee or licensee if they, rather than the owner, are responsible for the breach of this requirement, it will avoid an imposition on the owner and additional bureaucracy.

Primary legislation is obviously time-consuming and expensive and as this proposed change is very specific in its scope and potential interest, it is unlikely to make the legislative calendar.

4.37 Risks

- Difficulty of obtaining primary legislation.
- Increase risk of “innocent purchasers” acquiring unforeseen restocking obligations.

4.38 Compliance and Enforcement

This would be a change to current rules and would prevent a current loophole in the felling regulations being exploited.

4.39 Implementation and Delivery Plan

Apart from the changes to the Forestry Act, the changes can be implemented administratively. It would be necessary to ensure the proposals were publicised to ensure owners of woodlands were aware of the changes.

(c) *Amending the 1967 Forestry Act via an RRO (i) to remove the requirement to secure a prior conviction re illegal felling and (ii) to allow restocking requirements to be enforced against lessees and licensees*

(i) In many situations, it is ignorance of the felling licence requirements that leads to an illegal felling. By breaking the link between the restocking notice and successful

prosecution, the Forestry Commission will be in a better position to deliver the policy aim of reducing the loss of woodland. It would also be better placed to exercise its discretion over whether the circumstances of the illegal felling merit pursuing a prosecution.

In many of these cases, the FC's priority is to get the woodland or trees replanted and not to carry through a prosecution. This change would clearly reduce the bureaucratic burden on FC, Defra (Legal) staff and the woodland owner and manager, and allow the FC to operate in a manner in line with the Modernising Government agenda.

(ii) This part of option (c) is as for option (b).

4.40 Risks

By serving the restocking notice before conviction, or where no prosecution is intended, it might lead to more appeals against the restocking notice and therefore an increased administrative burden.

4.41 Compliance and Enforcement

This change would make enforcement of existing requirements simpler and lead to a simpler procedure to achieve the policy objective – trees being replanted where illegally felled. The lifting of the need to prosecute would result in a simpler procedure which would involve less resources and save legal, court and administrative time.

4.42 Unintended Consequences

None envisaged.

4.43 Implementation and Delivery Plans

These changes would be administrative amendments to current procedures and it is not expected that there would be major difficulty with this. The procedures for dealing with enforcement of illegal fellings would have to be changed but as the overall result would be greater transparency and simplicity, this would not be a problem.

5. Costs and Benefits

The costs and benefits for each proposal have been set out and quantified below together with some analysis of the sectors and groups affected.

(i) **Proposal 1 - To allow the Forestry Commission to enter into joint ventures with the private sector to provide recreational facilities in publicly owned forests.**

The Forestry Commission currently has 3 cabin sites and 21 campsites which are run as a stand-alone business under the Forest Holidays banner. The cabin sites have recently been modernised with funds from CMF while the campsites are in a poor condition and desperately require refurbishment to raise them to modern standards. The business is currently successful but not self sustainable. It does offer a unique product and there are clear opportunities for developing new sites on the Forestry Commission's estate and expanding the Brand.

This cannot be funded internally by the Forestry Commission or by access to other public funds and so, on the advice of HM Treasury, a Public Private Partnership is being considered with the private sector. The current value of the assets of the business (book value) is approx £14m and it has a turnover of £5.1m with a surplus of £1m including all costs and overheads.

5.1 Sectors and Groups affected

Forest Holidays competes in the domestic holiday market and while its product offering can be considered unique, any changes or developments will have some effect on competitors and other holiday businesses. The holiday market is discussed further in Chapter 7. It is generally a large market with many different businesses catering for different segments of the market. The Forest Holidays segment is characterised by quiet unspoilt holidays in a natural environment with good facilities but no leisure development.

The development of Forest Holidays will give other businesses the opportunity to enter into partnership with Forest Holidays and thereby develop the business.

We have a loyal customer base who enjoy the special nature of our sites. However, they do, understandably, complain about the state of some of the facilities, particularly on the campsites. They also would like us to provide more cabin sites. The development of the business will offer greater choice, better facilities and better service to customers and the general public.

Finally, the Forest Holidays business provides local employment and economic gain to the local communities around the sites which are generally in rural areas. The development of the business will offer the opportunity to boost local employment, in the short term through the use of building contractors and in the longer term through employment on the sites. As there are no leisure facilities on the sites, customers generally go off the sites for meals, food and entertainment ensuring that the local economy benefits.

The sites are adapted for people with disabilities and they are welcomed to the sites. The sites encourage people from a wide range of social groupings to make use of them; for example young families during the school holiday season and, at other times of the year, keen campers and caravanners from the older generation.

The development of the business will ensure that the Commission fulfils its objectives and delivers the Government's wider social agenda of access to the countryside and healthy recreation and exercise.

The costs and benefits of each option for this proposal are as follows: -

(1) Forestry Commission continues to run the Forest Holidays business (do nothing)

Under this option, the business would continue to be run as it is at the moment without any capital injection, or any expansion. The state of repair of the campsites will mean

that sites will have to close or be downgraded in standard (ie be low quality sites without facilities).

While the cabin sites are now in a good condition, ongoing repair and refurbishment will be required. If the cash to do this cannot be internally generated by the business, the sites will deteriorate and again eventually leading to closure.

5.2 Economic Impacts

This option will result in a gradual decline in the business and reduction in the surplus as customer numbers decrease (due to poor state of facilities) and operating and maintenance costs increase. Sites may well have to be closed, or managed with minimum input, which will considerably reduce their appeal and thereby cause further reductions in income and customer satisfaction.

Under this option, the FC could keep all sites open over the next 10 years, accepting the general decline in standards and reduction in quality. Alternatively, loss-making sites could be closed. If the closed sites could not be integrated into the surrounding forest areas, they could be sold to realise a capital sum. The impact of these possible decisions on the net income is shown in the table below.

Forest Holidays Nett Income (Business Plan projections £m)

	2006	2010	2015
All sites remain open with poor or lower facilities	1.8	1.5	0.8
Loss making sites closed remainder remain open with poor or fewer facilities	1.8	1.5	1.1
Capital sum realised for sale of loss making sites	0	1.0	3.0

The sites generate economic activity in the local area. A cabin site can generate up to £750k spend in the wider local economy, while campsites can generate up to £500k depending on the size of the site. Unless it was possible to continue to run the sites as a going concern, the decline, closure or sale of the some or all of the sites would jeopardise this

This would have an impact upon the Commission's financial position and also lead to reputational risk because the Commission was operating poor quality accommodation, and selling off sites in rural areas, which might or might not continue to be operated by the private sector.

5.3 Social Impacts

These could be significant locally where sites are closed or sold, through loss of economic gain and local employment.

The sites support local employment, on average each of the cabin sites provides up to 8 FTE jobs during the year and each campsite up to 6 FTE jobs during the season. If the sites were closed, these local jobs would be lost although if the sites were sold as a going concern they could be retained.

The sites cater for the disabled (a selection of cabins are adapted) and campsites are used by school groups and groups from minority communities. Closure or sale would result in a loss of facilities for these groups.

5.4 Environmental Impacts

Closure of campsites could lead to an increase in camping in unauthorised areas which would have an adverse environmental impact.

(2) The sites are sold and Forest Holidays Business is closed.

This option has been partially covered in the above section. The sites are valued in the Forestry Commission accounts at £14m. A sale of the business should raise a sum equivalent to this figure although there are title issues relating to some of the sites being held on lease and the rights of the Verderers and Commoners in the New Forest. While the Commission would obtain this one-off capital receipt (timing unknown because it will depend on whether sites are sold piecemeal or in one lot) there would be the loss of the annual income to the FC from the business equating to £1m per annum.

The sale of the business would result in the management of the sites being divorced from the surrounding forest, one of their major unique selling points, and also a loss of the capacity for the Forestry Commission to deliver benefits such as health, exercise, education and learning.

5.5 The Social Impacts

This has been covered above. The sites provide significant benefits and gains for the local communities and if the sites were sold these would be at risk. Any new owner may choose to operate the sites differently and reduce the social benefits either to society as a whole or the local community. These cannot easily be quantified.

5.6 Environmental Impacts

This is covered in Option 1 above. A private owner of the sites might not necessarily have as high environmental standards and there would be risk of environmental loss, although again difficult to quantify.

(3) Enter into a Joint Venture with a partner through the PPP process in order to develop the Forest Holidays business.

This is the preferred option. The economic impacts of this option are significant. It is projected that a private sector partner would invest a minimum of £25m in the existing sites and new sites within the first 5 years of any partnership or joint venture. The turnover of the business would be expected to increase by at least 4 times over a 10-year period, as set out in the business plan.

The Commission's returns for the business will increase over the 10 year period as a partner in this venture and it is projected that the Nett Present Value of the Commission's share of the business could increase from the current value of £12m to a figure up to £20m. The cost of entering into such a joint venture is estimated to be of the order of £0.5m to £1m. These figures have been calculated at a 3.5% rate of return in accordance with the Green Book.

A spin off will be an increasing economic gain for the local communities by increasing the number of visitors who stay the night and the length of stays thereby potentially increasing visitor spend in the local economy. Although any proposal of this nature may incur some displacement effects, although not perhaps at local level, feedback from customers has shown that Forest Holidays offers a unique product and fills a specific market segment in the tourist sector.

5.7 Social Benefits

The development of the sites will result in an increase in the number and security of jobs in the local communities and an increased spend in local communities. There will be an increase in opportunities for people of all social classes to spend time in the forests, learning about them, relaxing or taking part in healthy exercise.

5.8 Environmental Impact

The sites are managed to high environmental standards and that would continue, with the Commission as a partner in the Joint Venture insisting on this. Most of the sites are in National Parks and the others are in areas of high environmental value. They are managed in accordance with best practice and with the support of the environmental NGOs and other authorities.

Development of any new sites would be in accordance with the environmental protection legislation, including planning and environmental impact assessment, and would be managed to the same high standards as the existing sites. The Forestry Commission would require any new developments to meet high standards of environmental construction.

Summary of Costs and Benefits for Proposal 1

Option	Costs	Benefits
Do nothing	Gradual decline of business. Reduction in revenue from £1.8m to £0.8m	Business continues, but on a limited basis
Sites sold	Loss of annual income - £1m pa	Sale of sites – £14m
Joint Venture with partner	Cost of entering into a joint venture - £0.5m-£1m	<ul style="list-style-type: none"> - Increased value of business - NPV increases from £12m to £20m - Increased annual income - More focussed management

Summary of Economic, Social and Environmental Impacts

Option	Economic Impact	Social Impact	Environmental Impact
Do nothing	Medium - negative	Nil	Minimal
Sites sold	Medium - negative	Low – negative	Low - negative
Joint Venture	High - positive	Medium - positive	Low - positive

(ii) **Proposal 2 - To provide the Forestry Commission with wider powers to participate in projects with others for the purpose of delivering its objectives**

(a) ***Do nothing***

The Commission has considerable expertise in the planting of woodlands on brownfield sites and their aftercare and management, and has been a partner of choice. As the Commission has only been able to be involved in these schemes as a contractor or managing agent, the full benefits of partnership/Joint Venture with the Commission have not been realised. The Commission has not been able to contribute its full range of skills including design planning, acquisition, liability testing etc nor has it been able to give its long-term commitment in managing such sites.

5.9 Economic Impacts

The Commission is acting as contractor and delivering new woodlands on brownfield land owned by local authorities, Development Agencies etc. The benefits to the local communities are evident in that they are better places to live and there is an improved environment which will create a climate of greater economic confidence.

This has been shown to lead to investment, jobs, increases in property prices and greater economic activity in the area.

5.10 Environmental Impacts

Managed woodland and related open habitats are a rare resource in urban areas. There are significant environmental gains from ameliorating past damage on brownfield sites and creating new, more diverse habitats, on former agricultural land.

5.11 Social Impacts

The creation of woodland provides improved living environments for people and communities. The local communities will be involved in the planning, development and management of the area which will help to create community involvement and cohesion. For example, these areas are used by local people for walking, jogging and cycling and by schools and other groups as an educational resource.

The areas will be laid out for disabled access and work will be done by community rangers to involve the deprived and minority communities to get involved in the planning and use of the area.

(b) ***Obtain greater powers to become promoter of these schemes.***

This would mean that the Forestry Commission would be taking on powers currently held by the other regeneration agencies, English Partnerships and RDAs. This would materially change the remit of the Commission and would require a policy change. Since this would require primary legislation, it is outwith the competence of the Regulatory Reform Act and is not considered further here.

(c) ***Enter into partnerships to achieve this aim***

Enabling the Commission to enter into partnerships and be able to participate in Companies and Trusts will put the FC on an equal footing with other public bodies. It will allow the maximum benefit to be gained from the Commission's expertise. It brings long term management and vision, expertise in planning and developing forests, and experience of effective consultation and engagement with communities ensuring these developments are welcomed and meet their needs. The Commission will be able to be a full member of these Companies and Trusts which are formed with other partners to take forward these initiatives and participate in all relevant aspects of the development of this brownfield land.

As set out under Option (a) the full range of economic social and environmental benefits in this area will be achieved and the Commission will fully contribute its expertise. As a

full partner, the Commission's long term commitment to delivering these objectives will be secured.

This option will have no direct costs to the Commission because it will only enter into schemes that are fully funded by partners through the leading Government Agencies. There may be some additional management costs associated with the FC taking a fuller part in the activities of these Companies and Trusts.

A summary of the costs and benefits of each of these options is set out in the following table:

Options	Costs	Benefits
Do nothing	Nil – status quo	Nil – status quo
Promote schemes	Significant FC resources would be required to act as promoter of schemes. There would be concern over FC changing its remit significantly and competing with established regeneration agencies	This would secure long term engagement by the FC in these schemes
Enter into Partnerships	No major additional cost as schemes would be fully funded by partners. Some management costs participating in partnership boards etc.	FC able would be a full member of the body, providing long term management with its full range of skills

Table summarising the main economic social and environmental impact of each option

Option	Economic Impact	Social Impact	Environmental Impact
Do nothing	Nil Positive status quo but economic impact on surrounding areas	Medium - positive	Medium - positive
Promote schemes	Medium – positive	High - positive	High - positive
Enter into partnerships	Medium - positive	High - positive	High – positive

(iii) **Proposal 3 - Enable the Forestry Commission to exploit commercially the results of forest research**

The options that have been explored are:

(a) ***Do nothing***

The Commission’s agency, Forest Research, would continue to make public its research results in accordance with normal scientific practice but it would not be able to commercially develop the results. This would result in the loss of opportunities for the public sector to benefit from commercial development of the research and reduce the opportunity to increase forest research by gaining access to additional funding.

While this option would not affect the programme of research, it would represent a number of lost opportunities which could have commercial value through exploitation or partnership with the private sector.

The economic impact on the public sector would be high, in relation to the budget for forest research, as there is no scope to benefit from this additional source of funds.

It would continue to be possible for the private sector to be given the right to develop the work of Forest Research commercially but to date few opportunities have arisen which would be sufficiently attractive as a stand alone venture.

The social and environmental impacts are low. If the research is commercially viable and the private sector exploit it, any advantage or benefits for society will be realised. However, by constraining exploitation by the FC of commercial viable research, this

option removes the potential for income from this source to cross subsidise social and environmental research.

(b) ***Develop commercial opportunities by selling results of research on open market as the sole beneficiary or in partnership with other interested parties***

The Commission carries out a wide range of research into forestry and related issues and the results are made available to the public. However, there are many opportunities to realise the full value of that research by selling the opportunities or working in partnership with the private sector to ensure that there is a return to the public purse for the original research. This would ensure that it is not left solely to market forces to pursue. Moreover, where there are such opportunities, private sector partnership and support may assist in ensuring the public benefits of research are realised.

The private sector will be encouraged to work in partnership to develop these opportunities and the Commission will benefit financially from these arrangements allowing funds to be put back into Forest Research to carry out further research.

The economic benefits are that this will generate a source of income for Forest Research. By working in partnership with the private sector, who will bring commercial acumen, the products of publicly funded research will be marketed to the forest sector and other related activities, thereby improving their efficiency and effectiveness.

The environmental and social benefits would arise by increasing the rate of uptake of the results of research. Income generated from commercial activities can be used to support other areas of research, particularly in the environmental and social fields, which have high public benefit but limited commercial potential.

Table summarising the costs and benefits of the options set out above

Options	Costs	Benefits
Do nothing	Nil	Nil
Sell Research	Low – set up system to promote the opportunities and monitor results	High – financial return and return to society in the exploitation of research findings

Table summarising the economic, social and environmental impacts of the above options

Table 2

	Economic Impact		Environmental Impact
Do nothing	Nil	Low	Low
Sell Research through partnership	High – value captured for the public purse and industry	Medium	Medium

(iv) **Proposal 4** - To enable the Forestry Commission to use powers to require restocking more effectively by removing the requirement to convict a person before serving him with a restocking notice and enforce restocking conditions against lessees and licensees as well as freeholders.

In terms of the change to the Forestry Act required, this proposal is in 2 parts:

- a) removing the requirement to convict a person before serving him with a restocking notice
- b) removing the anomaly which prevents the FC enforcing restocking requirements against lessees and licensees as well as freeholders

However these are considered together here. Both will have the impact of improving the FC's capacity to prevent woodland loss and it is not sensible to separate the economic, environmental and social impacts of each part.

The options that have been considered are:

(a) ***Do nothing***

The current system and procedures for dealing with illegal fellings are both time consuming and resource intensive because of the requirement to carry out a full investigation and prosecution before a restocking notice can be served on the landowner. In addition, restocking requirements can only be enforced against the landowner even if a lessee or licensee has committed the breach.

The economic cost of this option can be directly related to the staff time spent dealing with these cases:

675 man-days of FC time dealing with 76 cases in 03/04

245 man days of FC additional time in connection with legal investigations

300 man days of DEFRA legal time in pursuing the prosecution

This can be costed at £300,000 (1220 man-days at £250/day)

The social and environmental impacts with this option will be loss of woodland which could have a particular environmental impact and in certain cases a social cost.

- (b) ***(i) Remove the requirement to serve a prior conviction for illegal felling and permit service of restocking notices on the current owner of the land and (ii) allow restocking requirements to be enforced against lessees and licensees.***

This option will require primary legislation because it changes the powers of the Forestry Commissioners and therefore is outside the scope of the Regulatory Reform Act. For the costs and benefits of this proposal, see option(c). In the event of trees being felled illegally, without a felling licence, the Commission would be able to serve a notice on the current owner of the land. This would rectify the current situation whereby a restocking notice can no longer be served on a person who has felled without a licence once he has sold his land.

This option has not been pursued because of the difficulty of obtaining parliamentary time to enact this change and because of the limited additional benefits it affords as compared with option (c), namely, the marginal advantage of not having to secure restocking notices before any sale of the land took place.

The financial impact of this option would be similar to that in respect of option (c). Additional staff time might be expected to be saved by avoiding the need to monitor prospective sales of land and to act quickly in serving a restocking notice before this could take place.

Again, the social and environmental impact would be the loss of woodland which would be obviated by utilising this option.

- (c) ***Amend the 1967 Act through a Regulatory Reform Order to (i) remove the requirement to secure a prior conviction re illegal felling and (ii) allowing restocking requirements to be enforced against lessees and licensees.***

This option would remove the link between the restocking notice and the prosecution, enabling the restocking to be enforced without the expensive requirement for a prosecution. This would also have the benefit of reducing the time taken in investigation and prosecution, ensuring prompt restocking and a reduction in administrative input. It is essentially similar to option (b) but would not remove the risk that a landowner who committed the offence of illegal felling might sell his land before he could be served with a restocking notice.

5.12 Economic Impacts

Resource savings can be made through less prosecutions, and therefore less time spent in taking proceedings by the FC, DEFRA, the judicial system (lawyers and court time) and the land owners, many of whom have felled illegally by mistake and are willing to restock as directed. The exact value of this varies from case-to-case and is therefore impossible to predict. It can be estimated as about half (125 man-days) of FC time, and 75% of

DEFRA lawyers time, potentially providing a saving of £87,000. It would still be a requirement to investigate all illegal fellings so those costs would remain.

In addition there is also a cost to the owner being taken to court even when the owner accepts a mistake has been made and is willing to replant. We are forced to take the precaution of seeking a prosecution and Restocking Notice to ensure woodlands felled illegally are replanted. This approach has proved necessary as on many occasions we have accepted the owner's word and then been left powerless to ensure restocking.

5.13 Environmental Impacts

These are difficult to quantify but this change would allow the FC to ensure woodlands that have been felled without a licence are replanted, and this is done promptly, thereby ensuring the Forestry Commission meets one of its key objectives - the sustainable management of woodlands and trees.

5.14 Social Impacts

The Social benefits are associated with maintaining woodlands and tree cover for the benefit of the public and improving relationships with woodland owners by making a bureaucratic process more easily understood.

- In addition to money saved, the RRO change would allow the FC to serve Restocking Notices on a far larger proportion of the cases it investigates, thereby better fulfilling its statutory obligations.
- The FC could take a lighter touch with its investigations where the FC is not planning to pursue prosecution, as an owner is likely to be more willing to comply with the investigation if the likely sanction for breach is limited to a requirement to restock .
- This amendment will also enable the FC to further adopt the principles of the Better Regulations guidance in terms of less bureaucracy but would still safeguard the owner served with a Restocking Notice (without prosecution) through an open and fair appeals procedure which is already in existence.

In addition, the proposed amendments could close a loophole in the legislation as demonstrated by the following example:

Partners in business who owned a wood that was felled illegally (for housing development) were taken to court by the FC. On the day after they were convicted of the illegal felling, they transferred their interest in the woodland to their respective wife and partner. This meant that when the FC served the subsequent restocking notice on the convicted persons (after the court case), their lawyers stated that the notice was invalid and fundamentally flawed, as their clients no longer had a material interest in the land. There was no conviction against the new landowners so a notice could not be served.

The proposed change would enable the FC to serve the restocking notice in advance of any legal proceedings, which could then be enforced against the new owners. This is because under the RRO amendments it would be much easier and quicker to serve a

Restocking Notice.

6. Small Firms Impact Test

On the advice of the Small Business Service, stage one of the Small Firms Impact Test was carried out by contacting SME trade associations and other representative organisations in the small business sectors most likely to be affected by the proposals. These included the Federation of Small Businesses, Forum of Private Business, British Retail Consortium, British Holiday and Home Parks Association and the Association of Leading Visitor Attractions. However, we have been unable to identify any disproportionate impact on small firms as a result of these proposals. We have consulted the Small Business Service (SBS) on a number of occasions during this initial stage, who have agreed that there is no requirement to carry out further Small Firms Impact Test analysis.

The consultation process did not identify any further unidentified impacts or unintended consequences of the proposals on small firms, and so no further stages on the Impact Test have been undertaken.

The Small Business Service was content with this approach.

7. Competition Assessment

We do not believe that any of the proposals will result in any significant restriction in competition in any particular market. We posed the question in the consultation and all the comments received agreed with this view.

However below is a further explanation and justification for this view by considering the filter test and analysis of the competition effects of the first 3 proposals in this Order. The 4th proposal, to change the restocking notice procedures, does not have any competition issues.

Proposal 1 To enable the FC to enter into Joint Ventures with the private sector to provide recreational facilities within publicly owned forests.

The market for recreational facilities particularly forest cabins and camping is fragmented with several large businesses but a very large number of small independent businesses. In the camping and caravanning market for instance, there are the two Clubs – Camping Club and Caravan Club, who have 91 sites (9,700 pitches) and 190 sites (18940 pitches) respectively.

There are estimated to be more than 4000 commercially owned caravanning and camping sites in the UK. These range from small, underdeveloped fields to the larger, highly invested holiday parks, which provide for 500-1000+ pitches each and can include swimming pools, clubs and evening entertainment. There are estimated to be around 500 sites with more than 200 pitches. Even this part of the market is fairly fragmented with the ten leading players in the market accounting for 40% of the market for larger sites.

The Forestry Commission's product, Forest Holidays, has 21 sites with some 5000 pitches and so is a relatively small player.

The investment proposed in FH camping and caravanning under the PPP would not change FH's relative position within the industry in terms of scale. Although a progressive upgrade to include a proportion of accommodation units on selected sites would bring its balance of touring to accommodation pitches more into line with a number of the leading players. To the extent that the PPP opens new camping and caravanning sites, this would be part of strategy to create greater geographical spread and balance in its portfolio which is currently dominated by locations in the New Forest.

The structure of the cabins holiday market is quite different. In this, FH is a niche player which does not compete directly with the dominant firms such as Center Parcs, who have four cabin sites with 3200 cabins, as against the Commission's 3 cabin sites with 141 cabins. There are many independent small businesses which cater for a range of markets and vary from one holiday home to small sites, generally with less than 10 units.

The proposed changes to allow the Commission to enter into a joint venture with one of these private sector companies will not affect anyone's costs nor affect the market structure. The changes will also:

- not affect the costs of set up for either existing or new businesses;
- not lead to increase in costs;
- the market is not characterised by rapid technological change;
- not restrict the ability of firm to set price, quality or location of products

As far as the cabins are concerned, there are not considered to be any competition issues because of the Commission's niche position and there are no other business offering the same product in the market.

Proposal 2 To enable the FC to have wider powers to participate in projects with others for the purpose of delivering its objectives

In this area the Commission is proposing to enter into joint ventures and form Trusts or Companies in the first instance to deliver afforestation of brownfield land and other tree planting initiatives. While there are a number of public sector or NGO organisations who are involved in this area, it is not a competitive market partly because of long term liability issues. The Commission has a particular area of expertise which is made available to prospective partners. These include the Land Restoration Trust, English Partnerships, RDAs, Groundwork, Environment Agency, and The Woodland Trust. Each brings their area of expertise to this area of work and has worked in partnership with the Commission in the community forests.

No issues were raised by any other bodies in the consultation process. In view of this, it is not felt there are any competition issues with this proposal.

Proposal 3 To give the Forestry Commission the power to commercially exploit forestry research.

The Forestry Commission's Research Agency currently makes its research findings available to the public in accordance with Government policy. These proposals will not change this. However, it is also Government policy to develop or exploit a research

outcome where there is a commercial opportunity. A change is required to give the Commission the power to do this and retain a proportion of the value. This would be achieved through the ownership of the intellectual property and entering into a partnership with a Company or Companies in the private sector to develop the product. The method of selection of partner would be through open competition and so would allow all those in the market with the necessary expertise to compete for the opportunity.

On this basis, it is not considered that there would be any competition issues, indeed it would allow competition from the opportunities on a controlled basis.

8. Enforcement, Sanctions and Monitoring

These issues are discussed in turn for each proposal.

(a) *to enter into Joint Ventures with the Private Sector to provide recreational facilities within publicly owned forests.*

8.1 Enforcement

There are not likely or expected to be any enforcement issues with this proposal. Joint Ventures with the private sector will be entered into by open competition and will be governed by the normal legal documentation associated with this type of relationship, particularly company law and the law of contract. Any necessary enforcement will be within these parameters.

8.2 Sanctions

Other than the provisions contained in the legal documentation, no other sanctions will be appropriate.

8.3 Monitoring

Any company, joint venture or other partnership arrangement will be the subject to monitoring. This will take the form of having members on the Company Board and ensuring that the standards contained in the company articles and other legal documentation is complied with. In each case, there will be a principal contact in the Commission who will be responsible.

(b) *To have wider powers to participate in projects with others for forestry purposes.*

8.4 Enforcement

As with option (a) there are not likely or expected to be any enforcement issues. The legal framework for the partnerships will provide a basis for all enforcement action.

8.5 Sanctions

As with option (a) the legal documentation for the partnership will provide sufficient protection.

8.6 Monitoring

As with option (a) a number of ways will be available to enable the projects to be monitored through the legal documentation and through specific FC staff having responsibility for the project.

(c) ***to exploit commercially the results of Forest Research***

8.7 Enforcement

There will not be any enforcement issues with this proposal.

8.8 Sanctions

There will not be any sanction issues with this option.

8.9 Monitoring

Any commercial arrangement will be monitored through the legal arrangements and by an appointed member of FC staff responsible for the project.

(d) ***to use powers to regain restocking more effectively***

8.10 Enforcement

Under Part II of the Forestry Act 1967 the Commissioners are made responsible for regulating felling by dealing with applications for felling licences, imposing restocking requirements where appropriate and taking any necessary enforcement action.

Two restrictions have been identified that relate to the ability of the Commissioners to require restocking of felled trees. The first is the current requirement to obtain a conviction for unlawful felling before a restocking notice can be served on the person responsible. It is proposed to remove this requirement. The second is the current restriction on the power to enforce restocking requirements, which prevents it from being exercised against persons other than freeholders. It is proposed to remove this anomaly to allow enforcement action to be taken against lessees or licensees.

Persons who have felled trees without a licence but have not been convicted for the offence will be affected by the proposal to remove this pre-condition to serving a restocking notice. In some cases, the ability to secure restocking without a conviction will result in no prosecution being brought.

Extending the Commissioners' power to enforce restocking requirements to persons other than freeholders will affect those persons against whom enforcement action cannot currently be taken. It will also affect, beneficially, freeholders who would otherwise have been required to restock.

Both changes will improve the FC's capacity to enforce felling controls to protect our woodlands and trees.

8.11 Sanctions

Sanctions will be in place in that where persons have not restocked areas that have been illegally felled the Commission will act under Part II of the Forestry Act and the sanctions contained in the Act will be imposed.

8.12 Monitoring

The Commission monitors through its own staff, local authorities and information from the public all illegal fellings. It also monitors total woodland area and woodland loss. There is an existing system to monitor progress of the current enforcement regime and this will continue to be used to ensure the amended requirements are monitored.

9. Implementation and Delivery Plan

There will be different implementation arrangements for each proposal. As only the fourth proposal regarding restocking directly affects the public, the delivery plans for the first three proposals will be internal to the Forestry Commission.

Proposals 1-3

On completion of the Regulatory Reform Order the Commission will consider how to take forward a number of initiatives which are awaiting the changes to the Forestry Act including pursuing the PPP for Forest Holidays and joining the Land Restoration Trust (as set out in the Explanatory Statement).

In the case of exploitation of research, a number of potential opportunities have been identified. Once the change has been made, then the appropriate steps will be taken to pursue them. We will be able to draw on our links with other academic and research institutions who have experience in this area.

Proposal 4

This proposal will involve a change in the way that enforcement action is undertaken and there will need to be amendments to current guidelines to ensure that the method of enforcement is adapted to the new rules. This will be completed as soon as the RRO is approved to allow the new enforcement regime to be put in place.

10. Post Implementation Review

It is proposed that there will be post implementation review of the introduction of the RRO 3 years after its implementation. The Forestry Commission would carry this out (with assistance from the Cabinet Office).

A number of indicators would be used to monitor success, such as:

- feedback from local business on external effects
- internal analysis of costs and benefits

- improvements achieved to the Forest Holidays business

11. Summary and Recommendation

These proposals are necessary to update the Forestry Act to allow the Forestry Commission to pursue current Government policy, to use modern mechanisms for implementing this and reduce bureaucracy in implementing its regulatory functions. The proposals do have significant benefits and the costs are acceptable in implementing the proposals. The public will gain from these changes in having the opportunity to enjoy Britain's forests provided with modern facilities and get the benefits of a lighter regulatory touch.

12. Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs.

SignedJ Knight.....

Date23 June 2005.....

Contact Point: Peter Ranken
Address: Forestry Commission
231 Corstorphine Road
Edinburgh
EH12 7AT

Tel No: 0131 314 6262
E-mail address: peter.ranken@forestry.gsi.gov.uk

Relevant Statutes

Apart from the Forestry Act 1967 and the Countryside Act 1968, the following statutes are relevant:

- Forestry Act 1979,
- Town and Country Planning Act 1990,
- Countryside and Rights of Way Act 2000.

The relevant sections of these Acts are set out below.

In addition, the following secondary legislation is relevant:

- Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001 (SI 2001/3966),
- Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228).

Relevant paragraphs are set out below.

Forestry Act 1979

Section 1 (referred to at paragraph 17, above).

1 Finance for forestry

(1) The Forestry Commissioners may, with Treasury approval [as regards England and Wales, and the approval of the Scottish Ministers as regards Scotland⁴], make grants and loans to owners and lessees of land for and in connection with the use and management of the land for forestry purposes.

[(2) Any such grant or loan shall be payable in accordance with section 41 of the Forestry Act 1967.⁵]

[(3) In the application of this section to land in Scotland which constitutes or is part of a common grazing for which a grazings committee or a grazings constable has been appointed under section 24 of the Crofters (Scotland) Act 1955, the references to owners and lessees shall be construed as references to the grazings committee or, as the case may be, the grazings constable.⁶]

⁴ Inserted by SI 1999/1747, art 3, Sch 12, Pt II, para 6(a).

⁵ Substituted by SI 2000/746, art 2, Schedule, para 8.

⁶ Inserted by the Crofter Forestry (Scotland) Act 1991, s 3(1).

Countryside and Rights of Way Act 2000

Section 16 (referred to in Annex C above).

16 Dedication of land as access land

(1) Subject to the provisions of this section, a person who, in respect of any land, holds—

- (a) the fee simple absolute in possession, or
- (b) a legal term of years absolute of which not less than 90 years remain unexpired,

may, by taking such steps as may be prescribed, dedicate the land for the purposes of this Part, whether or not it would be access land apart from this section.

(2) Where any person other than the person making the dedication holds—

- (a) any leasehold interest in any of the land to be dedicated, or
- (b) such other interest in any of that land as may be prescribed,

the dedication must be made jointly with that other person, in such manner as may be prescribed, or with his consent, given in such manner as may be prescribed.

(3) In relation to a dedication under this section by virtue of subsection (1)(b), the reference in subsection (2)(a) to a leasehold interest does not include a reference to a leasehold interest superior to that of the person making the dedication.

(4) A dedication made under this section by virtue of subsection (1)(b) shall have effect only for the remainder of the term held by the person making the dedication.

(5) Schedule 2 to the Forestry Act 1967 (power for tenant for life and others to enter into forestry dedication covenants) applies to dedications under this section as it applies to forestry dedication covenants.

(6) Regulations may—

- (a) prescribe the form of any instrument to be used for the purposes of this section,
- (b) enable a dedication under this section to include provision removing or relaxing any of the general restrictions in Schedule 2 in relation to any of the land to which the dedication relates,
- (c) enable a dedication previously made under this section to be amended by the persons by whom a dedication could be made, so as to remove or relax any of those restrictions in relation to any of the land to which the dedication relates, and

(d) require any dedication under this section, or any amendment of such a dedication by virtue of paragraph (c), to be notified to the appropriate countryside body and to the access authority.

(7) A dedication under this section is irrevocable and, subject to subsection (4), binds successive owners and occupiers of, and other persons interested in, the land to which it relates, but nothing in this section prevents any land from becoming excepted land.

(8) A dedication under this section is a local land charge.

Town and Country Planning Act 1990

Sections 206, 207, 210 (referred to at paragraph 64, above)

206 Replacement of trees

(1) If any tree in respect of which a tree preservation order is for the time being in force—

(a) is removed, uprooted or destroyed in contravention of the order, or

(b) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of section 198(6)(a),

it shall be the duty of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can.

(2) The duty imposed by subsection (1) does not apply to an owner if on application by him the local planning authority dispense with it.

(3) In respect of trees in a woodland it shall be sufficient for the purposes of this section to replace the trees removed, uprooted or destroyed by planting the same number of trees—

(a) on or near the land on which the trees removed, uprooted or destroyed stood, or

(b) on such other land as may be agreed between the local planning authority and the owner of the land,

and in such places as may be designated by the local planning authority.

(4) In relation to any tree planted pursuant to this section, the relevant tree preservation order shall apply as it applied to the original tree.

(5) The duty imposed by subsection (1) on the owner of any land shall attach to the person who is from time to time the owner of the land.

207 Enforcement of duties as to replacement of trees

(1) If it appears to the local planning authority that—

- (a) the provisions of section 206, or
- (b) any conditions of a consent given under a tree preservation order which require the replacement of trees,

are not complied with in the case of any tree or trees, that authority may serve on the owner of the land a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified.

(2) A notice under subsection (1) may only be served within four years from the date of the alleged failure to comply with those provisions or conditions.

[(3) A notice under subsection (1) shall specify a period at the end of which it is to take effect.

(4) The specified period shall be a period of not less than twenty-eight days beginning with the date of service of the notice.^{7]}

(5) The duty imposed by section 206(1) may only be enforced as provided by this section and not otherwise.

210 Penalties for non-compliance with tree preservation order

(1) If any person, in contravention of a tree preservation order—

- (a) cuts down, uproots or wilfully destroys a tree; or
- (b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,

he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- [(a) on summary conviction to a fine not exceeding £20,000;^{8]}
- (b) on conviction on indictment, to a fine.

(3) In determining the amount of any fine to be imposed on a person convicted . . .⁹ of an offence under subsection (1), the court shall in particular have regard to any financial

⁷ Substituted by the Planning and Compensation Act 1991, s 23(1).

⁸ Substituted by the Planning and Compensation Act 1991, s 23(6).

⁹ Repealed by the Planning and Compensation Act 1991, ss 23(6)(b), 84, Sch 19, Part I.

benefit which has accrued or appears likely to accrue to him in consequence of the offence.

(4) If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in subsection (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) . . .¹⁰

Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001

Regulation 24(1) (referred to at paragraph 64, above).

24 Reinstatement

(1) Where it appears to the Secretary of State that an offence has been committed under regulation 19, 20 or 21 she may serve a notice (“a reinstatement notice”) upon the person who appears to her to be responsible for committing the offence requiring that person to reinstate, to her satisfaction, the relevant land to the condition it was in before the project was commenced and specifying the period within which the reinstatement is required to be carried out.

(2) Where the condition of the relevant land before the project was commenced cannot be determined with reasonably accuracy or where it is not possible to return the relevant land to the same condition it was in before the project commenced, the reinstatement notice shall impose such requirements for the purposes of reinstatement as shall, in the opinion of the Secretary of State (after consultation with such of the consultation bodies as she thinks fit), be reasonable in the circumstances.

(3) A person served with a notice under paragraph (1) above may, within twenty-one days from the date on which the notice is served on him, appeal to the Magistrates’ Court by way of complaint for an order on any of the following grounds:—

(a) that the notice or any requirement in the notice is not within the power conferred by this regulation;

(b) that there has been some material informality, defect or error in, or in connection with, the notice; or

(c) that any of the requirements of the notice are unreasonable.

(4) An appellant shall at the same time as he makes a complaint, deposit with the justices’ clerk a notice of appeal stating his name and address and the grounds on which the appeal is made and shall serve a copy of the notice on the Secretary of State.

(5) The justices’ clerk or the court may give, vary or revoke directions for the conduct of proceedings, including—

¹⁰ Repealed by the Planning and Compensation Act 1991, ss 23(6)(c), 84, Sch 19, Part I.

- (a) the timetable for the proceedings;
- (b) the submission of evidence; and
- (c) the order of speeches.

(6) The Magistrates' Courts Act 1980 shall apply to the proceedings.

(7) Where an appeal is made in accordance with this regulation, the reinstatement notice shall be of no effect pending the final determination or abandonment of the appeal.

(8) Any party to the proceedings of a Magistrates' Court in which a decision is made in accordance with this regulation may appeal against that decision to the High Court.

(9) If any person, without reasonable excuse, fails to comply with any requirement of a reinstatement notice served under paragraph (1) above he shall be guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 5 on the standard scale; and
- (b) if the failure is continued after conviction, to a further fine not exceeding one twentieth of the maximum available for the substantive offence for every day on which the failure is so continued.

Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

Regulation 20 (referred to at paragraph 64, above).

20 Enforcement notices

(1) Where it appears to the Commissioners that a person is carrying out or has carried out work in relation to a relevant project—

- (a) without consent, where consent is required by regulation 4, or
- (b) in breach of a condition subject to which consent has been granted in relation to that relevant project,

the Commissioners may serve an enforcement notice on that person.

(2) An enforcement notice may require that the person on whom it is served shall take such one or more of the following measures as appear to the Commissioners to be suitable in the circumstances, namely—

- (a) apply to the Commissioners for consent;
- (b) discontinue work in relation to the relevant project;

(c) restore the land to its condition before any work in relation to the relevant project was carried out;

(d) carry out on the land any works or operations, specified in the enforcement notice, which in the opinion of the Commissioners are reasonably necessary to secure compliance with any condition subject to which consent was granted or to remove or alleviate any injury to the environment which has been caused by the relevant project.

(3) An enforcement notice shall specify the period during which any of the measures mentioned in paragraph (2)(a), (c) or (d) is to be taken and may specify different periods for different measures.

(4) Either—

(a) an enforcement notice served by virtue of paragraph (1)(a) above shall include or be accompanied by a written statement of the Commissioners' reasons for being of the opinion that the project is a relevant project; or

(b) the Commissioners shall serve such a written statement on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.

(5) Either—

(a) an enforcement notice shall include or be accompanied by a notice explaining how, to whom and within what period an appeal may be brought and whether the requirements of the enforcement notice will be stayed while an appeal is pending; or

(b) the Commissioners shall serve such a notice on the person on whom the enforcement notice was served as soon as practicable after serving the enforcement notice.

(6) The Commissioners may, at any time—

(a) by a further notice served on the person on whom the enforcement notice was served, vary an enforcement notice; and

(b) withdraw an enforcement notice.

(7) An enforcement notice may be served on any person—

(a) by delivering it to him personally;

(b) by leaving it for him at his last known place of abode or business; or

(c) by sending it through the post addressed to him at his last known place of abode or business;

(8) An enforcement notice may—

(a) in the case of a body corporate, be served on the secretary or clerk of that body at the address of the registered or principal office of that body;

(b) in the case of a partnership, be served on a partner or person having the control or management of the partnership business.