

Approach Paper

How NRW intend to implement the proposed Forestry powers under the amended Forestry Act 1967

NRW's role as a regulator

Our role in regulation and why it's important

Our regulatory role is established through a mix of legislation and policy which specify the types of activities we regulate and require us to undertake certain duties such as issuing permits/licences, checking compliance and monitoring. The Environment (Wales) Act 2016 requires us to work in a way that better understands and values the natural environment, is more joined-up and more pro-active.

We are responsible for more than 40 different types of regulatory regime across a wide range of activities, including the Felling Licensing regime. We help shape and deliver regulatory approaches or interventions across Wales to promote responsible behaviour and where necessary tackle illegal activity. Regulation is about the law, but it also includes much wider levels of intervention including economic and voluntary tools or the provision of advice and guidance.

We adopt a risk-based approach to the activities we regulate and this will be no different for the proposed new powers. Regulation is important as it allows activities to proceed in a sustainable way.

Regulators' Code and Regulatory Principles

To ensure appropriate behaviours, we adhere to the Regulators' Code, developed by the UK government in 2014, and still upheld in Wales. The key points from this code include:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

In addition to the Regulators' Code, we have developed [Regulatory Service standards](#) describing what customers can expect from us and also a set of Regulatory Principles. We use our Regulatory Principles to guide our regulatory approach to the sustainable management of natural resources and deliver well-being outcomes. Regulation is about doing something, a clear 'intervention' that makes a difference. In the delivery of this, we remain committed to the application of the Regulatory Principles, and to our commitments under the Regulators' Code.

The Powers

The Agriculture Bill Wales 2022 includes a Forestry Provision to:

- Amend the existing Forestry Act 1967 (as amended) to enable environmental conditions to be applied to felling licences
- allow licences to be amended, suspended, and revoked once granted.

The purpose of the new powers is to minimise the risk of granting a felling licence that would negatively impact the environment or undermine other environmental legislation. The effect of this is primarily to safeguard habitats and species and provide protection from environmental harm. In applying these conditions, we will apply its duty under the Environment (Wales) Act 2016 to pursue sustainable management of natural resources (SMNR) and apply the principles of SMNR. We will do this by ensuring that forests and woodlands can continue to provide a range of benefits including timber production.

Currently, the Forestry Act 1967

- only allows us to apply licence conditions requiring the licence holder to replant an area where felling permission has been granted and to maintain those replanted trees. It does not allow us to apply licence conditions for any other purposes such as minimizing the impact the felling would have on the environment e.g., ensure the integrity of protected sites, protected species, or other sensitive elements of the environment.
- has no provision that gives us the power to amend, suspend or revoke a felling licence whether this is due a change in management objectives, in light of new evidence or related to environmental harm through forestry operations relating to the felling licence.

These powers will be used for felling licences granted *after* this provision comes into force. The requirements will not be retrospectively applied.

How we will approach the proposed powers

We recognise the importance of getting our approach right. In addition to considering conditions and best practice from other regimes, we want to engage with customers and stakeholders during this development period to help inform and sense-check our thinking.

WG utilised a stakeholder group to develop the Cost Benefit Analysis to support the forestry provisions of the Agriculture (Wales) Bill. We will work with this group as a minimum to ensure our external guidance is developed in a collaborative way.

We are aware from the stakeholder group that concerns have been raised:

- Conditions will delay the processing of licences
- Not enough guidance
- Too much guidance
- Inconsistency of approach across teams in NRW
- Additional costs to applicants

We will endeavour to address these concerns in our development of the guidance to ensure a clear structure setting out how the new powers will apply to felling licences across Wales.

We will provide clear guidance for applicants on our website to provide an understanding of how and when the proposed powers will be used and support applicants with any documentation they may need to supply with their licence application.

We will produce internal guidance for all relevant staff to ensure the proposed new powers are utilised consistently, proportionately, and appropriately.

Both sets of guidance will relate to each other to ensure transparent and consistent approach to implementing the proposed new powers.

We will develop and deliver training around the proposed new powers for internal staff and where necessary for applicants and stakeholders too.

We will develop a communications plan to set out and share its progress with stakeholders.

We will develop a timeline to provide stakeholders with prior notice for engagement. The engagement exercise will aim to understand whether what is being developed, e.g., a set of conditions, is workable in practice.

There are a range of ways that this engagement can take place, and this will be confirmed along with the timeline.

We will apply these powers where there is a clear need to do so for environmental reasons, ensuring their use is reasonable, proportionate and justified, and in line with our statutory duties.

Based on our current knowledge we are proposing to take the following approach to using the proposed new powers:

Environmental conditions

Most felling licences would benefit from having generic or baseline conditions to provide protection to the wider environment, for example, pollution prevention. Some felling licences may also require additional conditions, for example if there are sensitive receptors close by. The forestry sector is already required to comply with environmental legislation, but this will formalise compliance within the felling licence regime and address any inconsistency of legislation that currently exists.

Many of our applicants do not have a professional forestry background and therefore the addition of conditions will make the standards that are required to protect the environment in line with law more visible. Adding such conditions should not add any extra burden where licence holders already comply with relevant legislation and adhere to the UK Forestry Standard (UKFS). The use of environmental conditions will however give assurance that operational activities that take place, once a licence is issued, are carried out in a way that compliments other environmental legislation.

Applying conditions to felling licences

We will develop an approach to implementation, initially based on 3 levels or 'tiers' of conditions, although this may change as our work develops. The conditions related to each tier will be derived depending on sensitivity and potential risk of environmental harm.

By developing a tiered model for conditions, we can ensure the protections and requirements needed are consistent and proportionate to the sensitivities of an operation and that they are clear to understand and enforceable. It will also be an efficient delivery model for us, as much of the work can take place during the setup of the system. It will also make the application of conditions more transparent to applicants and stakeholders.

When developing the tiers and applying the conditions, we will consider whether a condition is

- necessary
- relevant
- enforceable
- precise and
- reasonable in all other respects.

We will develop a bank of conditions which will form the baseline conditions for felling licences and further standard conditions which may suit common sensitivities.

It is expected that on occasion, where there are more complex sensitivities affecting a felling licence application, more bespoke conditions will need to be written.

The tiers will be developed by understanding the environmental sensitivities that occur throughout Wales. It is expected that there will be baseline conditions that will apply to all licences. This may include, for example, reporting an environmental incident to us.

These baseline conditions will protect a number of sensitivities, however where sensitivities to be assessed sit outside of their scope, standard screening distances for these sensitivities will be considered. This information will be used to develop sets of

conditions in a further tier, for use in relatively common circumstances. An example of this may be where the sensitivity is a water course and the screening will consider how close the operations are to that watercourse, as well as local topography and if there is a potential pathway. Where sensitivities are not present, they will not require conditions and only relevant conditions will be applied. We will be exploring the use of screening distances to enable us to focus on actual sensitivities and estimate that conditions at this level will apply to around 31% of felling licences.

The majority of licences would be approved with baseline conditions only or with the addition of specific sensitivity based conditions. These conditions will be established within a conditions bank as part of this guidance development work.

Where a felling licence proposal has several or more complex sensitivities, it is expected that bespoke conditions will be developed on a case-by-case basis. These bespoke conditions are expected to be required in only a low number of felling licences estimated to be around 4% of felling licences.

Our guidance will set out the extent and source of appropriate supporting information to be submitted with felling licence applications. Supporting material requested will be proportionate and necessary to the approval process.

Conditions have still to be developed in line with necessary legal wording. However, examples of the type of conditions and how the tiers may work are at Annex 1.

Powers to amend/suspend or revoke licences

These powers are applicable in the following circumstances:

- Amendment of a felling licence by mutual agreement between ourselves and the felling licence holder
- Amendment, suspension, or revocation of a felling licence after a breach of condition in the felling licence
- Amendment, suspension, or revocation of a felling licence where there is no breach of a condition, but where significant environmental harm is being caused or is likely to be caused.

The use of powers to amend felling licences where there is mutual agreement will vary as the need arises either from us or the licence holder. Suspension or ultimately revocation of a felling licence is seen as an exceptional outcome. For this reason, these powers are for use only in certain circumstances where amendment to the felling licence would not address the issue or cannot be agreed by the parties. In all cases, in line with our Regulatory Principles, we will work with felling licence holders to agree mitigation through amendment before considering suspension or revocation.

Amendment by agreement

The Agriculture Bill includes a proposed amendment to enable us and the licence holder to agree to amend the felling licence at any time.

The ability to amend a felling licence in mutual agreement with the licence holder should help address:

- changes in objectives e.g., where land has changed hands

Examples of what may be amended under this new proposal are:

- changes to felling areas,
- changes to tree numbers,
- additional or different conditions

In developing guidance, we will consider and set out the circumstances in which we may allow or refuse a request for an amendment. We will consider how amendments will be requested and administered. This will be detailed in our guidance for internal teams and for applicants.

Amendment, suspension, or revocation of tree felling licence after a breach

The Agriculture Bill includes proposed amendments to enable us to amend, suspend or revoke a felling licence where any condition of the licence:

- Has not been complied with
- Is not being complied with

A possible example of this is where harvesting operations are causing pollution to a water course where there was a condition to have and implement a water management plan to prevent pollution which has not been complied with.

If a breach has been identified, we will issue a notice to either the felling licence holder and/or the landowner. The notice will detail whether one or more of the following are applicable:

- A variation, removal of a condition of the felling licence or an imposition of a new condition
- A suspension of the felling licence, either full or in part
- If necessary, and subject to the circumstances set out in the legislation, revocation of the licence

Amendment, suspension, or revocation of tree felling licence where there has been no breach

The Agriculture Bill includes proposed amendments to enable us to unilaterally amend, suspend or revoke a felling licence where we consider that felling in accordance with the licence is causing or is likely to cause significant harm to:

- Natural beauty or
- Flora, fauna and geological or physiographical features.

An example of this may be where a protected species such as a schedule 1 bird, chooses to nest in the felling area during the felling licence period. This may require a condition specifying the timings of felling within exclusion zones.

We will amend the felling licence through agreement with the licence holder. Where this is not possible, we will issue a notice to either the felling licence holder and/or the landowner. The notice will detail whether one or more of the following are applicable:

- Amendment of the felling licence
- A suspension of the felling licence, either full or in part
- A revocation of the licence if an amendment or a suspension will not prevent the harm that is caused or likely to be caused

Serving Notices

When issuing a notice to the applicant or landowner, depending upon the specific notice and in accordance with the legislative requirements, we will:

- Set out the reason for giving the notice
- require the person responsible to take steps that are reasonable and proportionate to remedy the failure to comply with the condition or amend the felling licence to address the unexpected environmental harm
- specify the period within which those steps must be required
- If necessary, suspend the licence (in full or in part) for a time period or until such a time that any steps to remedy the failure to comply with the condition have been taken
- State the date when the variation of conditions, suspension or revocation will take effect
- Where suspending the licence in part, specify what elements of the licenced felling can continue
- Where amendment would not address the issue, cannot be agreed or no other options are available, revoke the licence.
- Provide details of how to appeal.

Amendment, suspension, or revocation – General

Amendment

It is intended that the majority of cases will be dealt with by an amendment to the licence by mutual agreement or through the service of notices as outlined above. The proposed suspension or revocation powers will therefore only be used where an amendment of conditions or the felling licence would not address the issue. Revocation of a licence would only be used as a last resort.

Suspension

The timescales involved for the suspension of a licence will be determined on a case-by-case basis. For example, the timescales may be determined by animal nesting seasons. There may be circumstances where only part of a felling licence area requires suspension, which will be set out in the notice.

Suspension will be a temporary solution, with the timescales for the suspension period dependent on the situation of the case and any remedial action required. Where a licence holder complies with the steps and/or conditions set out in a notice, we may consider lifting the suspension at an earlier date, depending on the circumstances of the case. Failure to comply with a suspension notice would not automatically lead to revocation of the felling licence.

Revocation

If a felling licence holder is unable to provide a clear plan for addressing the requirements of the amendment or suspension notice and/or there is a continuing risk of significant harm to the environment e.g. pollution, or there are continued breaches of licence conditions, service of a revocation notice may be an appropriate course of action.

Revocation may also be appropriate where our proposed powers to amend or suspend a felling licence are insufficient to deal with the environmental harm that is being caused or likely to be caused by the activity.

Our legal team will always be consulted before service of a suspension or revocation notice unless it is not possible due to the urgency of the situation.

We will set out how amendments, suspensions, and revocations will be managed in relation to a breach or where, despite no breach of conditions, significant environmental harm has occurred or is likely to occur. This will be detailed in both our internal and external guidance which will be developed in the coming months.

Milestones / deadlines

It is anticipated that work to develop the overall approach will take approximately 12 months.

By starting this work in 2022, subject to resource, we hope to have the new system up and running by the end of 2023.

We will work with stakeholders and share expected dates for engagement periods, document sign off and publication with staff and stakeholders. We expect to be able to share timelines in Autumn 2022.

Annex 1

Tier system of conditions and *examples* of condition types.

*NB. actual conditions have still to be developed and may change from these examples. They will require careful consideration in line with necessary legal wording.

Tier	Condition	Reason	Example of type of condition*
1 - Majority of licences	e.g. Pollution prevention	To minimise the risk of pollution incidents, and to ensure the timely report of such incidents, to enable the Licensing Authority to take action as appropriate.	<p>Example from marine licences:-</p> <p>Pollution prevention - The Licence Holder must ensure that pollution prevention best practice is adhered to. Any incidents must be reported to the Licensing Authority as soon as possible using the hotline number 0300 065 3000.</p>
2 - General conditions for recurring themes e.g. SAC features	e.g. Otters as a designated feature of a SAC: An HRA (Habitats Regulations Assessment), It is possible that a generic condition could be agreed for this scenario	Requirement of Habitat Regulation Assessment (HRA)	<p>Example from a current felling licence advisory note:-</p> <p>Thinning and clearfelling can damage or destroy otter holts and resting sites</p> <p><u>Harvesting</u></p> <p>Clear felling</p> <ul style="list-style-type: none"> • Limit clear fell in riparian zones to retain woodland cover. • Retain brash piles and leave undisturbed. • Avoid carrying out felling within 30 m of a holt or 100 – 200m of a breeding site.

3 - Specific conditions	E.g. multiple sensitivities on site	Impact pathways to multiple sensitivities.	Multiple conditions based on multiple sensitivities e.g. avoid critical nesting season for multiple species
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