

PROTOCOL BETWEEN FORESTRY COMMISSION SCOTLAND (FCS) AND SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA) TO FACILITATE AND DIRECT COLLABORATIVE WORKING ON FORESTRY ADVISORY AND REGULATORY MATTERS

Introduction & Purpose

Both FCS and SEPA have important regulatory and advisory responsibilities in relation to forestry as an activity in Scotland. Along with Scottish Natural Heritage and Historic Environment Scotland we have also agreed a joint statement on climate change.

SEPA has also published a regulatory strategy, One Planet Prosperity, outlining how we will deliver the new approach to regulation that has been introduced by the better environmental regulation programme. One key aspect of this strategy is engagement with other agencies, industries and stakeholders to create environmental success in ways that also creates social and economic success.

The purpose of this protocol is to identify and agree how both organisations can collaborate to help deliver SG outcomes in line with the desire for alignment of procedures and approach outlined by the RAFF Deliver Board of which both FCS and SEPA are members. It has also been informed by the analysis of current arrangements for the consideration and approval of forestry planning proposals carried out by James Mackinnon, CBE.

Accordingly, FCS and SEPA will seek to achieve the required compliance with best practice and statutory requirements on forestry and associated operations along with promotion of responsible forestry operations as an integral part of Scotland's rural economy and landscape. In so doing both organisations will promote the UK Forestry Standard (UKFS) and integral Forests and Water Guidelines as the basis for defining good practice alongside the Diffuse Pollution: General Binding Rules (DP GBRs) for forestry.

Both organisations have a good track record of working together. However, there is a need for even closer collaboration due to:

- the significant increase in forestry harvesting and related civil engineering activities in recent years
- the introduction of more rigorous consenting regimes, all allied to
- a growing understanding of the potential role good forestry practice can play in mitigating diffuse pollution and flooding,

This will not only realise the opportunities from good practice but also help to minimise any potentially detrimental impacts from forestry practice not meeting UKFS requirements.

Both organisations have differing regulatory responsibilities and consenting regimes but are keen to use their respective resources to promote good practice. Together they offer a good regulatory framework. However, because of the differing nature of each body's individual regulations and promotional resources, there is much to be gained by joint working and collaboration to avoid confusion over responsibilities and powers in achieving the joint aims of promoting good forestry

practice, clean water and good land management to mitigate diffuse pollution and flood risk across Scotland.

Who are the key stakeholders involved in delivering this protocol?

The protocol is directed, at National Office and Conservancy level and their respective teams within FCS, and, for SEPA, at Area managers, Planning teams and Operational Heads and their respective teams.

Whilst the protocol outlines the formal ways in which both organisations may work together, informal collaboration between local, regional and national staff will be just as vital to help deliver joined-up working.

Local staff from both organisations, both in planning and 'on the ground' inspection, should not be strangers to one another and should expect to liaise regularly on routine matters as well as difficult casework and statutory consultation. The expectation is that this protocol will be regularly revised to reflect that ongoing collaboration and comfort in working together.

For clarification, this protocol does NOT cover the activities of that part of FCS known as Forest Enterprise Scotland (FES) when acting in its capacity as manager of the National Forest Estate. Accordingly, in terms of formal approvals and compliance monitoring and requirements, FES will be treated in exactly the same manner as any other forest or land manager. However, there is an existing expectation that forestry practice on the NFE will be an exemplar of good forestry practice as defined in the UKFS and related forestry best practice guides. Serious concerns by SEPA local staff and/or FCS Conservancy staff should be raised in the first place with the local Forest District Manager responsible for the local NFE Forest District and, if not satisfactorily dealt with, through the usual channels of the respective organisations when dealing with compliance matters (UKFS or otherwise. See section C below).

FES, in managing the NFE, has to comply with the same forestry regulatory regimes and associated public consultation requirements as all other forest managers and should be considered similarly for the purposes of this protocol.

How will we collaborate?

Annex I shows the various working collaborations between FCS and SEPA staff for 2015/16. These cover both the regulatory and advisory/development roles of both organisations.

A. Collaboration on forestry consents and approvals under the FCS's various grants and regulatory regimes

FCS, acting under the remit of the 1967 Forestry Act, operates a formal consultation on forestry approvals for felling and woodland creation. This consultation is currently defined under a Ministerial Direction dating from 1996. FCS is also responsible for administering the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 which cover afforestation, deforestation, forest roads and quarries.

SEPA, in its role regulating activities that could lead to pollution or environmental damage, has been formally included in the consultation process on woodland creation, felling as well as EIA determinations and consents since its inception and has contributed substantively ever since to approvals covering woodland creation, felling licences, and Forest Plans.

FCS is now updating its consultation and liaison arrangements to reflect the significant changes in government, legislation and procedures since 1996. As both SEPA and FCS are part of the RAFF (Rural Affairs, Food, & Environment) Delivery Board, they will subscribe to the remit of the Board to 'drive operational and cultural alignment across rural affairs, food and environment outcomes and priorities(to) take forward the ENFOR Review and... ensure that relevant elements of the Pack Review on agriculture red tape are implemented.'

Annex II outlines how FCS will notify and liaise with SEPA on forestry casework under its remit where SEPA has expressed a specific interest in offering advice to FCS in considering forestry approvals and consents.

B. Collaboration on activities impacting on forestry considered by SEPA, including planning applications, but not 'normal' forestry activities and therefore outwith the remit of FCS

As a statutory consultee on planning matters and also as a consenting authority in its own right, SEPA is often notified or consulted on activities which may have an impact on forestry or woodland interests which may overlap with FCS's remit under the Forestry Act 1967 and EIA (Forestry) (Scotland) Regulations 1999. Examples include forest removal as part of a planning application (such as a windfarm) or tree removal as part of CAR licencing for work along watercourses (such as drains clearance).

Annex III outlines how SEPA will notify and liaise with FCS on casework impacting on forests and woodlands where FCS have expressed a specific interest in offering advice to SEPA in considering responses and consents.

C. Collaboration on compliance monitoring, joint inspections of incidents of reported breaches of UKFS or CAR Regs

i. Diffuse Pollution and monitoring of General Binding Rules compliance

FCS and SEPA have agreed that FCS Conservancy staff will have a role in reporting and regulating diffuse pollution and relevant forestry activities impacting on water courses on forestry sites, to

help secure compliance with the CAR Regs and as outlined in the leaflet on Diffuse Pollution General Binding Rules (DP GBRs).

In helping FCS staff undertake this role, SEPA will train Conservancy Woodland Officers to:

- a. have an understanding of diffuse pollution general binding rules under the CAR Regs and how to apply them to forestry activities including those affecting rivers and watercourses
- b. be able to report back information to SEPA including those circumstances apparent during the course of routine forestry inspection work where further action may be required by SEPA

Where appropriate, any action will be agreed by both bodies.

ii. Joint investigations of incidents

Occasionally, incidents of diffuse pollution of watercourses related to forestry activities will occur which require investigation by one or other (or both) of FCS or SEPA. Such incidents are relatively uncommon and are often reported by members of the public who may not be certain as to the appropriate competent authority.

In such circumstances where an incident is reported to either FCS or SEPA, and appears to relate to a forest or woodland or forestry-related activity of interest to the other authority, the first authority notified, if it deems the incident worthy of further investigation, will notify the other authority to ascertain the existing background to the location in terms of existing consented activities, ownership, responsible manager, and other relevant intelligence.

SEPA and FCS have different but complementary means of resolving agreed breaches of good practice based on existing powers and networks. Where such incidents do appear to have occurred, FCS Conservancy and SEPA regional staff should actively collaborate on any subsequent investigation, including joint inspection and agreed outcomes. Most incidents will be readily dealt with locally but serious incidents should be reported to the respective national line managers who will expect good local liaison to have already taken place to ensure a joined-up approach consistent with RAFF requirements

D. Collaboration on joint working, training and development

SEPA and FCS collaborate in a number of routine ways in commissioning research, policy and regulation development, agreeing best practice and providing suitable advice to stakeholders, particularly forestry practitioners.

Annex 1 outlines the various current (2015/16) differing collaborations on both regulatory and policy development/advisory functions along with the key organisational leads/contacts. Current collaborations include River Basin Management Planning, Flood Risk Management Planning, diffuse pollution management advice, diffuse pollution for FCS Conservancy staff, updating the consultation procedures on forestry consents, developing suitable incentive regimes to support and promote good forestry practice preventing diffuse pollution land use management and supporting flood risk mitigation along with joint workshops aimed at the same audience.

Such collaboration is to be encouraged and co-ordinated to optimise its delivery and cost-effectiveness.

Review Arrangements

This Concordat is not intended by either party to be legally binding; nor shall it affect the statutory duties of either party. Changes may be initiated by either party at any time and will be subject to the written agreement of both parties.

Signed on behalf of
Forestry Commission Scotland



Date:

20/5/17.

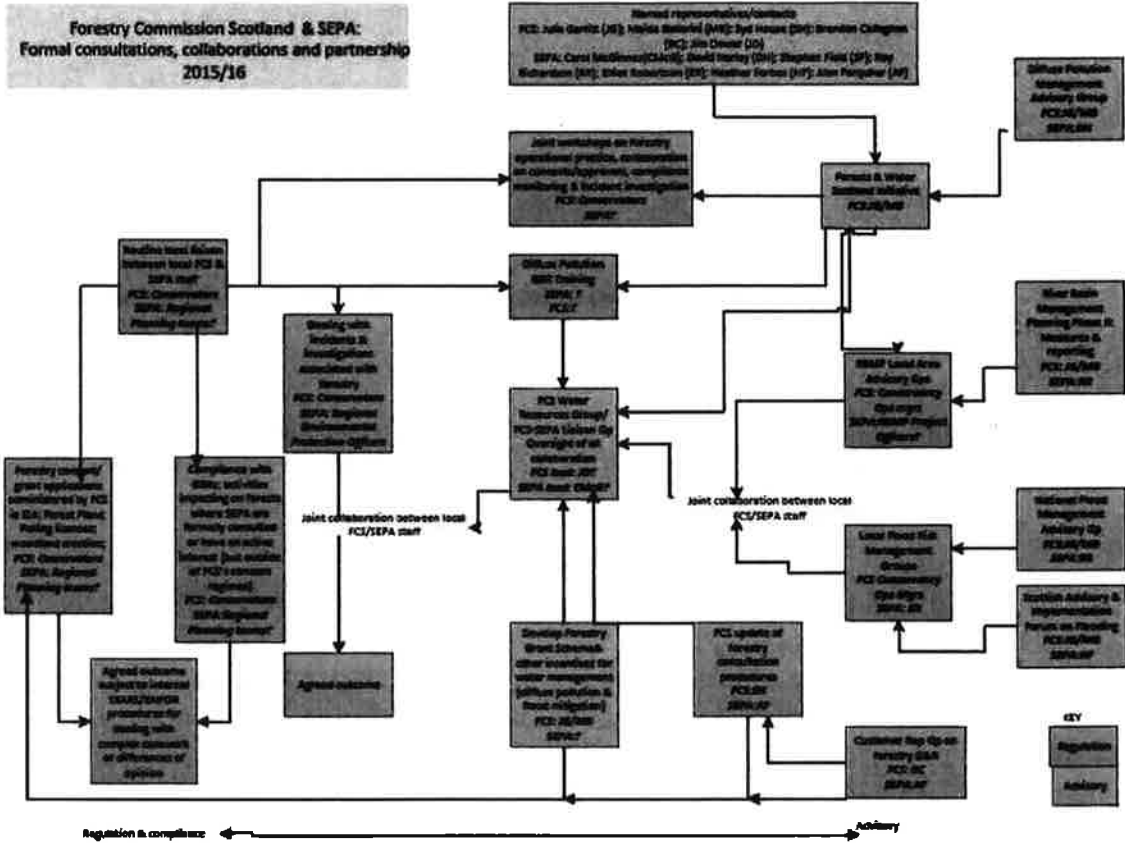
Signed on behalf of
Scottish Environment Protection Agency



Date:

22 MAY 2017

**Annex I: Flowchart for Forestry Commission
Commission**



**Scotland & SEPA:
Formal consultations, collaborations and partnership 2015/16**

Annex II: How Forestry Commission Scotland Conservancy staff will seek advice from SEPA on the impact of forestry activities on issues relevant to SEPA's remit when considering applications for approval/consent under its various grant and regulatory regimes

FCS, in delivering its responsibilities on forestry regulatory, consent and grant applications (i.e. woodland creation, felling licences, Forest Plans, and EIA projects covering woodland creation, deforestation, forest roads and quarries) will seek SEPA advice and input where this advice is materially relevant to the application/proposal and to SEPA's remit.

Our joint aim should be that, through the development and provision of guidance to applicants at the earliest possible stage, we will deliver decisions on forestry applications without undue delay and in line with the Scottish Government's aspirations for smart and efficient government. Accordingly, and in working together, SEPA and FCS will collaborate in line with FCS' Customer's Charter and SEPA's Service Charter to help deliver effective administration and good service to applicants.

Consultation Arrangements

1) Environmental Impact Assessment - Screening

FCS will make all screening determinations without consulting SEPA (as per the recommendation made in the report by James Mackinnon CBE). If FCS does consult SEPA on screening the reason for consultation must be identified, otherwise SEPA will be unable to provide a response.

2) Environmental Impact Assessment scoping

FCS will only consult with SEPA where the impact identified in the screening assessment relates to issues within SEPA's remit, specifically:

- a. Flood risk
- b. Potential pollution and waste
- c. Quarrying
- d. Disruption to wetlands including Groundwater Dependant Terrestrial Ecosystems (GWDTE)
- e. The disturbance and re-use of peat
- f. Habitat restoration
- g. Engineering activities in the water environment
- h. Private water abstraction or dewatering

3) Forest Plans

- a. Of 200 hectares or more
- b. Other plans < 200 ha when the River Basin Management Plan has identified that a water body within or adjacent to the site is downgraded as a result of a forestry pressure.

4) Felling and replanting applications

- a. Of 100 hectares or more
- b. Other applications < 100 ha when the River Basin Management Plan has identified that a water body within or adjacent to the site is downgraded as a result of a forestry pressure.

5) Rural Development Contract applications in relation to Forest Plans which meet the consultation requirements outlined in 3 above, or where there is a direct impact on wetlands

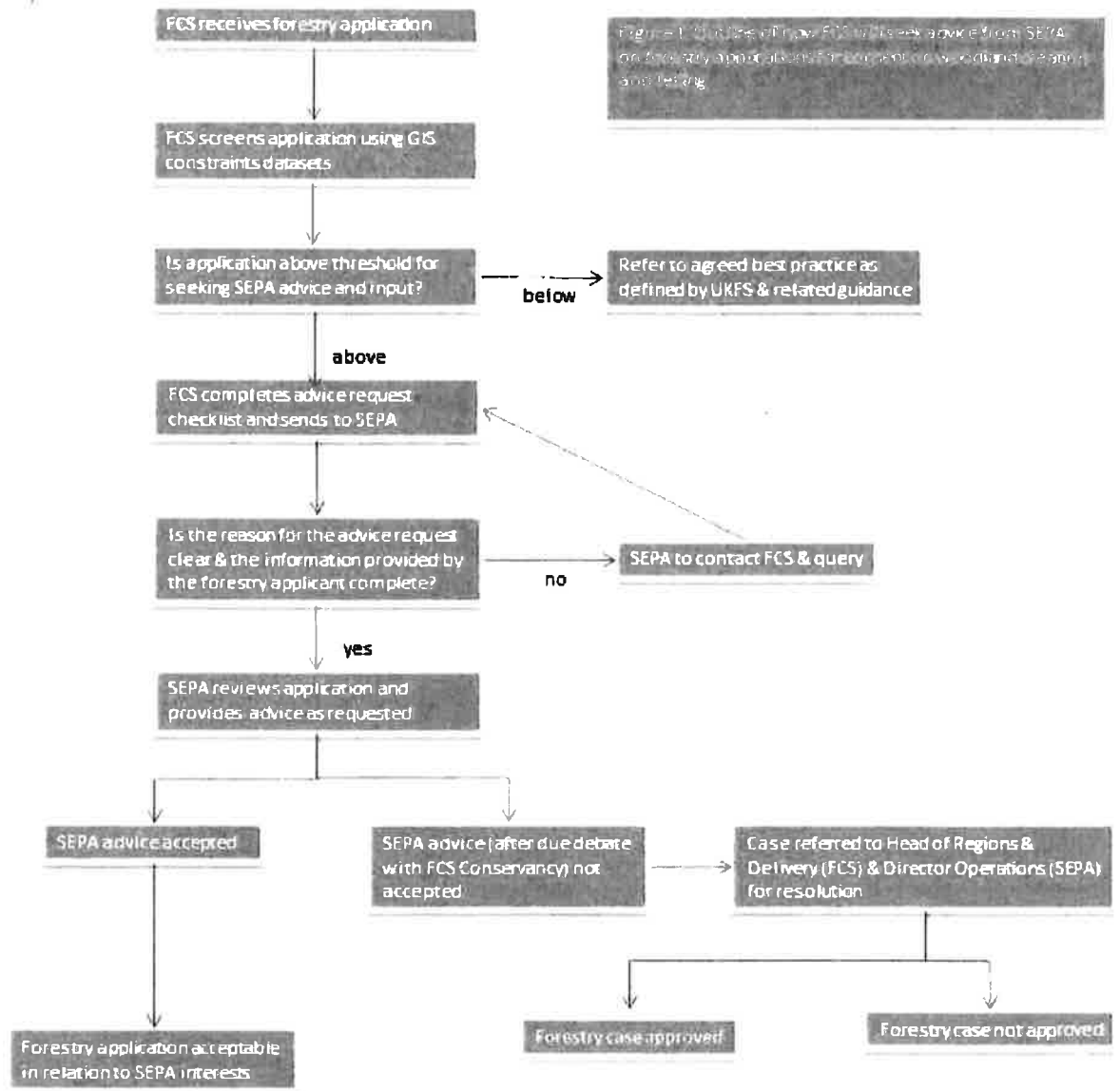
To assist with focusing consultations (so the FCS can deal with the majority of forest plans and Felling and replanting applications without consulting with SEPA) joint standing advice on dealing with these issues in most circumstances should be developed. It will therefore only be necessary to consult SEPA in particularly complex cases where specialist advice is required.

To assist FCS in dealing with SEPA's issues in the EIA process, it is proposed that SEPA and FCS will work together to produce joint screening and scoping guidance which can be used by applicants / agents and FCS.

It should be noted that The forthcoming guidance on groundwater dependent terrestrial ecosystems (GWDTE) that FCS, Tilhill/Confor, SNH and SEPA is developing with and for the forest industry/ FCS will reduce the need for consultation on GWDTEs in future (subject to agreement).

It is expected that, in the future, SEPA River Basin Management data provided to FCS will enable them to deal with forestry sensitivities identified in the River Basin Management Plans. This will reduce the need to consult SEPA on RBMP issues (subject to agreement).

The process for seeking SEPA input and advice on forestry applications and projects is outlined in figure 1 below.



Current arrangements involve FCS Conservancy offices directly notifying/informing the relevant SEPA planning team and forwarding the relevant application and supporting information.

All request for SEPA input and advice as outlined above should be sent to the appropriate SEPA Planning Service team in the relevant local office accompanied by a completed Advice Request Checklist as listed in Figure 3. Completion of the latter will help SEPA staff target their advice and avoid repetition of good practice advice which FCS staff will already have considered under UKFS and related guidance as part of their routine scrutiny of applications. The SEPA contact points are as

follows (NB it is recognised that the FCS Conservancy and SEPA areas do not fully align. If sent to the wrong office it will be redirected internally):

SEPA North Area

planning.aberdeen@sepa.org.uk

planning.dingwall@sepa.org.uk

SEPA South East Area

planning.se@sepa.org.uk

SEPA South West Area

planning.sw@sepa.org.uk

Figure 2: FCS Conservancy and SEPA Planning Team boundaries



SEPA will seek to respond to forestry notifications and requests for advice from FCS within the normal time-scale associated with forestry approval and consultation procedures (normally 28 days maximum) in line with FCS' Customers' Charter and SEPA's Service Charter.

Figure 3: Consultation checklist

**CONSULTATION WITH SEPA ON A FORESTRY APPLICATION
(Forest Plan, Felling application and Planting application)**

- a checklist for Forestry Commission Scotland when consulting SEPA
- at least one box should be crossed

Is this a re-consultation of an existing application? (cross and complete as applicable) (If no, reference no. & case officer details not required)	No		
	Yes		SEPA reference no.
			SEPA case officer

Type of forest development		Purpose of this Consultation (x as appropriate)
1.	The application covers an area of 200 ha or greater (Forest Plans) or 100 ha of greater (felling or planting applications)	
2.	The application covers an area less than outlined in (1) above but there is a downgraded water body as a result of pressure from forest activities either within or adjacent to the site Please highlight the name of the downgraded water body within your consultation letter or in the comments section below.	
3.	The application covers an area less than outlined in (1) above but you consider that it raises a particularly unusual or significant environmental risk, and you wish our advice Please highlight the reason you are consulting us within your consultation letter or in the comments section below.	
Comments:		

Similarly, FCS will seek to respond to SEPA requests for advice in line with these time-scales. In the event of either party being unable to meet the stated time-scale, they should request additional time as early in the process as possible.

Objections

SEPA rarely objects in principle to forestry consultations (of the 2815 consultations and responses logged by SEPA there is only **one** objection in principle). More commonly, where the consultation information provided is insufficient for SEPA to provide advice, additional information will be sought via an objection based upon lack of information. The objection will clearly identify the information required from the applicant. Timeous submission of the required information will enable SEPA to assess it and, should it be found to be satisfactory, remove the objection. SEPA objections are not intended as barriers to delay or frustrate progress; they are used to indicate in a clear and unambiguous way that additional information is required to assess the environmental impact of a proposal. Should a meeting be required to discuss the issues with the applicant then this can be arranged. In practice there should be very few situations where objections cannot be resolved.

Unresolved local casework

For those cases where substantive comment and advice is offered by either party yet, after all local avenues for resolution have been explored, no satisfactory local or line management resolution has been possible, the matter, with the agreement of both parties, will be submitted to the Head of Delivery & Regions, FCS, and Director of Operations, SEPA, as appropriate line managers, to resolve.

Annex III: How SEPA will seek FCS advice when considering or being consulted on activities impacting on forests which may have an impact on FCS's forestry remit

In the course of discharging its regulatory duties, SEPA will occasionally be presented with proposals which impact on woodlands and which have an impact on the remit of FCS. In such circumstances, the relevant SEPA staff will inform the relevant FCS local Conservancy office and seek their advice on any forestry-related implications of the proposal. Both parties will seek to have an agreed approach to any such situation and will liaise accordingly.

SEPA will notify FCS in the following circumstances:

1. Applications to SEPA for CAR licences and other relevant consents where the proposed operation may result in substantial tree felling) and where a felling licence may be required

Local FCS and SEPA staff will liaise on these arrangements and may implement additional or reduced advisory arrangements subject to agreed local circumstances.

The agreed good practice in collaboration working and those procedures for unresolved casework will be followed for the situations described above as for Annex II.

