



Forestry Commission Scotland
Coimisean na Coilltearachd Alba

UK Forestry Standard Compliance Procedures

Forestry Commission Scotland (FCS) procedures for dealing with breaches of the UK Forestry Standard (UKFS) under Forest Plans¹, Felling Licences, Forestry Grant Scheme contracts and Environmental Impact Assessment (EIA) consented operations or during unapproved operations (e.g. illegal felling).

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Summary

This paper sets out how we will respond to potential breaches of UKFS and what corrective actions or sanctions will be sought from owners or their forest manager. It outlines the process of investigation which we will follow and the laddered approach to actions we will take. Establishment of a compliance register and notification to the Institute of Chartered Foresters (ICF) will form part of our response.

These compliance procedures are designed to deal with a range of non-compliance issues and are intended to be used following the discovery or notification of a breach. They do not replace the regulatory obligations and processes that we use to deal with breaches of regulations. The UKFS compliance procedures will be followed alongside other legal procedures², or will be undertaken where no legal procedures are available. The intention of these compliance procedures are to ensure that breaches of the UKFS are properly dealt with, and that standards in forestry are maintained.

¹ Long-term Forest Plans, Forest Design Plans, and Land Management Plans

² Other procedures e.g. illegal felling investigation, claim inspection, EIA enforcement action

UK Forestry Standard

The UKFS is a comprehensive document outlining national and international requirements (either legal or best practice) and guidelines to achieve Sustainable Forest Management (SFM). The document uses a hierarchy to achieve this based on legal terms to define an order of precedence.

The compliance framework, Table 1, shows the terminology used in UKFS of 'must', 'should' and 'avoid'. This provides the basis for how the regulating authority³ should interpret how the requirements and guidelines apply to each forest and woodland.

Table 1 – Compliance terminology

Compliance with UK Forestry Standard			
Forest Plan / Grant contract /	UKFS Requirement	Legal	'Must'
		Good practice	'Should'
Felling Licence / EIA project	UKFS Guideline		'Avoid'

The flexibility and the number of requirements and guidelines over a broad range of issues, provide both a strength and challenge to how compliance with the UKFS should be interpreted.

We work with partners to raise awareness of the content of the UKFS through grants and regulations and policy guidance, training events, seminars and publications.

Laddered Approach

A laddered approach involves a range of interventions that we will take to address non-compliance. This approach reflects the UKFS structure and involves responses that are proportionate to the nature of the non-compliance which will help owners and managers resolve the issues and improve their understanding of SFM.

Specifically it:

- Reflects our current approach to breaches of the Forestry Act and grant scheme rules.

³ In the context of the UKFS, the regulatory authority in Scotland is Forestry Commission Scotland in relation to forestry contracts, plans or approvals issued where UKFS compliance is a condition.

- Provides a pragmatic and proportionate approach to possible impacts that may arise from non-compliance.
- Allows for a range of approaches to be used to help ensure compliance such as:
 - Encouraging woodland owners into best practice in planning, operations and contingency, via compliance actions such as advisory or warning letters. This is expected to be the majority of owners.
 - Providing appropriate enforcement sanctions to 'suspend' or 'revoke' approvals or Forest Plans of woodland owners who significantly or recklessly damage forestry sustainability or whose actions have serious environmental impacts. This is expected to be the minority of owners.
- Provides a clear and straightforward approach within the complexity of the UKFS.

It should be recognised that the FCS actions outlined in these procedures may lead to financial or reputational damage to the parties involved.

Process of investigation

The flow chart in Appendix 1 sets out the process that Conservancies will follow when investigating an incident through these procedures. Other procedures for investigation will also be followed where breaches fall under other relevant legislation such as illegal felling, EIA⁴, or grant claims.

Conservancies will gather information and prepare a report which establishes: the nature and extent of the breach; the parties involved; any mitigating factors; the severity of the impacts; and the corrective action(s) required. A standardised inspection and incident report template will be used.

Conservancy staff may draw upon specialist advice from other parts of FCS, Scottish Government, and regulatory bodies. If, during the investigation, Conservancy staff consider there has been a breach of other legislation e.g. Water Environment and Water Services Act or Wildlife and Countryside Act, this will be reported to the relevant competent authority e.g. SEPA, SNH, and Police Scotland Wildlife Crime Officer.

If our staff observe plans, practices or operations which could potentially lead to a UKFS breach or damage to the environment they will inform the forest manager and owner through an advisory letter. This will be followed up by an inspection as set out in the section below on FCS actions.

⁴ EIA consent may be required for forestry projects, namely afforestation, deforestation, forest roads and quarries.

Severity of impact

Assessing the severity of impact is a key consideration for the recommended FCS action. The UKFS compliance framework differentiates between requirements (both legal and good forestry practice) and guidelines. This should be considered when assessing the severity of impact of any UKFS breach. Non-compliance with requirements is defined by 'must' and/or 'should' and guidelines by 'avoid' terms. Within these terms guidance is provided on how compliance and non-compliance can be interpreted from the UKFS policies using a series of defined impacts. A breach of a requirement would usually indicate a moderate to major impact. However a breach of guidelines can also lead to a major impact.

Appendix 2 sets out definitions of severity of impact with examples and suggested corrective and FCS actions.

FCS actions

Five possible actions are set out in the flow chart in Appendix 1:

1. No action
2. Advisory
3. Warning
4. Suspension
5. Revoke

If action has to be taken against the owner or forest manager then the severity of impact, and where relevant, any failure to address corrective actions or repeated non-compliance will be used to determine the level of action taken.

Minor or moderate impact breaches

For breaches which are assessed as having a minor or moderate impact it is expected that we will: take no action; issue an advisory letter; or issue a warning letter with corrective actions (1-3 on the flow chart). Advisory letters may be issued where an investigation indicates there is an ongoing risk of a breach.

These actions may be followed up by an inspection.

Major impact breaches

For breaches assessed as having a major impact then actions ranging from a warning letter, to suspension of approvals/claims, and revoking of approvals or contracts would be appropriate FCS actions (3-5 on the flow chart). These breaches will be formally reported to FCS Grants & Regulations, Silvan House.

For moderate and major impact breaches, the Conservancy will issue a letter to the owner and/or forest manager of the woodland to make them aware of the breach and

the FCS action. The letter will also set out any corrective actions and reasonable timescales that will ensure compliance with the UKFS.

A follow up inspection will be done once we are notified that these corrective actions have been undertaken, or within no more than one year of the date of the FCS action. For breaches which are causing immediate environmental impact then we will inspect the site regularly.

Escalation

Failing to take reasonable preventative action, repeated non-compliance, or failure to implement corrective actions will lead us to escalate the breach, and could involve the next level of action. This could mean that breaches which were originally assessed as moderate impact are now considered to be causing major impact.

Appeals

Where breaches are assessed as having a moderate or major impact and require a warning letter, suspension, or revocation (3-5 on the flow chart) the owner or forest manager can appeal the decision where they disagree with our assessment of severity or the reasonableness of corrective actions. The appeal must be made to the Head of Delivery and Regions within 28 days of the date of the letter.

A panel comprising the Head of Delivery and Regions and two nominated ICF members will consider the appeal within 3 months of the date of the appeal being made.

During the appeal, any action to suspend or revoke plans, approvals, and contracts will immediately be reviewed by the Head of Delivery and Regions and will normally be lifted, except in circumstances where there is a clear risk of further negative environmental impacts if approvals were to remain in place.

If we pursue other legal actions, such as EIA enforcement or FGS claim suspension, alternative appeal processes are also available. You will be advised on these by your local Conservancy office.

Compliance register

Serious incidents (defined as those assessed as having a moderate or major impact) will be placed on a Compliance Register. This register will contain details of the incident and will distinguish between those breaches which resulted in a warning letter and those which led to suspension or revoking actions.

We will not enter details onto the Compliance Register until after an appeal has been concluded, if relevant. If other legal actions are being progressed we will also not enter details onto the register until these actions are concluded.

Incidents will remain on the register for a period of 10 years (this ties in with Forest Plan approval periods) to allow sufficient time to bring a woodland / forest back within compliance with UKFS and SFM.

This information will be shared with FC England, Natural Resources Wales, and the Northern Ireland Forest Service where ownership or management is across countries to ensure the monitoring of repeat incidents.

We will also use this register where there have been regulatory breaches but no consent or approval has been granted with UKFS requirements, e.g. illegal felling. This will be done to maintain consistency and fairness.

Where we believe that there has been a failure of professional conduct⁵, moderate or major impact incidents will be reported to the ICF where a member⁶ has been involved. Where appropriate, FCS will report incidents to auditors of forest certification schemes.

Phased implementing and review period

As new procedures we will monitor adoption of these for consistency and interpretation. Given the potential impacts of actions at level 4 and 5 on forest plans and ongoing forest activities, we will carefully monitor and review these actions over the first 18 months following the formal launch of this guidance, in October 2018.

Where we intend to suspend or revoke a Forest Plan or contract (where it is not a legal procedure) this will be reviewed and approved by a joint panel involving a senior FCS member of staff and a nominee from ICF. Should agreement not be reached the case would be escalated to the Head of FCS for a decision.

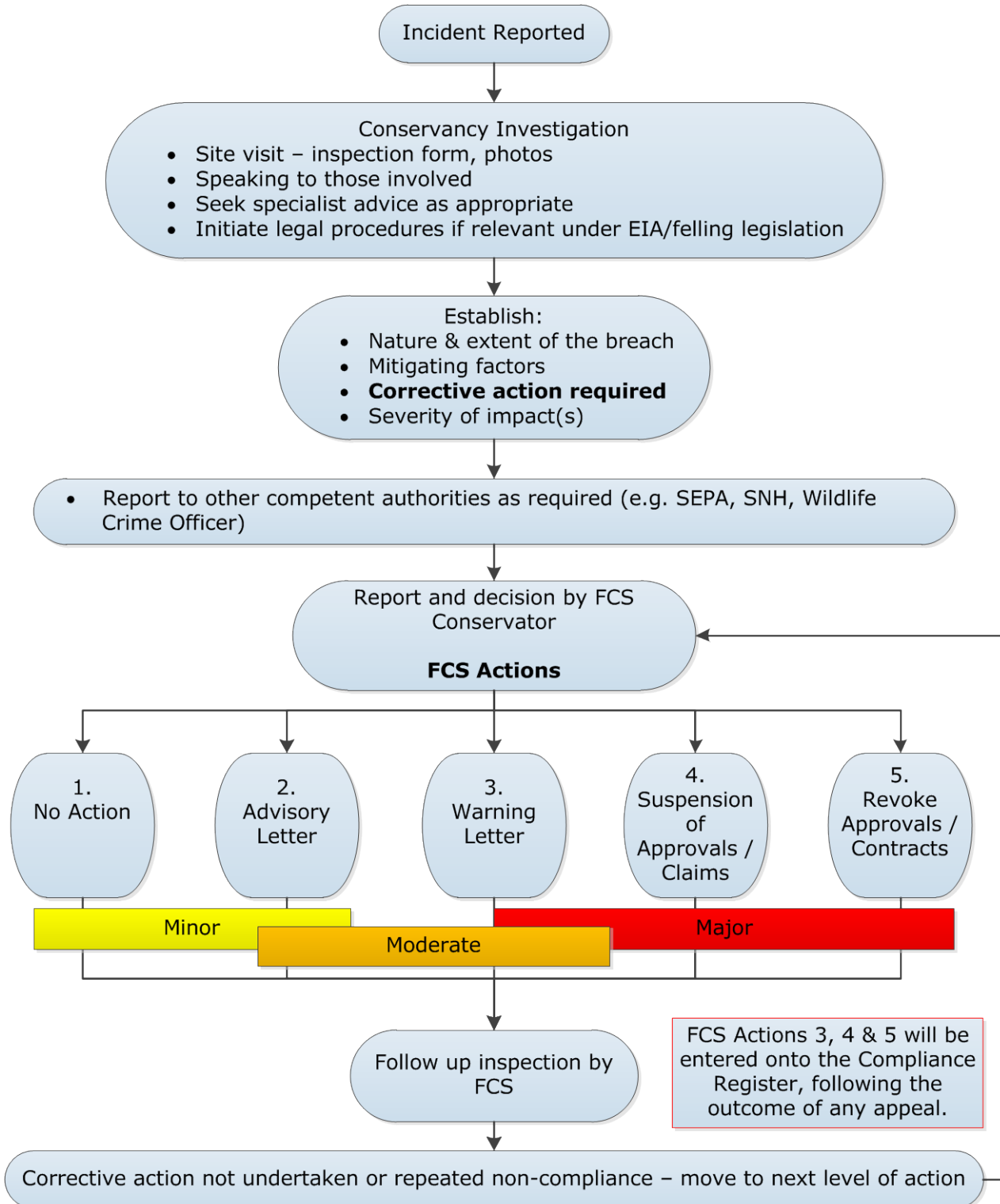
The operation of these arrangements will be reviewed with the FCS Customer Representatives Group at the end of this 18 month period.

Testing of these procedures have been undertaken by some Conservancies prior to formally launching it; however the Compliance Register will be developed following the formal launch of this guidance (Oct 2018) and so incidents prior to this have not been captured. Incidents dealt with following this date will be recorded and we aim to publish the Compliance Register on our webpage post April 2019. We will then update the register quarterly.

⁵ <https://www.charteredforesters.org/join-us/member-obligations/our-code/>

⁶ ICF members include students, associates, professionals and fellows

Appendix 1 – Flow chart for FCS response to UKFS breaches



Appendix 2 – Impact severity

Minor	Small scale impact that is rectifiable and/or there is no risk of further impact(s) on forestry sustainability and the environment. Could be a breach of UKFS guidelines.
Moderate	Large-scale and/or serious but <u>can be rectified</u> . Will require corrective actions not listed in the original Forest Plan, and/or causes an incident related to legislation to be recorded and acted upon by a Government Department / Agency and/or risk to limited impact(s) on forestry sustainability and the environment. Likely to be a breach of a UKFS guideline or requirement.
Major	Large scale and/or serious and <u>permanent</u> . May also have wider impact(s) on forestry sustainability and the environment and results in a prosecution by Government Department / Agency. Likely to be a breach of a UKFS requirement.

The UKFS compliance framework differentiates between requirements (both legal and good forestry practice) and guidelines. This should be considered when assessing the severity of impact of any UKFS breach. A breach of a requirement would usually indicate a moderate to major impact. However a breach of guidelines can also lead to serious impacts. The examples below help to illustrate this.

Examples of impact severity and actions

Minor (small scale, but rectifiable)

- Incident – Small amount of sediment entered a burn from a harvesting site and forest road.
 - Breach against Forests and Water
 - UKFS: Forests and Water, Water quality and buffer areas, **Good forestry practice requirement**, Reference number 7: Forest operations should be conducted to prevent watercourses being polluted with sediment or discoloured; inspections should be carried out during forestry works and any incidents involving contamination of the water environment reported to the water regulatory authority without delay – remedial action should be taken immediately if pollution starts to occur.
 - Preventive Action: Use appropriate buffer zones for water courses, keep machines out of water, contingency plan etc.
 - Corrective Action: Divert water away from the water course and inform fisheries board and SEPA.
 - FCS Action: Warning letter

- Incident – Failed to establish 5% native broadleaves within the landscape setting
 - Breach against General Forestry Practice
 - UKFS: General Forestry Practice, Forest planning considerations, **Guidelines**, reference number 9: Maintain or establish a diverse composition within the forest management unit; where only one species is suited to a site and management objectives, a maximum of 75% may be allocated to a single species. In all cases, incorporate a minimum of:
 - 10% open ground or ground managed for the conservation and enhancement of biodiversity as the primary objective;
 - 10% of other species;
 - 5% native broadleaved trees or shrubs.
 - Preventive Action: Ensure operational plans fully detail species and percentages of tree species to be planted and adequate protection is in place.
 - Corrective Action: Plant native broadleaves and ensure protection is in place.
 - FCS Action: Warning letter and investigate under grant scheme rules, if applicable.

- Incident – Small heath (*Coenonympha pamphilus*) habitat damaged during road maintenance (Scottish Biodiversity List: species identified as 'Avoid Negative Impacts')
 - Breach against Forests and Biodiversity
 - UKFS: Forests and Biodiversity, Biodiversity action plans, **Good forestry practice requirement**, reference number 4: Particular consideration should be given to conserving, enhancing or restoring priority habitats and species identified in the statutory lists of priority species and habitats for England, Scotland, Wales and Northern Ireland, through the delivery of country biodiversity strategies and local level plans.
 - Preventive Action: Pre-operational survey of site to locate if protected species are present prior to operations commencing. Once areas have been identified ensure they are marked for operators to identify and set up appropriate buffers.
 - Corrective Action: Stop operations in the buffer zone, protect site from any further damage, and contact SNH for advice.
 - FCS Action: Warning letter

Moderate (large scale / serious, but rectifiable)

- Incident – Felling activity close to breeding site of Schedule 1 bird (e.g. Goshawk).
 - Breach against Forests and Biodiversity
 - UKFS Forests and Biodiversity, Protected habitats and species, **Legal requirement**, reference number 1: Appropriate protection and conservation must be afforded where sites, habitats and species are subject to the legal provisions of EU directives and UK and country legislation. Advice can be

obtained from the relevant authorities on minimising potentially adverse effects for management activity likely to affect them. For Natura 2000 sites likely to be affected, an appropriate assessment is required.

- Preventive Action: Conduct pre-operational site check for presence of protected species; obtain relevant disturbance licence from SNH if it is required. This would include appropriately marked buffer zones, times of operations and having clearly identified buffers on site plan and in briefings to contractors.
- Corrective Action: Stop operations immediately and inform SNH if a breach of an existing disturbance licence, or if no disturbance licence had been obtained report to Police Scotland Wildlife Crime Unit: this may lead to prosecution.
- FCS Action: Suspend felling approval for that area.

Major (large scale/ serious, but permanent)

- Incident – Sediment from ground preparation on a grant aided woodland creation site damages fresh water pearl mussels in an adjacent river designated for mussels.
 - Breach against Forests and Water and Forests and Biodiversity
 - UKFS: Forests and Water, Water quality and buffer areas, **Good forest practice requirement**, reference number 7: Forest operations should be conducted to prevent watercourses being polluted with sediment or discoloured; inspections should be carried out during forestry works and any incidents involving contamination of the water environment reported to the water regulatory authority without delay – remedial action should be taken immediately if pollution starts to occur.
 - UKFS: Forests and Biodiversity, Protected habitats and species, **Legal requirement**, reference number 1: Appropriate protection and conservation must be afforded where sites, habitats and species are subject to the legal provisions of EU directives and UK and country legislation. Advice can be obtained from the relevant authorities on minimising potentially adverse effects for management activity likely to affect them. For Natura 2000 sites likely to be affected, an appropriate assessment is required.
 - Preventive Action: Use appropriate buffer zones for water courses, layout drainage and cultivation as per guidelines and approved operational plan, have contingency plan in place. Discuss operation with SNH prior to work commencing to ensure preventative measures are appropriate.
 - Corrective Action: Stop cultivation, divert water away from the water course and inform SNH and fisheries board. Wildlife crime officer should also be informed as may lead to prosecution.
 - FCS Action: Investigate under grant scheme rules to suspend or revoke claim.