

Forestry Commission

A Hampton Implementation Review Report

January 2010

Forestry Commission

This review is one of a series of reviews of regulatory bodies focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a review team drawn from the Better Regulation Executive, the Charity Commission and the Gambling Commission in September 2009

Further information about the reviews can be found at:

<http://www.berr.gov.uk/whatwedo/bre/inspection-enforcement/page44029.html>

EXECUTIVE SUMMARY AND CONCLUSIONS

Key findings from the review: The Forestry Commission (FC) is a complex organisation with an evolving and broadening role. It is the largest manager of woodlands in Great Britain and also regulates all woodland activity in Great Britain. The review team found that the Commission complies well with the Hampton criteria in many areas. However, the review team identified some opportunities where further progress could be made.

The majority of new policies relating to forestry regulation originate from EU directives. This is particularly the case on Plant Health issues.

This section summarises the many positive features of the FC's operations that were identified during the review.

Key findings are:

- The FC takes a consultative approach when new EU regulations are proposed, and ensures that industry is able to comment on the additional burdens that these might introduce.
- The FC seeks to influence EU regulation and works with industry to improve the controls put in place by other countries. The development of the certification programme for the production of wood packaging material is an example of the FC working with industry to design a new policy that has reduced burdens.
- Regulations relating to tree felling have limited capacity to promote effective forestry management because they are designed primarily to prevent harm to, and loss of, woodland. The FC has, however, considered and adopted a wide range of approaches and delivery mechanisms to achieve effective woodland management. It has, for example, used the grants programme to strengthen incentives for effective woodlands management; focused on providing advice and guidance; and demonstrated good practice through the management of its own woodland.
- The FC demonstrates the importance it attaches to the provision of advice and guidance by devoting

considerable resources and energy to this area. Its advice appears to be clear, accessible and targeted. Stakeholders perceived the FC to be an expert resource and found FC staff knowledgeable and responsive.

- Generally, FC data requirements (e.g. for tree felling licences, Wood Packaging Material Marking Programme (WPMMP) certification and import notifications) are not onerous and have a clearly defined purpose. They are short, in plain English and have accompanying guidance to fill out the forms correctly.
- The FC has considered and used the available scope within the EU regulations to reduce inspections, based on a risk-based approach.
- Given the sanctions available to it, the FC adopts a graduated approach to enforcement. Transparency will be enhanced when the FC publishes its enforcement strategy which is currently being prepared.
- Stakeholders appeared to understand and support the FC's core aims and objectives. FC staff during the review also appeared to be committed to achieving their team's objectives.

Issues for follow-up identified during the review:

The key follow-up issues identified by the review are:

- The FC should consider a more risk-based approach and the review team recommends the publication of an overall risk management strategy. This would help to maintain the confidence and support of stakeholders in the FC's approach to risk management and would also enhance accountability for delivery of its strategy. It would also help show how resources are allocated using a risk-based approach. Some specific areas the FC could consider as part of this are:
 - the FC documents its approach to the inspection of wood packaging and devotes resources proportionate to the risk that this represents.
 - the FC develops and adopts a risk-based approach to inspections under the WPMMP programme.

- The proportionality of sanctions in some areas warrants review. The FC considers that the sanctions available to it can be limited, not appropriate or difficult to enforce. The review team recommends that the FC explores how it can broaden the range of sanctions it can apply.
- There are informal systems for collaborative working and sharing information with Local Authorities (LAs) but more formal arrangements might avoid duplication of effort, encourage a consistent approach to advice and guidance and ensure that sanctions applied by the FC are not unknowingly undermined by the LAs. The review team, therefore, recommend that the FC consider how to improve the effectiveness of its relationship with LAs.
- Some stakeholders raised concerns about the information required in grant application forms. We recommend that the FC continues to streamline forms and processes wherever possible, including by influencing the EU on content and working with the Rural Payments Agency to rationalise data requirements for grant applications.
- Both stakeholders and staff were of the view that the Commission's website could be improved to ensure accessibility of key information. Online data capture has also not been progressed because of the low volumes of transactions. The review team suggests that the Commission expedites improvements to its website as an important guidance tool and considers whether online methods of data capture would be cost effective and assist in reducing burdens.
- Certain stakeholders believe the FC is slow to act on suggestions in relation to policies relating to tree felling and forestry management in Great Britain. The review team encourages the FC to be proactive in making changes that improve regulations and policies in areas where they are not restricted by EU legislation. EU legislation also represents a major barrier to the FC taking a risk-based approach to plant health inspections. The FC should therefore continue in its efforts to influence the EU towards a risk-based plant health regime.
- Currently, the FC's corporate plans and annual reports do not draw out the linkages between the

FC's regulatory instruments and the outcomes they are intended to achieve. It appears that the FC's focus is now on more strategic outcomes, such as climate change and the social benefits of forests. The review team did question whether the FC has the necessary legislative framework to achieve all of the outcomes for which it is responsible because it has, for example, no regulatory power to enforce the UK Forestry Standard. However, this raises broad and fundamental questions that go beyond the scope of this review. We suggest that the FC may wish to consider whether its current mix of delivery methods and approaches are sufficient to achieve its desired outcomes.

INTRODUCTION

Introductory background information about the regulator, such as the rationale for establishing it:

Originally set up to address the timber shortage after the First World War, the Forestry Commission's role has broadened to include conservation, environmental and recreational objectives.

The Forestry Commission is a statutory body and a non-ministerial Government department that advises on forestry policy and manages nearly one million hectares of public forests in Great Britain. Forestry is a devolved matter, and as a result the Forestry Commission has established separate administrative arrangements to deal with its responsibilities in England, Scotland and Wales in addition to its Great Britain functions.

This review is confined to aspects of the Forestry Commission's work for which it is accountable to the UK Parliament. This includes the work of the Forestry Commission Great Britain and the Forestry Commission England.

The Forestry Commission Great Britain advises the UK Government and the devolved administrations in Scotland and Wales. It sets standards for sustainable forest management, encourages good forestry practice, conducts forestry research, provides information and advice to Government and regulates the GB plant health regime for wood, wood products and bark. Working with other departments, it formulates UK policy in international negotiations, develops the UK's national forest programme and advises on implementation of international and European obligations. It has statutory duties for some regulations that, by agreement with Ministers, are GB-wide.

The Forestry Commission England aims to protect and expand England's woodlands and related environmental resources and improve the competitiveness of woodland businesses and promote the development of new and improved markets for sustainable woodland products. This includes:

- the power to control tree felling
- the Environmental Impact Assessment Forestry regulations. Consent is required for woodland creation, deforestation, road or quarry operations that could have a significant effect on the environment
- rules on the import and export of forestry material. Achieved through controls on trade of forest tree seeds, wood and wood products including wooden

packaging material and used forestry machinery.

The legislation establishing the regulator:

The 1967 Forestry Act (as amended) sets out the duties and powers of the Forestry Commissioners, specifies the constitution and administration of the Commission, its statutory committees and the powers of the Commissioners. Specifically, Part II sets out the “Commissioners’ power to control felling of trees”. The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 [SI 1999/2228] sets out the Commissioners’ role in assessing the environmental impact of relevant projects. The types of project covered are afforestation, deforestation, forest road works and forest quarry works. The Plant Health Act 1967 makes the Forestry Commissioners the competent authority for the protection of forest trees and timber from attack by pests and diseases, and gives them the power to make orders. Other Acts of Parliament impose additional duties on the Commissioners. For example, the Countryside (Scotland) Act 1967 and the Countryside Act 1968 require all public bodies, including the Forestry Commission, to have regard to the desirability of conserving the natural beauty and amenity of the countryside.

The regulator’s statutory remit or objectives:

The FC’s mission is to protect and expand Britain's forests and woodlands and increase their value to society and the environment. The FC takes the lead, on behalf of all three administrations, in the development and promotion of sustainable forest management and delivers the distinct forestry policies of England, Scotland and Wales through specific objectives drawn from the respective country forestry strategies.

The three main areas of regulation that this review focused on were tree felling, regulation of imported wood and wood packaging materials associated with other cargoes, and the wood packaging materials marking programme for wood packaging materials produced in this country.

Tree Felling Licences and Restocking Notices

The FC uses felling regulation as one of a range of instruments to achieve diversity and improved forest structure. Other instruments include its grants programme, and the provision of advice on forest management.

With certain exceptions, it is illegal to fell trees in Great Britain without prior FC approval. The FC investigates all cases of suspected illegal felling. FC policy is that areas clear-felled will be replanted (by putting conditions on the

licence or serving a re-stocking notice) or naturally regenerated, except where felling is allowed to enable development authorised under planning regulations or for environmental improvement. Tree felling for thinning purposes can improve the quality of woodland, so the FC's aim is to limit felling where it is inconsistent with improving forest structure.

Tree felling for the immediate purpose of carrying out approved development does not require a felling licence. Control in these circumstances is exercised by the local planning authority through the statutory development control process. The planning authorities can also place Tree Preservation Orders (TPO) on trees and woodlands. In England and Wales, the FC will decide whether to grant a felling licence for trees covered by a TPO or those in a Conservation Area, but will consult with the local authority about the application.

Regulation of imported wood

Nearly 90% of Britain's requirement for wood and wood-based products is imported, mainly from Scandinavia, the Baltic States, Canada and Russia. In addition, most imports have manufactured wood packaging material or loose wood (known as dunnage) which is used to protect a ship's cargo from damage during transport. Some of this material is made up of low quality wood which can present a high plant health risk as it may carry pests or diseases.

All wood packaging material (WPM) entering the EU from non-member states (except Switzerland) must be either heat treated or fumigated with methyl bromide and be marked in compliance with an International Standard for a Phytosanitary Measure (ISPM15). WPM used to transport goods between EU member states (including Switzerland under special agreement) need not be ISPM15 compliant, although there are current EC proposals to extend it to intra-Community trade.

Plant health checks are made at approved points of entry into Great Britain. All cargoes of restricted wood are inspected, although under reduced frequency of inspection arrangements a small proportion are subject only to documentary and identity checks. Less than 1% of general containerised cargoes with associated wood packaging is inspected. To help put this into context, circa 7 million freight containers enter the UK from abroad each year and the FC must "compete" against other government inspection agencies e.g. Defra, HMRC, Port Health etc for use of the Port Authority's inspection bays and facilities.

The FC can therefore be limited in terms of the number of containers that can be physically presented for examination without causing significant delays to importers.

Regulation of wood for export: the Wood Packaging Materials Marking Programme (WPMMP)

For exports from the UK, the Forestry Commission (Great Britain) and Forest Service (Northern Ireland) have developed, in conjunction with the trade, a national wood packaging material marking programme to help manufacturers demonstrate compliance with the International Standard for Phytosanitary Measures 15 (ISPM15).

Firms that want to apply a mark indicating compliance with ISPM15 must apply for an official certificate authorising them to do so. Applicants are subject to an assessment of their systems, including processes and records pertaining to the manufacture, re-manufacture, repair, recycling, treatment and marking of wood packaging materials. The FC issues certificates to successful applicants that are valid for six months.

The regulator's budget:

The following are the costs of specific regulatory activity undertaken by the Forestry Commission:

Plant Health Service

Gross operating costs in 2008-09: £997,604

Income in 2008-09: £300,000

Net Operating costs in 2008-09: £697,604

Control of tree felling and Environmental Impact Assessment (EIA)

Net administrative cost approximately: £850,000

The FC has a wide range of other approaches and delivery methods to achieve its objectives. The overall budget is as follows:

Gross operating costs in 2008-09: £109,238,000

Income in 2008-09: £24,748,000

Net operating costs in 2008-09: £84,490,000

Number of staff (including breakdown of

The Forestry Commission employs 3000 staff, with about 1000 working in Forestry Commission England and about 300 in Forestry Commission GB (based in Edinburgh).

policy and
frontline staff):

Only a small proportion of these staff work on regulation; about 5 in plant health control, supplemented with about 15 contract inspectors, and about 100 staff in tree felling and licensing – although as the latter work is integrated with the Forestry Commission's grants activity only around 10% of the staff time is spent on regulation.

The sectors and
number of
businesses
regulated either
directly or
indirectly:

The industries affected most by the Forestry Commission's regulations are:

- timber growers
- timber processors
- timber importers

The Commission manages, through Forest Enterprise, the largest single public or private landholding in Great Britain. It is the biggest producer of timber, responsible for over half of domestic output.

In 2008 41,000 people were employed in forestry and primary wood processing and the Gross Added Value (GVA) of this industry was £1.9 billion.

THE HAMPTON VISION

“Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent, accountable for their actions and should recognise their role in encouraging economic progress.”

Any findings relevant to whether the regulator takes a risk-based approach:

The FC’s capacity to implement a risk-based approach to the inspection of sawn wood is limited by EU requirements. The EU currently requires the FC to inspect 100% of certain types of wood entering from non-EU countries. However, the FC has considered and used the available scope within the EU regulations to reduce inspections based on a risk assessment; for example, on maple wood from North America and Canada.

The FC applies a ‘no exceptions’ approach to inspecting both compliance with tree felling licences and with requirements for the Wood Packaging Material Marking Programme (WPMMP). Audits under the WPMMP are set at six month intervals. The frequency of audits is the subject of an ongoing discussion between the FC and industry. The FC has previously proposed what it considers to be a proportionate and risk-based approach to the setting of intervals in regards to these audits, but the industry has indicated that it feels that it is too soon to reduce the audit frequency but has agreed to review this in mid-2010.

In other areas, such as the inspection of wood packaging, the inspections are a lot less frequent; since some staff have suggested this to be a high-risk area, this does not appear to reflect a risk-based approach to assigning resources. FC staff did point out that there are significant operational difficulties associated with inspecting containerised goods to check that wood packaging material is compliant: the imposition of port handling charges for each container selected for examination, which would have to be borne by the importer under the current model and the availability of appropriate facilities at ports to ensure inspections of containers can be carried out safely e.g. each container must be checked for unsafe atmospheres, including the presence of toxic fumigant gases, prior to personnel entering them.

The main barriers to creating a fully risk-based model of inspections for imported wood lie within the EU legislative framework, and therefore, the FC should continue to influence the EU towards a more risk-based approach to its plant health regime wherever possible.

The FC has considered adopting a more focused risk-based approach but it has not yet articulated its strategy for applying risk management to inspections in its corporate plan or annual report. It has identified problems in applying and collecting proportionate 'across the board' (sea, air and road freight) inspection fees. The review team would recommend that, if wood packaging is determined to be a high-risk area, the FC ensures that it explores alternative funding models to ensure that its resources are properly focused on the areas of highest risk.

Any findings relevant to whether the regulator is transparent and accountable:

The FC has a good relationship with stakeholders, who understand the objectives the FC are trying to achieve. Stakeholders felt the FC consulted effectively with them about EU proposals for new regulations.

Some stakeholders had questions regarding the progress of online data capture for required information and on the information required in the grant application process. By providing documented cost benefit analysis in the case of online data capture and making clear where data is an EU requirement for grants the FC could be more transparent about its decision-making.

FC identifies outputs and targets in its annual report and reports against them. Accountability would be enhanced if the FC articulated more fully both its risk management strategy and the linkages between the application of its regulatory instruments and the outcomes they are intended to achieve.

The review team also found it difficult in the time available to gain a full picture of how FC England and FC Great Britain work together to achieve shared outcomes. Nevertheless, we think that it would be useful to have more connection between the corporate plans of the two parts of the organisation or at least a clearer explanation of why this is not appropriate.

Any findings relevant to whether the regulator encourages economic

FC is mindful of the impact of regulation on the timber and related industries. Evidence to support this includes:

- it consults actively with businesses and takes steps (such as arranging inspections of wood imports quickly after notification) to constrain the burden of

progress:

regulation

- the FC developed the WPMMP in response to business trading partners' concerns and international regulations to mitigate the potential impact of diseased packaging on exports.

Suggestions later in this review would further encourage economic progress.

DESIGN OF REGULATIONS

Hampton Principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted.”

“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.”

Key findings on Design of Regulations: The FC takes a consultative approach when the EU proposes new regulations, and ensures that industry is able to comment on the additional burdens that these might represent.

The FC seeks to influence EU regulation and works with industry to mitigate the controls put in place by other countries.

In relation to policies relating to tree felling and forestry management, some stakeholders believe the FC is slow to act on suggestions and to recognise or reflect in policies those that adhere to good practice in forestry management.

We would encourage the FC to continue its efforts to explore how the overall burden on woodland owners could be reduced or managed more effectively.

Background information such as the regulator’s role in developing regulations: The majority of new policies relating to forestry regulation originate from EU directives. This is particularly the case on Plant Health issues. Some of the FC’s regulations, such as those relating to tree felling, have been in place for many years. Others, such as the Wood Packaging Material Marking Programme, are recent and were developed in consultation with industry.

Regulations relating to tree felling have limited capacity to promote effective forestry management. The FC has, however, considered and adopted a wide range of approaches and delivery mechanisms to achieve effective woodland management. It has, for example, used the grants programme to strengthen incentives for effective woodland management; it has focused on providing advice and guidance; and has demonstrated good practice through the management of its own woodland.

Example of good practice:

The FC has a number of working groups that it uses for consultation and Commissioners bring broader perspectives. Stakeholders generally feel that they have been consulted and involved in the development of new policies.

The development of the certification programme for the production of wood packaging material is an example of the FC working with industry to design a new policy that mitigated burdens. By encouraging other countries (China in particular) to accept the standards of the marking when goods are being imported, the FC has reduced the number of phytosanitary certificates issued from 20,000 to 200 per year.

As mentioned above, the FC has also developed a wide range of approaches to achieve its outcomes.

The extent to which the review team believes the regulator is acting in line with the Hampton principles:

Stakeholders generally see the FC as a consultative organisation. The FC works within the EU framework to mitigate burdens on industry.

Some stakeholders believe the FC is slow to act on suggestions in relation to policies relating to tree felling and forestry management in the UK. For example, some feel that the FC has been slow to extend the period of a tree-felling licence to over a year. The new woodland plan template was welcomed, but it appears the main driver for this was related to changing government procurement practices rather than the role this could play in effective woodland management. We would encourage the FC to be proactive in making changes that improve regulations and policies in areas where they are not restricted by EU legislation.

While not an issue specifically about the FC's regulations, stakeholders commented about the growing number and complexity of regulations with which they had to comply. The FC should continue to consider whether there are any further actions it can take to reduce any unnecessary regulatory burdens. Encouraging the EU to move towards a risk-based plant health regime would be one such action.

It was also noted that that the design of regulations does not generally recognise or reward good practice in forestry management. For example, the same tree felling licence regime applies to all applicants, irrespective of their experience. The FC has adopted a different approach to grant applications and so there may be scope for designing

regulations that, for example, require less information from or inspection of those who have achieved the UK Woodland Assurance Standard (UKWAS).

It was noted during discussions that a significant proportion of privately owned woodland is not actively and sustainably managed. Tree felling licences and woodland grants are not relevant for woodland owners without active management strategies. It is also possible that they may be discouraged from applying for such licences or grants because of concerns that this will expose them to other scrutiny and regulations as well. The FC could consider whether it needs to encourage sustainable management of these woodlands and, if so, how it should do this.

The FC could keep under review whether any definitional issues, such as the exemption of gardens from a requirement to apply for tree felling licences, are undermining the intent of the legislation it administers since woodlands are increasingly being divided into smaller areas for private sale.

ADVICE AND GUIDANCE

Hampton principle

“Regulators should provide authoritative, accessible advice easily and cheaply”

Key findings on Advice and Guidance: The FC regards providing advice and guidance as important and devotes considerable resources to it. Its advice appears to be clear, accessible and targeted. Stakeholders perceived the FC to be an expert resource and found FC staff knowledgeable and responsive.

Nevertheless, there are actions it could consider taking to further improve in this area. They include: improving the navigability of the FC website; focusing on advice and guidance related to compliance issues; monitoring penetration to ensure harder-to-reach stakeholders are covered; and linking together advice and guidance by topic.

The review team also found that the FC should increase its efforts to inform Local Authorities (LAs) about the FC’s responsibilities and consider working with them on combined advice and guidance. LAs may not always be aware of the need to consult the FC on certain issues, such as whether an Environmental Impact Assessment might be required. There are obvious connections between the work of the FC’s woodland officers and LAs’ tree officers. There are informal systems for collaborative working and sharing information, but more formal arrangements might avoid duplication of effort and encourage a consistent approach to advice and guidance.

Background information, such as the means by which the regulator provides advice and guidance: The FC provides a great deal of advice and guidance, both on its website and in printed form. It has an inquiry line, publishes newsletters, and makes presentations at conferences. The FC told the review that it is proactive about encouraging awareness and compliance when new policies are implemented. It draws on its own research on forestry issues in these publications.

Stakeholders commented that guidance was authoritative, well written and easy to understand, but also contained sufficient technical detail if required. They also commented that the FC tailors the media

through which it delivers its advice to suit the preferences of the recipient. Members of staff involved in both the tree felling and plant health areas were also seen as knowledgeable and accessible sources of information.

The website contains information on all four bodies (FC GB, FC England, FC Scotland and FC Wales). Each key part of the website has its own web manager, who works in collaboration with the general web manager within the central communications team, to help ensure a consistent corporate approach.

Examples of good practice:

The FC's website enables subscribers to receive updates on specific subject areas. There are also a number of FAQs on different aspects of the regulations.

The FC has in the past been highly commended for its "Guidelines for Regulating Wood Packaging Material in International Trade" at the National Business Awards. Elaine Dick, the Commission's publications' manager, earned an Inside Write Award from the Plain English Campaign for producing a straight talking booklet on tackling Lyme disease.

Review findings:

There is much to be commended in the FC's approach to providing advice and guidance.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

We recommend, however, that the FC considers:

- improving its website. The site does not separate the roles of the four FC bodies. It is not easy to navigate, some material is duplicated and some important information (for example on plant health updates or legislative requirements) is difficult to find. There appears to be a lack of responsiveness and flexibility in the website, which both staff and stakeholders find frustrating. The FC is aware of these criticisms and is working to resolve them, but should explore diverting resources to accelerate progress.
- focusing on advice and guidance related to compliance issues. We were told that approximately 80% of illegal felling happened because people were not aware that they needed a licence. The FC should try to identify and address the issues this raises.

- increasing its efforts to inform LAs about the FC's responsibilities and possibly working with them on combined advice and guidance. LAs may not always be aware of the need to consult the FC on certain issues, such as whether an EIA might be required. There are obvious connections between the work of the FC's woodland officers and LAs' tree officers. There are informal systems for collaborative working and sharing information, but more formal arrangements might avoid duplication of effort and encourage a consistent approach to advice and guidance.
- ensuring that there are clear, consistent and published requirements that are accessible to industry, particularly as the FC uses different contractors to enforce the regulations. In relation to the wood packaging marking programme, for example, we would recommend that the standard audit criteria, against which the industry members are being assessed, are published so that the industry is assured that the same assessment procedures are being applied regardless of the contractor employed to perform the assessment. Whilst we understand that there may be issues with publishing checklists, greater transparency in this area would provide welcome clarity for industry.
- monitoring the penetration and effectiveness of its advice, particularly to woodland owners that might not proactively access the FC's services.
- linking advice and guidance on different topics. Some stakeholders suggested that different areas of the FC provide different messages and suggested that there might be scope for more targeted advice and advice containing more cross-cutting information for forestry practitioners.

DATA REQUESTS

Hampton principle

“Businesses should not have to give unnecessary information or give the same piece of information twice.”

Key findings on Data Requests: The review did not find examples of the FC asking for unnecessary information or for the same information twice.

Some stakeholders raised concerns, however, about the information required in grant application forms.

The FC has not progressed with online data capture because of the low number of transactions involved. However, it is unclear whether a cost/benefit analysis has been done to establish whether the FC should pursue this.

The FC requires sufficient information to understand the environmental impact of any tree loss or to satisfy itself that the goods have come from a disease and pest free source.

Data is collected through:

- Felling licence application forms;
- Registration as a forestry trader and importer of controlled timber (required to keep movement logs);
- Applications for environmental impact assessments;
- Grant application forms;
- Activity logs for companies using ISPM15 marking; and
- Documents concerning the landing of wood and wood products.

Examples of good practice: The data requirements in the forms for tree felling licences, WPMMP certification and import notifications are not onerous and have a clearly defined purpose. They are short, in plain English and have accompanying guidance on how to fill out the forms correctly.

The requirements of inspections for the WPMMP appear to have been designed to be consistent with the reporting systems of the businesses concerned.

Review findings: The FC’s data requirements appear to be consistent with the Hampton principle. Stakeholders noted that forms are generally simple and understood the reasons for the FC requiring this information.

The extent to which the review team

believes the regulator is acting in line with the Hampton principle:

Some stakeholders did raise concerns, however, about the information required in grant application forms. The grant application was viewed as quite complex and it was also noted that some woodland owners needed advice and assistance in completing these forms. The grant programme might, therefore, not be accessible to all those that could benefit from it.

Applicants for woodland grants also have to provide similar data to the Rural Payments Agency (RPA). This apparent duplication came though as a concern, and the FC is working with the RPA to streamline data collection.

The FC does not have complete control over the content of the grants forms because of restrictions linked to the EU funding. However, the grant application does impose a potential burden on business and takes up the time of the FC's woodlands officers, who consequently have less time to provide advice on woodlands management. In terms of the FC's outcomes it is also important that the grant programme is accessible to all. We would therefore suggest that the FC looks to streamline the form and process wherever possible, including influencing the EU on its content and working with the RPA to rationalise data requirements.

The issue of online data capture was discussed. The FC has not progressed with this route because, as the number of transactions involved is low, the costs involved might outweigh the benefits. However, it was not clear whether the FC has fully explored and carried out a documented cost/benefit analysis on this. Stakeholders implied that online systems had been promised but there appeared to have been limited progress. We would suggest that the FC conducts a cost/benefit analysis on the use of IT in data collection. If it is not cost effective, then stakeholders should be advised of this.

The FC should also ensure consistency in the data required, as those not applying for a grant have to provide more information to obtain a tree felling licence. It was not clear that requiring less information from grant applicants for a tree felling licence was a risk-based decision.

INSPECTIONS

Hampton principle

“No inspection should take place without a reason.”

Key findings on Inspections: The FC’s capacity to implement a risk-based approach to the inspection of cut wood is limited by EU requirements.

The FC applies a ‘no exceptions’ approach to inspecting both compliance with tree felling licences and with requirements for the WPMMP. In other areas, such as the inspection of wood packaging, the inspections are much less frequent. As wood packaging appears to be a high risk area, more frequent inspections may be warranted.

The FC has considered adopting a more focused risk-based approach but it has not yet articulated its strategy for applying risk management to inspections in its corporate plan or annual report. It has identified problems in applying and collecting proportionate ‘across the board’ (sea, air and road freight) inspection fees. A fuller articulation of this strategy and principles would reduce concerns that its strategy is not sufficiently risk-based.

Stakeholders appeared not to see inspections as a burden, because they understood the reasons for them and many were equally committed to the intended outcomes.

Any relevant background information, such as the number of inspections and the number of businesses inspected; the regulator’s risk model etc

The FC has 4 main inspection functions:

- tree felling and planting;
- Woodland Grant Scheme applications;
- import and export requirements on wood products entering/leaving the country; and
- wood packaging suppliers within the ISPM15 programme.

It is also responsible for environmental impact assessments and any site visit conducted as part of the process.

Tree felling

In 2007-2008 the FC issued 2,207 felling licences (not linked to the English Woodland Grant Scheme). It has published working times for stages within the application process, and aims to issue licences within 10 weeks of receiving the application. It may inspect a site where a proposed application for tree felling exists and frequently

consults with and advises applicants before they submit their application, with the result that it rejects very few licence applications.

The FC may attach re-stocking conditions to a felling licence, or may require re-stocking in cases of illegal felling. Its policy is to inspect all sites where re-stocking is required. These inspections are frequently unaccompanied, and the FC argues that they impose little burden on woodland managers.

Some stakeholders suggested that less inspection should be required for the estimated one third of private woodlands managed by chartered foresters. The FC is considering whether to introduce a more risk-based approach to following up its re-stocking orders, although it considers that the cost savings for itself and the industry would be small.

The FC received 180 reports of illegal felling in 2007-08, of which 32 were investigated in more detail.

The FC does not require tree felling licences on land that it manages, but told the review that it applies a process that is as rigorous as the one it applies to the private sector. The review notes the tensions that may exist when a regulator is also a producer, but did not explore this issue.

Import and export requirements

Importers of wood of regulated species and origin must register with the FC; must meet requirements with regard to controlling the movement of consignments and keeping records, and some, as appropriate, must have their premises inspected to check that they meet specified standards. Importers or their appointed agents must give advance notification of landing and must present relevant import documentation to an inspector within three days of landing. Each consignment must be accompanied either by appropriate phytosanitary or industry or mill certificates.

All wood imports must be landed at an FC approved point of entry and documentary and identification checks are made in all cases. The FC aims to inspect goods on the day it is notified they are ready for inspection or on the next working day, and it achieves this consistently each year in over 99% of cases. In 2007-2008, 5,411 inspections of imported wood were carried out and there were 5,000 inspections of goods with associated wood packaging material. Data on failed inspections is submitted both to the

FC's Edinburgh office and to a European Commission database on Plant Health Information ('EUROPHYT').

As WPM and dunnage are associated with most imports, inspection rates must necessarily be lower. The FC can, however, target inspections if it learns of problems with imports of particular goods or from particular countries. However, its capacity for targeting is limited because cargo manifests do not report the WPM content. There is no legal basis for inspectors to charge for these inspections on a 'per container' basis, but rather, the FC expects them to spend about 30% of their time on these inspections and remunerates them accordingly. These inspections are therefore funded from the public purse rather than being a cost on importers. Inspectors commented that they 'do what they can' as they often do not have the resources to inspect more than a small proportion of containers.

The review heard different views about whether the allocation of inspection resources to wood packaging inspections was proportionate to the risks involved. A more intensive approach is limited by the lack of a legal capacity to charge for the inspections, and the FC's capacity to target inspections is limited by the data available on cargo manifests and operational difficulties also include the number of freight containers that the Port Authority can physically make available at the port's inspection bays. For health and safety reasons containers must be opened by the port staff, not inspectors, and prior to personnel entering a container it has to be professionally gas checked to ensure that the atmosphere is free from toxic fumigant gases and that it has been properly ventilated. The FC commented that all EU member states are finding it difficult to improve their approach to inspections in this area which is the principal reason why there is as yet no harmonised EU system as there is in the case of, for example, sawn wood.

Wood packaging manufacturers

All registered manufacturers are inspected every six months. Manufacturers that fail this inspection are re-inspected within three months. There is flexibility of up to one month around the six months requirement, partly to provide scope for inspectors to improve the scheduling of their inspection programmes. The FC has considered allowing additional flexibility on the basis of various risk criteria, but some businesses have urged the FC to delay this until confidence about the implementation of the revised International Standard (ISPM15) has been achieved.

Environmental Impact Assessments (EIA)

Proposals for new planting, deforestation, forest road construction and quarries that are likely to have significant environmental impacts require an Environmental Statement. The FC receives a large number of inquiries about whether an EIA is required (referred to as a 'request for an opinion', but initial screening reduced the number of Environmental Statements required to just 2 in 2008. The review noted that there is no template to guide potential applicants for completing an Environmental Statement. However, given the small number of EIAs, the review did not examine the scope for reducing the burdens of the EIA process.

Examples of good practice:

Inspectors use inspections as an opportunity to provide advice on woodland management as well as to ensure compliance. For example, this is an important duty for the FC's woodlands officers.

Stakeholders generally understand the reasons for inspections.

The FC has considered and used the available scope within the EU regulations to reduce inspections using a risk-based approach. EU regulations require inspection of all of the restricted types of wood entering the EU. The FC can, however, submit an application for reduced inspection should it have the necessary evidence, and has recently successfully done this regarding importation of maple wood from USA and Canada.

The FC also has a good process for escalating decisions. Plant health inspectors who suspect that imported wood is diseased, for example, will send digital images to head office in Edinburgh, where decisions will be taken and documented before enforcement action is taken.

Review findings:

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

The FC inspects virtually all re-stocking orders, wood imports and firms registered under the WPMMP, while only a small proportion of the WPM and dunnage in general cargoes is inspected. We would recommend that the FC take a documented approach to the inspection of wood packaging with imported goods and devotes resources relevant to the risk that this represents.

While there would be severe consequences from the import of diseased wood and inspection frequencies are set by an EU directive, there could be more scope for a risk-based approach in other areas. We recommend the FC consider:

- developing and adopting a risk-based approach to

inspections under the WPMMP programme. Concerns that lengthening the time between inspections for lower risk firms might encourage non-compliance could be alleviated by the introduction of random inspections

- developing and adopting a risk-based approach to inspections to follow up tree re-stocking notices
- continuing to seek to identify cases where it can apply to the EU for reduced frequency of inspections of imports
- rewarding good practice by exempting or reducing burden on chartered foresters or certified forests
- investigating the scope to work with the Local Authority Coordinator of Regulatory Services (LACoRS) or the Institute of Licensing to better coordinate action in relation to tree felling and re-stocking
- publishing its response rates on inspections of cargo. Some stakeholders felt that inspectors were not available to check cargo and were over stretched. The FC did not think that this was an issue and that cargo was inspected within service agreement levels. They noted, however, that on occasion notifications that goods were available for inspection may have been delayed by the port operators, possibly as a consequence of their limited specialised inspection facilities mentioned previously. Publishing details of inspections might address stakeholders' concerns in this area. (Plant Health Inspection figures and response rates are usually published in the GB Annual Report. Recent reports have seen the response rate omitted but we understand the FC will re-instate these in view of the Hampton Implementation Review report.)

Publication of an overall risk management strategy would help to maintain the confidence and support of stakeholders in the FC's approach to risk management and would also enhance accountability for delivery of the strategy. The strategy could provide data on inspection and failure rates in its various areas of responsibility; explain the basis on which the FC proposes to allocate resources between these areas; and outline the rationale for its proposed approach to inspection in each area.

SANCTIONS

Hampton & Macrory principles

“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”

“Regulators should be transparent in the way in which they apply and determine administrative penalties.”

“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”

“Regulators should follow up enforcement actions where appropriate.”

Key findings on Sanctions: Given the limited range of sanctions available to it in some areas, the FC adopts a graduated approach to enforcement and applies sanctions transparently. Transparency will be enhanced when the FC publishes its enforcement strategy, being prepared at the time of the review. There could also be gains from reviewing the range of sanctions available to enhance their proportionality.

Background information such as a summary of sanctions available to the regulator and any data on sanctions imposed by the regulator:

Tree felling

In cases of illegal felling, and as a result of a Regulatory Reform Order (RRO), the FC can issue a formal enforcement notice, requiring re-stocking without going to court. It may prosecute if the work is not carried out, and may carry out the work and charge for it. Conviction for illegal felling can lead to an offence and fine of up to £2,500 or twice the value of the trees, whichever is higher. And a £5000 maximum fine is applicable where the licence conditions of a re-stocking notice are not complied with and a follow-up enforcement notice is not complied with either. Discussions with the FC revealed some uncertainty about whether trees could be valued on the basis of firewood or amenity value, which could be substantially higher.

In 2008-2009, the FC received 176 reports of illegal felling and investigated 34 in more detail. It issued six re-stocking notices in 2008-09 and a further 12 are in progress. Two cases were under investigation with a view to prosecution. The FC issued six formal warnings and agreed no further action was necessary in two cases.

Woodland grants

Contracts can be terminated if the scheme holder does not comply with the contract conditions under which a grant has been given. Termination can lead to a request to repay the grant.

Plant health

If an inspector has reasonable grounds for suspecting that the landing requirements have not been met or where there is a risk of introducing a tree pest or disease, he/she is required under the EU Plant Health Directive to either:

- specify the manner by which the landing is carried out and the precautions to be taken during and after the landing of the consignment
- in exceptional circumstances, order treatment of the material by a prescribed manner so that the landing requirements are met
- prohibit the removal of the material from the premises
- prohibit the landing of all or part of the consignment
- require re-export out of the EU
- require destruction of the consignment

UKWMMP

If a registered firm fails an inspection, the licence will be qualified and a further inspection required within three months. A firm that is found to have counterfeited the certification stamp can be prosecuted for fraud. However, the evidence required is so stringent that the FC has not been able to pursue prosecution but has instead issued warning letters following legal advice. This was considered by stakeholders and FC alike to be an inadequate response.

Examples of good practice:

Positive features of the FC's approach include:

- sanctions, such as re-stocking orders, are aimed at reversing harm, rather than punishment;
- in some areas, such as in relation to plant health, the FC administers a graduated approach to sanctions;
- the FC is transparent about its reasons for applying

sanctions or giving qualified approvals; and

- greater flexibility, as through the re-stocking notice order, the FC can now require re-stocking without having to prosecute.

Review findings: The FC has important work in progress, as it is currently developing an enforcement strategy. Publication of this strategy would assist compliance and accountability.

The extent to which the review team believes the regulator is acting in line with the Hampton principles and Macrory characteristics:

The proportionality of sanctions in some areas warrants review. For example, financial penalties for illegal tree felling seem unlikely to deter the felling of trees to clear land for building development (although as noted there is some uncertainty about the size of penalties currently available).

In the case of the UKWPPM, the financial penalty for counterfeiting certification stamps requiring criminal prosecution is difficult to enforce.

Options such as smaller on-the-spot fines and 'naming and shaming' are worth considering as an intermediate penalty after warnings have been given, but would need to be accompanied by proportionate appeal procedures and would need to follow a common approach adopted by all nine administrations enforcing EU Plant Health legislation in the UK.

The FC should also ensure that it works effectively with other agencies to enforce sanctions. For example, the FC should ensure that local authorities are aware of re-stocking notices when they consider planning decisions. The FC currently advises local authorities about this but there was some concern about whether the information consistently gets to the key decision makers. The FC currently publishes a list of applicants for tree felling licences on its website and could expand it to include publication of re-stocking notices. It could also consider formal mechanisms to ensure that sanctions applied by the FC are considered by local government.

FOCUS ON OUTCOMES

Hampton principle

“Regulators should measure outcomes and not just outputs.”

Key findings on Focus on Outcomes: Stakeholders appeared to understand and support the FC’s core aims and objectives. FC staff contacted during the review also appeared to be committed to achieving their team’s outcomes (such as effective woodland management and protecting the woodland from pests and diseases), and recognised the contribution of output targets (such as numbers of tree felling licences or inspections) and these outcomes.

The FC is a unique and complex organisation with several different bodies and regulatory approaches. The challenge is to ensure that outcomes across such a structure are consistent with each other and mutually supportive, and that the delivery methods are effective in achieving the overall outcomes that the organisation wishes to achieve.

In the area of Plant Health, this challenge is complicated by the fact that in the UK, including the Channel Islands and the Isle of Man, nine administrations are responsible for implementing the requirements of the EU Plant Health Directive, which requires a consistent and mutually supportive approach.

Background information such as the regulator’s key objectives: The FC relies on a range of regulatory approaches and delivery methods to achieve its stated outcomes. Enforcing legislation and regulations appears to be a fairly minor part of the way the FC achieves its outcomes. It appears to rely more on providing incentives through the grants programme; providing advice and guidance; and demonstrating good practice through the management of the woodland under its control.

The FC Great Britain Corporate Plan states that its duties are promoting the interests of forestry, the development of afforestation, the production and supply of timber and other forest products, the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest and that two overarching priorities are climate change and biosecurity (tree health). The Plan sets out areas and

actions, but does not define measurable actions to achieve these outcomes. The nature of tree health issues often means that specific targets cannot be provided, as the nature of threats and a means of dealing with them require sound scientific evidence, which can take years to accumulate.

However, we understand that the shortcomings in the Corporate Plan concerning measurable actions are being addressed in the revised GB strategy, which is currently in preparation. The revision to the strategy acknowledges the setting up of the Biosecurity Programme Board, supporting a more strategic approach to plant health issues. The new plant health strategy will be produced in the Spring of 2010.

Example of good practice:

The FC England Corporate Plan 2009-2012 lists its aims under 5 headings (A Sustainable Resource; Climate Change; Natural Environment; Quality of Life; and Business and Markets) and identifies specific objectives and actions under each heading. Stakeholders appeared to have a good understanding of these outcomes.

The extent to which the review team believes the regulator is acting in line with the Hampton principle:

The review team found it difficult in the time available to gain a full picture of how FC England and FC Great Britain work together to achieve shared outcomes. On the face of it, the corporate plans are quite different. We would suggest that it would be useful to have more connection between the plans or a clearer explanation of why this is not appropriate.

This disconnection was perhaps also reflected in the fact that the work of the GB plant health team and the tree felling licensing/enforcement team seemed separate. Whilst teams were clear on their outcomes, there did not appear to always be a sense of how all the work fitted and linked together.

The FC's work on tree felling and EIAs is reported in terms of output numbers. Additional information might give a better idea of the FC's work and its impact. For example, while only two EIAs were undertaken in 2008-09, FC staff have screened a large number of proposals. Data on the number and outcomes of these applications would be useful. The 2008/9 annual report does not contain much detail on the impact of the plant health regulatory work either. Publication of the costs to suppliers when the FC has used its powers could encourage compliance.

The plans or annual reports do not draw out the linkages

between the FC's regulatory instruments and the outcomes they are intended to achieve. It appears that the FC's focus is now on more strategic outcomes, such as climate change and the social benefits of forests. The review team did question whether the FC has the necessary legislative framework to achieve all its outcomes because it has, for example, no regulatory power to enforce the UK Forestry Standard. However, this raises broad and fundamental questions that go beyond the scope of this review. We suggest that the FC may wish to consider whether its current mix of delivery methods and approaches are sufficient to achieve its desired outcomes.

**Appendix 1:
Review team
membership**

Richard Clarke was on a six month assignment at the Better Regulation Executive at the time this report was written. He has since returned to his ongoing role as executive director of the Victorian Competition and Efficiency Commission, an independent agency which advises the Government of Victoria, Australia on issues that include regulatory reform.

Emma Winter is a Development Manager at the Charity Commission, the body responsible for registering and regulating charities in England and Wales. Emma has worked for the Charity Commission for seven years and has undertaken a number of roles during that time, including acting as a case officer providing advice and guidance to charities. Emma's current role involves performance reporting; business planning and managing projects and initiatives to improve the Commission's services.

Erica Young is a Policy Programme Manager at the Gambling Commission, the body responsible for regulating commercial gambling in Great Britain. She has been with the Commission for three years and was closely involved in the development of the new regulatory regime associated with the implementation of the Gambling Act 2005. Erica previously had a varied career in health policy, latterly specialising in improving care at the end of life.

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