

## APPEAL TO SCOTTISH MINISTERS: NOTES FOR APPELLANTS SUBMITTING A FORESTRY APPEAL

**These notes relate to appeals to the Scottish Ministers under:**

- **Section 68 of the Forestry and Land Management (Scotland) Act ['the Act']**
- **Part 6 of the Felling (Scotland) Regulations 2019**

**In respect of decisions made by Scottish Forestry relating to applications for felling permission, in respect of serving directions or notices, or in respect of on any imposed conditions on the aforementioned.**

If you want to appeal against any decisions outlined in section 68 of the Act, you must use form FA01.

### **Appeal Process**

Before you complete and submit this form, please ensure that you have a right to appeal to the Scottish Ministers.

You must submit your appeal to Scottish Forestry in the first instance using the form provided. Scottish Forestry will undertake an internal review of the decision and either uphold the appeal or refer it to the DPEA (Planning and Environmental Appeals Division) for determination.

### **Deadline for making an appeal**

The regulations specify that an appeal must be made within the period of **40 working days** beginning with the date you were informed of the decision by Scottish Forestry. Your full appeal must be received by Scottish Forestry before the end of 40 working days. **If choosing to send your appeal by post, we recommend you use recorded delivery and retain proof of receipt by us.**

The Scottish Ministers have no scope to accept and consider an appeal made after the deadline. This includes any incomplete appeal form or documents received before the deadline, but not fully documented by the time it passes. To avoid any risk of your appeal being turned away due to being out of time, we strongly advise that you make your appeal in plenty of time before the end of the 40 working day period.

## **COMPLETING THE APPEAL FORM**

The notes below are intended to help you complete the appeal form. This form is mandatory and should be carefully completed to ensure your appeal is valid.

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<b>Appellant</b>	This section should be fully completed with the name, address, and contact details of the appellant. The appellant is the person who has been notified of a decision or an owner of the land on which a notice or direction has been served. The appellant's name, address and telephone number <u>must</u> be supplied.
<b>Agent</b>	This section should be fully completed with the name, address, and contact details of the agent, where applicable. The agent is the person who is acting on behalf of the appellant in completing the appeals form. The appellant's name, address and telephone number <u>must</u> still be supplied, even where the form is completed by an agent.
<b>Email communications</b>	We seek to use electronic communication wherever possible. Please mark the appropriate Yes/No box to confirm whether you are content to receive correspondence by e-mail.
<b>Scottish Forestry Conservancy office</b>	This will be the name of the regional Conservancy office that made the decision being appealed.
<b>Decision reference number</b>	Each felling permission application, direction, or notice is given a unique reference number by SF. This will feature in any correspondence from SF and on any associated documentation. You <u>must</u> supply the reference number with your appeal.
<b>Site address</b>	To help us identify the location of the site subject to the appeal, you should provide a postal address or site name, especially if this differs from the whole area subject to SF's decision.
<b>OS grid reference</b>	Where applicable, please ensure you provide an accurate 6 figure grid reference so the site can be easily located especially if this differs from the original SF's decision.
<b>Area of Site</b>	Where applicable, please insert the total site area that your appeal relates to, in hectares. Please provide a map of the area, if possible.
<b>Date of application</b>	If your appeal relates to an application, this should be the date that SF received your application. This information should be available on correspondence acknowledging receipt of the application.
<b>Date of SF's decision</b>	If your appeal relates to a separate decision, this should be the date that you were notified of the decision. This information should be available on correspondence sent to you regarding the decision.

<b>Nature of this appeal</b>	<p>There are 4 options in this section and you should select one of them, to demonstrate what decision has resulted in this appeal.</p> <ul style="list-style-type: none"> <li>• 1<sup>st</sup> option: This is if your appeal relates to a Felling Permission, including the conditions imposed in it.</li> <li>• 2<sup>nd</sup> option: This is if your appeal relates to a Felling or Restocking Direction or Remedial Notice, including the conditions imposed.</li> <li>• 3<sup>rd</sup> option: This is if your appeal relates to a Registered Notice to Comply.</li> <li>• 4<sup>th</sup> option: This is if your appeal relates to a registered Remedial Notice</li> </ul>
<b>Appeal against</b>	<p>There are 5 options in this section and you should select one of them to demonstrate what decision you wish to appeal against.</p> <ul style="list-style-type: none"> <li>• 1<sup>st</sup> option: You want to challenge SF's decision to give or issue something.</li> <li>• 2<sup>nd</sup> option: Your application for permission or a request has been refused, and you want to challenge this.</li> <li>• 3<sup>rd</sup> option: Your appeal relates to the variation, suspension, revocation or discharge relating to any notice, direction, or permission.</li> <li>• 4<sup>th</sup> option: Your appeal relates to SF's refusal to vary, suspend, revoke or discharge a notice, direction, or permission.</li> <li>• 5<sup>th</sup> option: You want to challenge conditions imposed on a felling permission, direction, or notice.</li> </ul>

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<b>Statement of appeal</b>	<p>Your statement of appeal should include full particulars of your appeal and the matters you think ought to be taken into account, and all documents, materials and evidence upon which you intend to rely in your appeal <u>must</u> accompany this form. All matters which you intend to raise in the appeal <u>must</u> be set out in your appeal or on the accompanying documents.</p> <p>You may only have the opportunity to raise additional matters or submit further documents in limited circumstances. For example, if, in its response to your appeal, Scottish Forestry raised matters which had not previously featured in its decision on your application, you would have the opportunity to comment and submit additional documents on those matters.</p>
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	<p>Other interested parties (who had previously expressed a view relating to the decision being appealed) may be advised of your appeal to Scottish Ministers. If they provide further comments in respect of your appeal, you will be entitled to respond to those comments before a final decision is made.</p> <p>Nevertheless, depending on the terms of Scottish Forestry's (and any other party's) response to your appeal and the possible need for any further procedure (see below), the point at which you lodge your appeal might be your only opportunity to state your case, and so you must be content that you have raised all relevant issues.</p>
<b>Matters not before Scottish Forestry</b>	<p>Where the appeal relates to a refusal of felling permission, the appeal should be based on the same proposal that was submitted to Scottish Forestry at the time of consideration. This means that any documents submitted at appeal must be identical to those considered by Scottish Forestry.</p> <p>Likewise, all parties involved in an appeal are not expected to raise any new matter during the appeal process that was not before Scottish Forestry at the time it made its decision, unless it can be demonstrated that:</p> <ul style="list-style-type: none"> <li>• It could not have been raised before that time; or,</li> <li>• It has not being raised before that time due to exceptional circumstances.</li> </ul> <p>If you are considering raising new matters or evidence which did not feature in Scottish Forestry's consideration of their original decision, you might want to consider whether you should make a make a fresh application (if applicable) to Scottish Forestry rather than appeal to Scottish Ministers.</p> <p>The appeal form asks you to state whether you are seeking to introduce new matters which were not before Scottish Forestry at an earlier stage and, if so, explain why.</p>
<b>List of documents/ evidence</b>	<p>As well as providing a full statement of your appeal at the outset, you <u>must</u> supply all documents, materials, and evidence that you intend to rely on in support of your appeal alongside your appeal form. To ensure we have received all of this information from you, please provide a full list of all supporting documents etc. in this text box.</p> <p>If applicable, please quote the reference number on any documents issued by Scottish Forestry.</p>

**Appeal  
procedure**

The appeal process will be managed by the person appointed by Scottish Ministers to consider and decide your appeal. If, having received your appeal, Scottish Forestry's response, and any other correspondence received from any interested parties, the appointed person has sufficient information to be able to make a decision, then a decision may be made on the appeal at that time.

However, the appointed person may consider it necessary to obtain some further information, perhaps just on a single issue/matter (rather than on the appeal as a whole) before reaching a final decision. There are several methods available to the appointed person to obtain this information.

Inspection of the site

The appointed person visits the site to view it and its surroundings. The appointed person will undertake an unaccompanied visit wherever possible. If an accompanied site inspection is necessary, there will be no scope to discuss the appeal with the appointed person.

Further written submissions

Parties will be invited to provide information on a specific issue in writing – and each of these parties will then be entitled to respond to the written submissions provided by others.

Hearing session

This involves a discussion between the parties. This will be restricted to the specific matters identified for discussion, and will be led by the appointed person. Formal cross-examination of hearing participants is not allowed.

If the appointed person decides that any further written submissions or a hearing session is needed to consider a specific matter, both you and Scottish Forestry will always be invited to participate, along with anyone else who the appointed person wished to receive relevant information from.

While ultimately it is the appointed person's role to decide whether (and, if so, what) further procedure is necessary to inform the decision on your appeal, both you and Scottish Forestry are entitled to express an opinion on which procedure (or combination of procedures) you think are appropriate. This section of the appeal form invites you to do so. It also provides an option (box 1) where you can express if you are content for a decision to be made without any further procedure.

	Where there is to be some further procedure, you will always be advised of what is happening and of what might be expected of you.
<b>Site Inspection</b>	This section of the form seeks your assistance and opinion in relation to the accessibility of the site relating to your appeal, to assist our preparations if the appointed person decides to inspect the site before reaching a decision.
<b>Bio-security</b>	Good bio-security practice helps prevent outbreaks and the spread of pests that may affect the forest industry. It is helpful for the reporter to know in advance if there are any such issues they need to be made aware of before they carry out a site inspection. If there are, please give details in the comments box on the appeal form or provide a separate sheet.

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<b>Checklist</b>	<p>The appeal form is structured to guide you in making a full and valid appeal which will comply with the terms of the 2018 Act and Regulations.</p> <p>The checklist allows you to ensure that you have provided us with all the information we need to progress your appeal.</p>
<b>Other appeals</b>	If you have any other forestry (or related) appeals currently with the Scottish Ministers concerning the same or neighbouring land, please provide details on this part of the form.
<b>Declaration</b>	To confirm that you are making an appeal to the Scottish Ministers in the manner set out on your form and supporting documents, please sign and date the form before you send it. If you are sending the form electronically, you can simply type your name and date – your email address will act as an electronic signature.

## What next?

Once you are happy with the terms of your appeal, you should send the form and all supporting information to the Scottish Forestry National Office care of the Operational Delivery team, either by e-mail or post. The contact details are at the end of the appeal form.

### **Further information**

For further information please see following:

#### **Scottish Forestry website:**

<https://forestry.gov.scot/support-regulations/felling-permissions>

#### **The Forestry and Land Management (Scotland) Act 2018:**

<http://www.legislation.gov.uk/asp/2018/8/enacted>

#### **The Felling (Scotland) Regulations 2019:**

<http://www.legislation.gov.uk/ssi/2019/49/made/data.pdf>

If you wish to discuss any aspect of the appeal form or the process, please contact Scottish Forestry on 0300 067 6000. Written queries can be sent to us at either the e-mail or the postal address on the appeal form.