



Scottish
Forestry
Coilltearachd
na h-Alba

Non-Timber Forest Products

V. 2024

Scottish Forestry is the Scottish Government agency responsible for forestry policy, support and regulation

Is e Coilltearachd na h-Alba a' bhuidheann-ghnìomha aig Riaghaltas na h-Alba a tha an urra ri poileasaidh, taic agus riaghladh do choilltearachd



Scottish Government
Riaghaltas na h-Alba

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Purpose

This report is owned by Scottish Forestry and updates the previous Forestry Commission guidance. It aims to provide policy direction for decisions on encouraging and supporting sustainable development of Non-Timber Forest Products in Scotland.

As Scotland's Government Agency responsible for forestry policy, support and regulation, Scottish Forestry will apply this policy to thinking and decisions within its areas of competence. It will also encourage others to have regard to the policy.

Definition

In this policy, the term 'Non-Timber Forest Products' will be used, abbreviated to NTFP. The definition will be as agreed by the FAO for Non-Wood Forest Products (NFWP). Please see Appendix 1 for a more in-depth discussion of definitions.

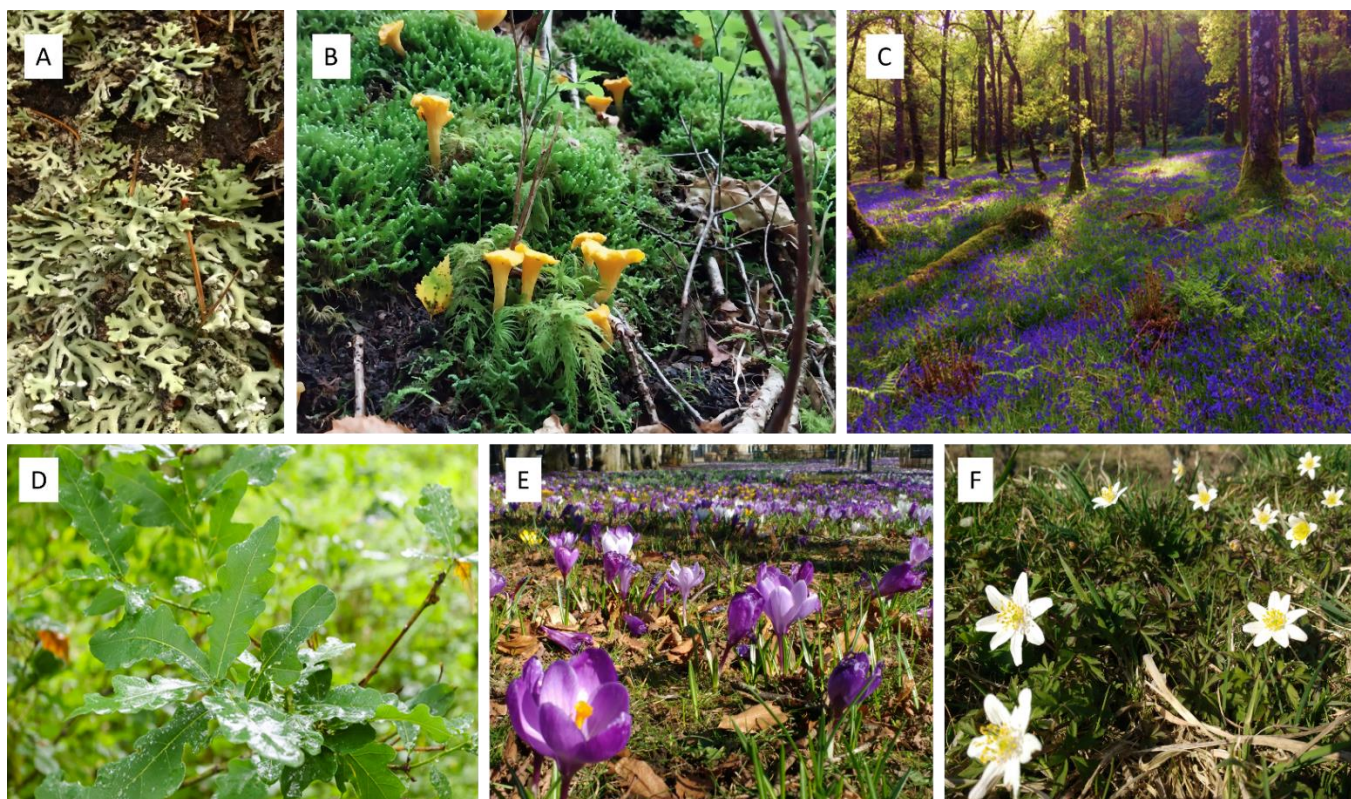


Figure 1: Selected NTFPs and existing/potential uses including (a) Lichens (forestry and medicines), (b) Mushrooms (foods), (c) Bluebells (cosmetics and medicines), (d) Oak trees (craft materials, natural dyes and medicines), (e) Crocus (food ingredients and medicines) and (f) Wood anemone (medicines).

Non-Timber Forest Products are defined as products of biological origin other than wood derived from forests, other wooded land, and trees outside forests.

Background and context

The Scottish Government's economic strategy¹ is to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth to deliver a just transition to net zero through a nature-positive economy². This will create significant new opportunities for nature-based businesses and jobs across Scotland, particularly in rural and island areas, and will also help to rebuild the natural capital that underpins our prosperity, health, and wellbeing.

Simultaneously, forestry in Scotland has expanded its emphasis to include a far broader range of values and objectives in recent years, and worldwide interest in contemporary harvests of NTFPs has grown amongst land managers, policy makers, researchers, rural development specialists^{3,4}, and communities. Recent estimates suggest 26% of European households regularly collect some form of NTFPs and the sector accounting for a total economic value of €23.3 billion per annum, with the total value of NTFPs collected each year in some areas amounting to 71% of the value of annual roundwood production⁵.

The Scottish Government Forestry Strategy⁶ recognises the economic potential of NTFPs in supporting business development activities. In Scotland, interest in NTFPs has been increasing over the last 10 years or so. There is now a wide range of businesses generating significant economic activity, which deal in a variety of products from wild mushrooms to essential oils. Previous surveys^{7,8}, have indicated that within Scotland, 24% of the population had collected NTFPs in the previous five years and that 80% of those people (around 19% of the Scottish population) had gathered some form of NTFP in the last 12 months. As the majority of collecting is for personal use, policy relevant to the sustainability of personal use is as important as regulation of commercial harvesting. See Appendix 2 for further background and detail.

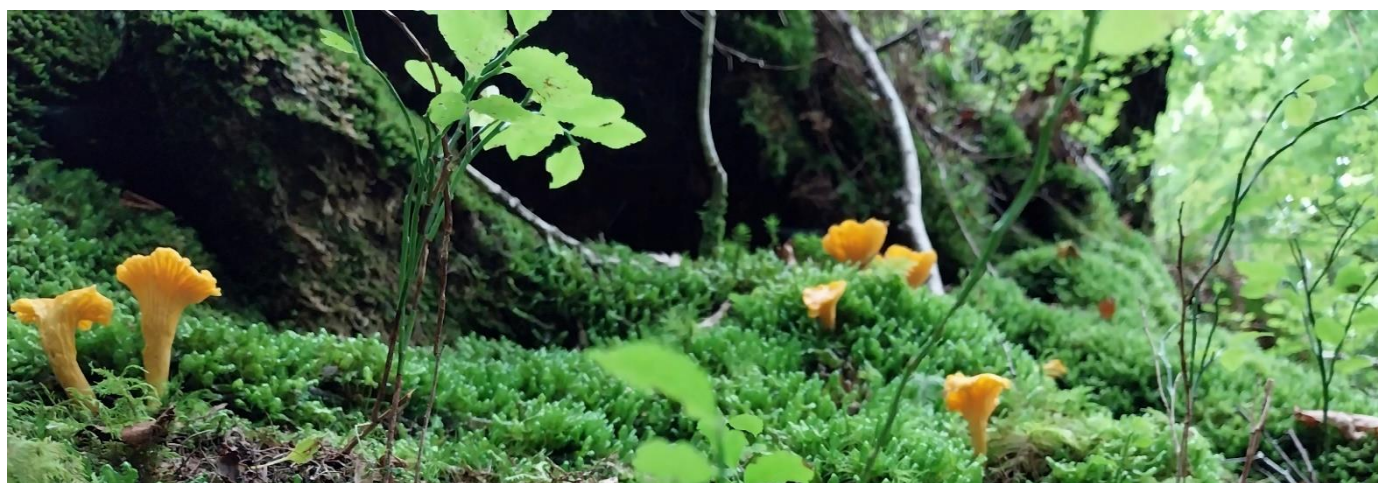


Figure 2: Wild mushroom NTFPs have an estimated value exceeding €5 billion per annum in Europe⁵.

These findings reinforce and highlight renewed interest in woodland product gathering in Scotland. At the same time, the related need to diversify the economic base of rural areas has led woodland managers and policy makers to consider NTFPs as potentially additional sources of revenue and rural development opportunities.

¹ Scottish Government (2022) [Scotland's National Strategy for Economic Transformation](#)

² Scottish Natural Heritage (2008) [The Economic Impact of Scotland's Natural Environment](#)

³ Emery *et al.* (2006) [Wild Harvests from Scottish Woodlands: Social, cultural, and economic values of contemporary non-timber forest products](#)

⁴ Shackleton and Vos (2022) [How many people globally actually use non-timber forest products?](#)

⁵ Lovric *et al.* (2020) [Non wood forest products in Europe – A quantitative overview](#)

⁶ Scottish Government (2019) [Scotland's Forestry Strategy 2019–2029](#)

⁷ TNS GLOBAL (2003) Results of an omnibus survey into non-timber forest product use in Scotland

⁸ Forest Research (2023) [Public Opinion of Forestry 2023: Scotland](#)

Unlike many other natural resources, NTFPs are often owned by one set of individuals, and exploited by another which has the potential to lead to misunderstanding and possible conflict. Sustainable forest management places an emphasis on managing forests to recognise and promote a broad range of values and uses. Until the Scottish Government's Policy on NTFPs was published in 2009, there was no clear policy for this important and expanding area of the rural economy. That said, it is also recognised, if less well understood, that NTFPs are also present and collected in urban areas.

This report sets out an update to core principles for the future management of NTFP resources in Scotland.

Principle aims

- To identify the rights and responsibilities of landowners and NTFP users;
- To state the position and approach of Scottish Forestry as regards NTFPs;
- To consider a definition of what constitutes sustainable management and use of NTFPs in Scotland;
- To support and encourage sustainable development across the NTFP sector;
- To raise the profile and encourage the integration of NTFP issues and opportunities with contemporary forestry practices;
- To raise awareness of NTFPs and potential issues within the private land-ownership and land management sectors.

Guiding principles

- There is a strong presumption in favour of protecting, improving, and expanding Scotland's woodland resources;
- NTFP gathering should be carried out in a responsible and sustainable way;
- The sustainable development of the sector is dependent on mutual respect, and well-defined relationships between the landowners and gatherers.



Figure 3: Hazel can produce diverse NTFPs including wood for baskets and weaving, oils for paints and cosmetics, human foods, animal feeds, cosmetics, and various medicines.

The law, rights and responsibilities

- The Wildlife and Countryside (1981) Act⁹ and amendments in the Nature Conservation (Scotland) Act 2011¹⁰ support the common law. Under section 13(1b), uprooting any plant without the permission of the landowner is illegal (for the purposes of the Act fungi are considered to be plants). Further, the Schedule 8 listings¹¹ give some species complete protection from harvesting (including seeds or spores), disturbance and sale or possession with or without the landowners' consent, or by the landowner themselves.
- Additionally, the Land Reform (Scotland) Act 2003¹² specifies that taking away anything in or on the land for commercial purposes or for profit is excluded from the right of access (and is therefore an offence).
- The outdoors is not a risk-free environment, as it is used for many working activities such as farming and forestry. Land managers may put up signs asking people not to use a particular path or area whilst land management operations such as tree felling are underway.
- There is a longstanding legal principle called "*volenti non fit injuria*" which means that a person taking access will generally be held to have understood and accepted any obvious risk or risks inherent in the activities they are undertaking. The key word here is "obvious", but the landowner still owes a duty of care to people entering onto their land as enshrined in the Occupiers Liability (Scotland) Act 1960¹³.

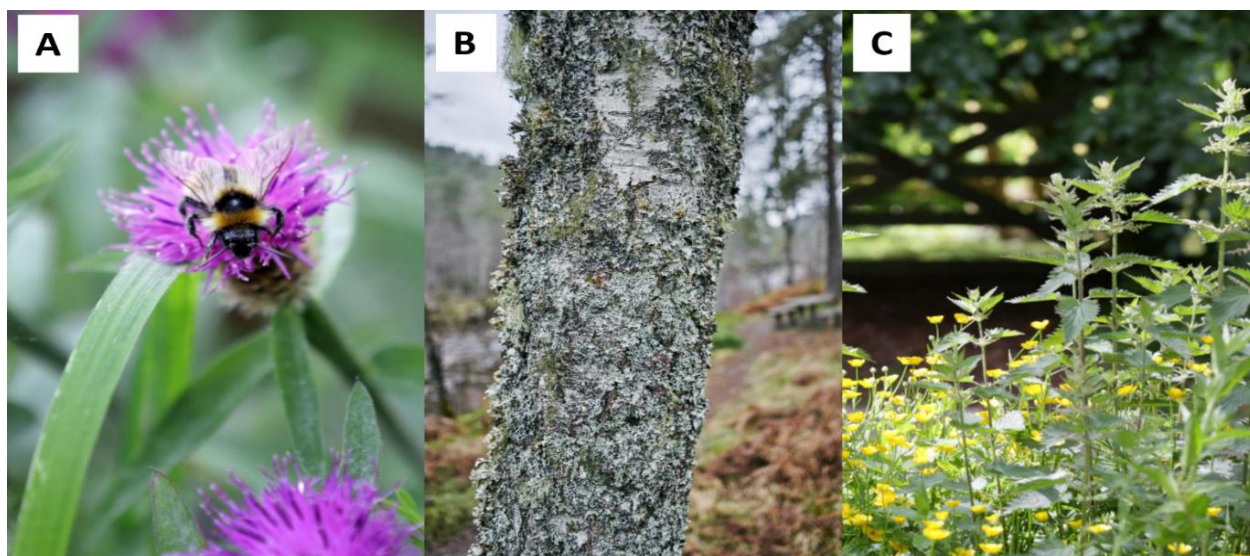


Figure 4: Less obvious NTFPs can also include (a) Honeys and waxes from bees (foods and cosmetics), (b) Birch sap (foods and medicine) and Nettles (crafts, foods and medicines).

- Despite this, where landowner interest in exploiting NTFPs is perceived to be low, a strong tradition of customary rights as public goods exists. This tradition has been practiced for many years in Scotland without legal challenge. It suggests that landowners view responsible harvesting for personal use as an acceptable rural activity. Both the UK Forestry Standard¹⁴ (UKFS) and the UK Woodland Assurance Scheme¹⁵ (UKWAS) require owners to respect and continue uses of woodland, where established by

⁹ [Wildlife and Countryside Act 1981](#)

¹⁰ [Wildlife and Natural Environment \(Scotland\) Act 2011](#)

¹¹ NatureScot (2020) [WCA-8 Protected Species List](#)

¹² [Land Reform \(Scotland\) Act 2003](#)

¹³ [Occupiers' Liability \(Scotland\) Act 1960](#)

¹⁴ Forest Research (2023) [The UK Forestry Standard](#)

¹⁵ UKWAS (2000) [The UK Woodland Assurance Scheme Guide to Certification](#)

long tradition providing these are sustainable and not detrimental to the objectives of management.

In the UK Woodland Assurance Scheme (UKWAS), permissive and traditional uses include:

- Gathering fruit or fungi by the public for their own consumption where this does not jeopardise the achievement of biodiversity objectives (having regard to codes of good practice), and;
- Traditional 'common rights'.

However, quite apart from legal considerations, common courtesy would be to request permission from the landowner, if wishing to collect regularly for personal use in an area. Potential conflict can arise where the landowner wishes to exploit the resource for their own interest, or where individuals or companies collect NTFPs for commercial gain. Any gathering of NTFPs can be seen as part of a continuum (Figure 5).

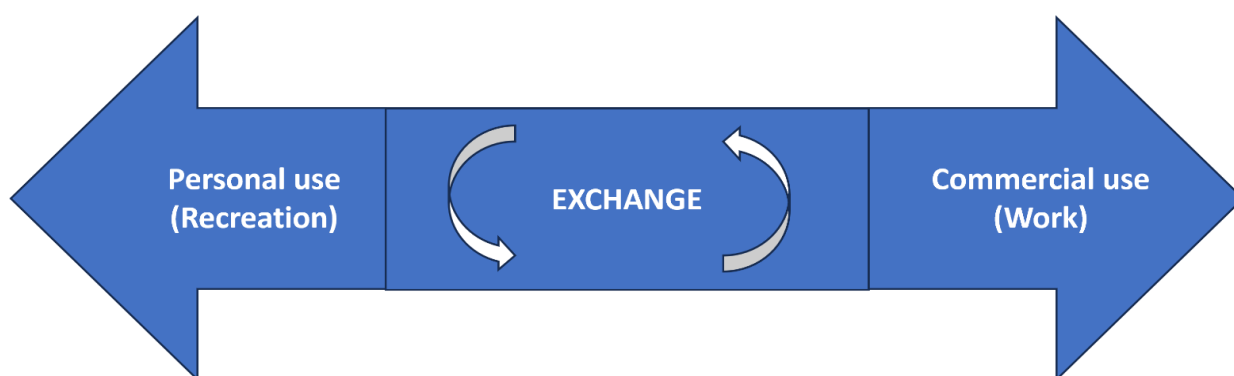


Figure 5: A Non-Timber Forest Product continuum

The middle area, where exchanges¹⁶ may take place, is where the greatest level of difficulty lies in determining the point at which harvesting is considered to be for commercial gain (defined as barter, exchange, and other transactions for value) rather than for personal use. The need to differentiate between harvesting for commercial and harvesting for personal use is most obvious at the extreme ends of the scale, where there is no doubt of the intent of the harvester. Where collections are made for commercial benefit, the balance is tipped from 'tolerated' public goods to private goods. This distinction is also important in terms of how the Health and Safety legislation will apply.

- Under the Land Reform (Scotland) Act¹⁷, the harvester has no right of access to collect for commercial benefit and must gain consent or permission prior to any harvesting activity.
- Where permission has been granted for commercial collection, employers need to be aware of the provisions of the Health and Safety at Work Act 1974¹⁸. The act places duties on employers to ensure, so far as is reasonably practicable, the health, safety, and welfare at work of employees and others who may be affected by their business.

Appendix 2 outlines key legislation, but it is not intended to be exhaustive.

"Sale" shall include barter, exchange, and any transaction in which NTFPs are or may be disposed of for value, and any transaction in which NTFPs are used or are to be used but not disposed of to obtain money, goods, services, or other consideration. ‘

¹⁶ [Deer \(Scotland\) Act 1996](#) (Section 36 sub section 7)

¹⁷ [Land Reform \(Scotland\) Act 2003](#)

¹⁸ [Health and Safety at Work etc. Act 1974](#)

Forestry and NTFPs

Scottish Forestry is keen to continue supporting and encouraging development of the NTFP sector in a way which allows continued access to the resource, but ensures that harvesting is carried out in a sustainable and responsible way.

- Landowners and collectors may find the Access Behaviour Code¹⁹, developed to provide guidance to Forestry and Land Scotland staff and stakeholders, useful when considering harvesting NTFPs. This sets out how the relevant legislation applies to forest users, and provides a traffic light system to indicate what activities are acceptable, and which will be subject to advice or, in the worst case, criminal proceedings. For example:
 - The collection of small quantities of moss for personal use is acceptable from appropriate sites. Equally, picking mushrooms and toadstools does not constitute uprooting and is not an offence, but it may be an offence to sell the fungi collected.



Figure 6: Snowdrops are rich in compounds with anticancer, antiviral, antifungal, and insecticidal properties.

- Landowners might consider that permissions for NTFP gathering will be required under one or more of the following circumstances:
 - Where the activity requires exclusive use of the forest, or where exclusive use is desirable;
 - Where the activity is likely to have an adverse impact on the forest environment or other users and a high degree of control is required;
 - Where the event or activity is of a commercial nature, with duties under the Health and Safety at Work Act, and where the landowner should be receiving income.

Persons who require to acquire a permit or permission in respect of NTFPs are those intending to or carrying out the following, and that whether or not for profit or commercial gain, and whether or not in the course of a profession, trade, or business: (a) the sale, or offering or exposing for sale, or; (b) the possession, transportation or causing to be transported for the sale at any premises, of any NTFPs.

¹⁹ Forestry Commission Scotland (2010) [Access Behaviour Guidance](#)

- The decision as to whether a particular event or activity requires exclusive use will have a significant bearing on the management of the permission. Exclusive use may be required by the landowner, or requested by the commercial collector on account of the nature of the activity. This will mean that procedures put in place to manage the activity will be much more rigorous than where low-level informal use is required. An initial baseline survey might be required for commercial collections in some instances before collection takes place, and regular monitoring to ensure collection is being implemented in a sustainable way.
- A commercial operator should undertake activities in line with good practice and provide evidence, if requested, that they have appropriate liability insurance, or other necessary cover to allow them to comply with statutory requirements. This includes Health and Safety, and Gangmaster Licensing rules.
- Scottish Forestry will continue to support the NTFP sector in developing new guidelines and disseminating information to promote sustainable harvesting activity and resource management.
- Scottish Forestry will encourage formation of a trade association, to make and develop useful contacts, develop, promote and police effective NTFP leases and permits, organise events and joint marketing, develop supply chains, provide a cohesive voice for the sector, and encourage best practice.

Sustainable management of NTFPs in Scotland

General principles and guidelines:

- Sustainable management for NTFPs in Scotland can be defined as “the maintenance of (Non-Timber) forest resources to meet current and future ecological, economic, and social needs”;
- Some sites and species will be appropriate only for small-scale manual collection; others will lend themselves to more commercial approaches;
- Some sites, such as Sites of Special Scientific Interest (SSSI) may have restrictions, which will either prevent harvesting, or only permit at certain times if there is risk of disturbance to wildlife. NatureScot is able to advise on such operations requiring consent. The landowner will need to apply for consent to NatureScot, and then permit a third party to conduct collection on their land.
- Existing published guidelines such as the Scottish Outdoor Access Code (SOAC)²⁰ are the starting point for sustainable management, and it is incumbent on landowners and gatherers to have read and understood them. Reforesting Scotland are working on guidance on the sustainability impacts of harvesting, which will provide additional information²¹.
 - The UK Forestry Standard sets out some general guidelines for good sustainable forest management practice. Forests should be managed in a way that protects or enhances biodiversity, and opportunities for enhancing biodiversity should be considered in forest plans;
 - Forest management should aim to maintain the capability of forests to produce a range of wood and non-wood forest products and services on a sustainable basis, and to achieve a diversified output of goods and services over the long term;

²⁰ [Scottish Outdoor Access Code](#) (website – accessed 01/09/2023)

²¹ [Reforesting Scotland](#) (website – accessed 01/09/2023)

- A minimum of 15% of the woodland area should be managed with conservation and the enhancement of biodiversity as a major objective;
- It is important to ensure that removal of forest products from the site, including NTFPs, does not compromise the long-term productive potential.



Figure 7: Scotland has a long history of harvesting NTFP fruits and preserving them as jams.

Certification

The sustainable management of NTFPs is one of the verification factors assessed when certifying against the UK Woodland Assurance Standard (UKWAS). Owners of certified woodland, or those seeking to gain certification, will need to consider the impact of NTFP harvesting on their ability to satisfy UKWAS criteria. Where forests are certified through the UKWAS, a stronger requirement is placed on owners to verify conformance with the spirit of any relevant codes of practice, guidelines or agreements.

- All certified woodlands must demonstrate no evidence of non-conformance from audit, and certified woodlands over 100 hectares must have a system in place, which is aware of and implements the requirements of any new legislation.
- The requirement states that 'Authorised harvesting of non-timber woodland products shall not permanently exceed, or diminish, the long- term productive potential of the woodland.' (See UKWAS Section 2.2.3).
- Verification is determined by evidence from records and discussions with the landowner or land manager that quantities harvested are properly and regularly recorded, are in line both with sustainable utilisation and reproductive rates, and there are no significant adverse environmental impacts.

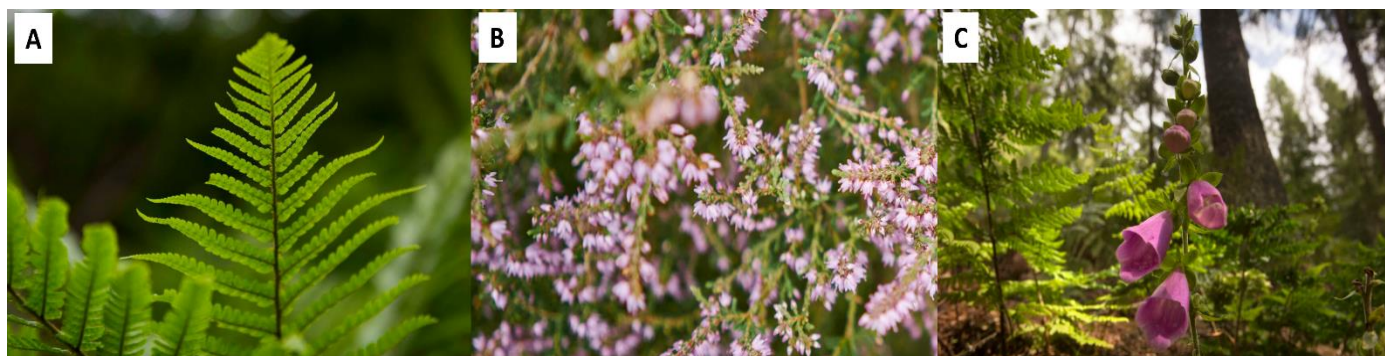


Figure 8: Ferns (a) were traditionally used as crafting materials for weaving but also for medicinal properties and some can even be made into beers, Heather (b) honey has long been prized by beekeepers but the plant is also used directly in foods and medicines, and Foxgloves (c) are well understood to be rich in compounds useful in treating blood pressure disorders.

Avoiding damage to the resource, owner's property, or relations:

In some situations, NTFP collecting can have a significant detrimental impact on landowners. Adverse impacts are defined as:

- Where sustainability is being compromised; or
- where damage to the property is being caused; or
- when the owner wishes to gain commercially from the collection.

The main way to avoid damage is to follow the best practice guides and inform the owner where and what you are going to collect. The owner can then let you know of other operations or events that may be taking place. If you are selling you need to ask the owner if they wish to issue a license or permit and it is advisable to get the response in writing if they do not. Landowners will decide how best to regulate activity on their land.

- The landowner will need to consider the ecological, economic, health and safety as well as social implications. In relevant circumstances, such consideration may require consultation by both landowner and potential collectors with relevant regulators such as NatureScot or SEPA.
- Responsible harvesters are likely to view the resource as a long-term opportunity and take appropriate steps to safeguard resources through the adoption of appropriate harvesting and management regimes. A license or permit then acts in the best interests of both parties. This approach could also work with local groups, who would secure their interests by effectively policing resources and collection on behalf of the owner. In return, any agreement could provide other benefits, such as access to other areas on the property.

Where it is apparent that the present guidelines are being ignored, landowners (or their land managers) have a range of options open to them:

- If members of the public are behaving irresponsibly and causing unreasonable interference, they can be asked to change their behaviour. If they do not change their behaviour, then they give up their access rights. If the person continues to behave irresponsibly, they can be asked to leave, and help can be sought from the local authority or law enforcement agencies. The local ranger service may be able to help provide advice too.

- Land managers can ask people to behave responsibly but cannot use force; their ultimate sanction if the irresponsible actions persist is to seek an interdict.

Police forces will have a full-time wildlife crime coordinator to help in enforcing the law when wildlife crimes are being committed.

- You should contact the police immediately and tell them which offences are being committed.
- Try to ensure there is at least one other witness, and if possible, collect the vehicle registration numbers:
 - If a person's behaviour is threatening or
 - If you encounter behaviour that is a criminal offence.

Appendix 2 provides details of the relevant legislation.

The Land Reform Act Scotland (2003) has provisions, which allow for the following instances to be implemented in a responsible way:

- Temporary land closure:
 - where other forest operations are taking place; or
 - where the resource is being over exploited; or
 - where there is a risk of disturbance to endangered species.

Policing can be difficult but appropriate signage enroute to the site and local engagement to raise awareness will help to minimise conflict.

Sector development

Scottish Forestry, Forestry and Land Scotland and the wider Enterprise Networks continue to recognise and support the NTFP sector. The Scottish Rural Development Programme offers some new business development support and skills development measures, which may be helpful in this respect and offer potential new opportunities for wild harvest businesses. The Scottish Working Woods label²² is also a useful marketing tool.

²² [Scottish Working Woods](#) (website, accessed 21/08/2023)

Policy consequences

The principal aims of this policy statement are set out on pages 3 & 4. The primary consequences will be:

- Improved understanding of the roles and responsibilities of all those directly involved with the NTFP sector in Scotland;
- Development of productive relationships between growers, landowners, and collectors;
- Safeguarding of an important national resource through responsible and sustainable management;
- Raising the profile for NTFPs as an important part of the forestry scene in Scotland;
- Increased employment and rural development opportunities from sustainable collection and processing.

Review

Unless there are significant changes in Policy and Regulation in the interim this guidance document will be reviewed after not more than 5 years (2028).

Equality Impact Assessment

This draft policy has been screened and the conclusion was it does not require a full Equality Impact Assessment.

Appendix 1

Defining NTFPs

The definition of ‘Non-Timber Forest Product’ has been under discussion for a long time, and the different definitions, concepts and uses given to this term have been diverse both in literature, and in the business and government policy sectors.

- The term “Non-Wood Forest Products” was originally adopted by the FAO in 1995 to differentiate between “wood” (a classification which had been recently extended to include woody products such as firewood, in addition to timber), and all “other” products²³.
- The FAO updated this definition in 1999 as “products of biological origin other than wood derived from forests, other wooded land, and trees outside forests”. In this context, hedgerows are considered other wooded land²⁴.
- More recently, this was further developed to “Goods derived from forests that are tangible and physical objects of biological origin other than wood” such that products collected from trees outside forests, other wooded land and agricultural production systems were excluded²⁵.
- The United Kingdom Woodland Assurance Scheme (UKWAS) 5th edition (section 2.4.3)²⁶ states that ‘Non-Timber Woodland Products include plants or parts of plants, bark, sap, moss, fungi, fruits, seeds and nuts, honey, venison and other animal products, but not tourism or education’.
- Another view is that NTFPs are annually renewed non-timber products that require no management.
 - This definition covers the fungi, berry, nut and pharmaceutical products but runs into difficulties over foliage/bark harvests, Christmas trees, wood fuel, and some other NTFPs, such as mosses, lichens and floral greens. It is also difficult to fit game into this definition as it is managed to some extent in many situations. Although NTFPs may be naturally occurring within a particular silvicultural regime, appropriate management may be beneficial to the natural resource. Similarly, although education and tourism/recreation benefits can be provided without management, the quality and extent of the benefits is often greatly enhanced by management. These benefits are an important part of the economic activity of the sector and are key to ensuring its sustainability.
- Alternatively, NTFPs could also be defined as any non-timber benefit arising from woodland.
 - This is a very wide-ranging definition which embraces all forms of microclimatic, hydrological, edaphic, sporting, recreational and educational benefits as well as Christmas trees. To base a policy on this definition would require it to deal with a wide range of benefits that are already adequately addressed under existing policies. For example, deer management is covered by Forestry and Land Scotland²⁷, the Scottish Government²⁸, NatureScot²⁹, and FSC³⁰ policies; and recreation and access policy is articulated in the strategy paper ‘Access, recreation and tourism on the national forest estate’³¹.

²³ Delgado *et al.* (2022) [Non-Timber Forest Products: Small Matters, Big Significance, and the Complexity of Reaching a Workable Definition for Sustainability](#).

²⁴ Dembner and Perlis (1999) [Non-wood Forest Products and Income Generation](#)

²⁵ Sheppard *et al.* (2020) [Sustainable Forest Management Beyond the Timber-Oriented Status Quo: Transitioning to Co-production of Timber and Non-wood Forest Products—a Global Perspective](#).

²⁶ UKWAS (1993) [United Kingdom Woodland Assurance Scheme](#), 5th edition.

²⁷ FLS (2014) [Deer Management on Scotland's National Forest Estate](#)

²⁸ Deer Working Group (2020) [The management of wild deer in Scotland](#)

²⁹ NatureScot (2014) [Scotland's Wild Deer – A National Approach](#)

³⁰ FSC (2023) [Principles and Criteria for Forest Stewardship](#)

³¹ FSC (2021) [Forests for People - Access, recreation & tourism on the national forest estate](#)

Appendix 2

Policy

UK Biodiversity Action Plan

For all uses and activities, it should be an aim of policy to minimise further losses of biodiversity due to human activity and, where possible, to increase biodiversity. The context for the chapter is provided by Article 10 of the UN Convention on Biological Diversity³².

Article 10 of the Convention on Biological Diversity says: 'Each Contracting Party shall, as far as possible and as appropriate:

- **Integrate** consideration of the conservation and sustainable use of biological resources into national decision making;
- **Adopt** measures relating to the use of biological resources to avoid or minimise adverse impacts on biological diversity;
- **Protect** and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;
- **Support** local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced;
- **Encourage** co-operation between its governmental authorities and its private sector in developing methods of sustainable use of biological resources.'

Scottish Outdoor Access Code

You should be familiar with the three principles of the Scottish Outdoor Access Code (SOAC19)³³ which guides people taking responsible access into the forest.

- **Take responsibility for your own actions:** The outdoors cannot be made risk-free for people exercising access rights; land managers should act with care for people's safety.
- **Respect the interests of other people:** Be considerate, respect privacy and livelihoods, and the needs of those enjoying the outdoors.
- **Care for the Environment:** Look after the places you visit and enjoy. Care for wildlife and historic sites.

³² United Nations (1993) [Convention on Biological Diversity](#)

³³ NatureScot (2005) [Scottish Outdoor Access Code](#)

Regulations

- **The Nature Conservation (Scotland) Act 2004³⁴** states that: “It is the duty of every public body and officeholder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.” It also enables Forestry and Land Scotland to impose conditions for the “purpose of conserving or enhancing the flora, fauna or geological or geographical features, or the natural beauty or amenity of any land.” (Section 19). It is an offence to intentionally or recklessly damage any natural feature specified in an SSSI notification.
- **The Anti-Social Behaviour Scotland Act 2004³⁵** states the vandalism offences are a fixed penalty offence under the Act, which can be issued by the police.
- **The Land Reform (Scotland) Act 2003³⁶** specifies that taking away anything in or on the land for commercial purposes or for profit is excluded from the right of access (and is therefore an offence). However, there is no specific provision for non-commercial harvesting, which potentially remains a grey area. Commercial activity that could be carried on otherwise than commercially or for profit, such as guided walks is not excluded from the right of access. This puts commercial activity in which the participants are engaged in extraction, such as commercial fungi forays, in another grey area.
- **The Wildlife and Countryside Act (Amendment) Regulations 1995³⁷** requires that Forestry and Land Scotland “...endeavour to achieve a reasonable balance between: the development of afforestation; the management of forests and the production of timber, and the conservation and enhancement of natural beauty and conservation of flora, fauna and geographical or physiographical features of special interest”.
- **Criminal Law (consolidation) Scotland Act 1995 Section 52.** Theft is a statutory offence and Section 2.12 and 2.13 explains such activities are excluded from access rights. The term theft covers dishonesty, appropriation, intention to permanently deprive, deception, abandoned property, robbery, and fraud.
- **The Criminal Justice and Public Order Act 1994³⁸** (Sections 61 and 62) considers collective trespass. If two or more people are trespassing with common purpose to reside on land for any time, and have caused damage or used threatening, abusive, or insulting words or behaviour, or have between them 6 or more vehicles, they can be directed to leave by the police. If they fail to do so, they commit an offence.

³⁴ [Nature Conservation \(Scotland\) Act 2004](#)

³⁵ [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)

³⁶ [Land Reform \(Scotland\) Act 2003](#)

³⁷ [Wildlife and Countryside Act \(Amendment\) Regulations 1995](#)

³⁸ [Criminal Justice and Public Order Act 1994](#)

- **Criminal Justice and Public Order Act 1994³⁹** (Section 68) on Aggravated Trespass states that a person commits this offence if, in relation to any lawful activity people are engaged in or about to undertake, the person does anything that is intended to intimidate and deter those people or to obstruct or disrupt the activity.
- **The Habitats Regulations⁴⁰**. The EC Habitats Directive (1992) is now embedded in Scottish Regulations through a series of changes to the Conservation (Natural Habitats, &c.) Regulations 1994^{41,42}, the Conservation of Habitats and Species Regulations 2017⁴³, the Conservation of Offshore Marine Habitats and Species Regulations 2017⁴⁴, and the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001^{45,46} (collectively known as “the Habitats Regulations”). These Habitat Regulations maintain the standards required by the EU Habitats⁴⁷ and Wild Birds⁴⁸ Directives (commonly referred to collectively as “the EU Nature Directives”).
- **Environmental Protection Act 1990⁴⁹** (Section 87). It is an offence when anything is dropped, thrown, left or deposited that causes defacement, in any place open to the air that the public have access to with or without payment. This includes any deposit on land or water and the statutory definition of litter specifically includes cigarette butts and chewing gum.
- **Road Traffic Act 1988⁵⁰** (Section 22). Driving a vehicle off road and parking. It is an offence to leave a vehicle or its trailer in a position likely to cause danger to other road users for example in gateways or in passing places.
- **Civic Government (Scotland) Act 1982⁵¹** (Section 56). Any person who lays or lights a fire in a public place (any place to which the public have unrestricted access) so as to endanger any other person, or to give reasonable cause for alarm or annoyance, or so as to endanger any property is guilty of an offence.
- The **Wildlife and Countryside Act 1981⁵²** and The **Conservation (Natural Habitats etc.) Regulations 1994⁵³**. Damage to plants or animals. Under section 13(1b), uprooting any plant without the permission of the landowner is illegal (for the purposes of the Act fungi are considered to be plants). However, picking mushrooms and toadstools does not constitute uprooting and is not an offence. It may though, be an offence to sell the fungi collected. Schedule 8 listings give some species complete protection from harvesting (including seeds or

³⁹ [Criminal Justice and Public Order Act 1994](#)

⁴⁰ [EU Exit: The Habitats Regulations in Scotland](#)

⁴¹ [The Conservation \(Natural Habitats, &c.\) Regulations 1994](#)

⁴² [The Conservation \(Natural Habitats, &c.\) \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019](#)

⁴³ [The Conservation of Habitats and Species Regulations 2017](#)

⁴⁴ [The Conservation of Offshore Marine Habitats and Species Regulations 2017](#)

⁴⁵ [The Offshore Petroleum Activities \(Conservation of Habitats\) Regulations 2001](#)

⁴⁶ [The Conservation of Habitats and Species \(Amendment\) \(EU Exit\) Regulations 2019](#)

⁴⁷ [Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora](#)

⁴⁸ [Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds](#)

⁴⁹ [Environmental Protection Act 1990](#)

⁵⁰ [UK Road Traffic Act 1988](#)

⁵¹ [Civic Government \(Scotland\) Act 1982](#)

⁵² [Wildlife and Countryside Act \(1981\)](#)

⁵³ [Conservation \(Natural Habitats etc\) Regulations 1994](#)

spores), disturbance and sale or possession with or without the landowner's consent.

It is also an offence to keep, sell, advertise, or exchange such plants. Schedule 9 lists plants, which cannot be released into the wild. Section 3.43 – 3.48 sets out responsible access over land where there is natural heritage interest. For protected species, it is an offence to; kill or injure the animal, capture or keep the animal, destroy damage or obstruct access to its place of shelter, and disturb the animal while using its place of shelter. NTFP harvesting may create disturbance in this respect.

- **Criminal Justice (Scotland) Act 1980⁵⁴** (Section 78). Vandalism and Criminal damage and Graffiti. Vandalism is a statutory offence and Section 2.12 and 2.13 explains such activities are excluded from access rights. Anyone who, without reasonable excuse, willfully or recklessly destroys or damages another's property commits this offence of vandalism.
- **Forestry and Land Management (Scotland) Act 2018⁵⁵**. Charged Ministers with a duty to support "the production and supply of timber and other forest products" whilst also "conserving and enhancing the environment by means of sustainable forest management."
- **Occupiers Liability (Scotland) Act 1960⁵⁶** (section 12). An 'occupier' of land has a duty to show care towards people on that land. The level of this duty of care is the level, which it is reasonable to foresee, will be needed so that people do not suffer injury or damage. The occupier must consider injury or damage which may be caused as result of any dangers due to the condition of the property, or of anything done or omitted to be done by the occupier which is his legal responsibility.
- **Trespass (Scotland) Act 1865⁵⁷** (Section 3). Lighting fires and Lighting fires as part of vandalism. You are guilty of an offence if you light a fire: on or near any private road, on enclosed or cultivated land, in or near any plantation without the consent of the owner or land manager. The Land Reform Scotland Act 2003 amends the act so that it does extend to anything done in exercise of the new rights - which allows fires to be lit in controlled circumstances.
- **Health and Safety at Work Act 1974⁵⁸**. This makes it the duty of every employer to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all his employees. The act also requires every self-employed person to conduct their undertaking in such a way as to ensure, as far as is reasonably practicable, that they and other persons (not being employees) who may be affected thereby are not thereby exposed to risks to their health or safety.
- The **Gangmasters (Licensing) Act 2004⁵⁹** includes a number of criminal offences. These make it illegal to operate as a Gangmaster without a license or use an unlicensed Gangmaster. The GLA enforces these criminal offences on behalf of Defra.

⁵⁴ [Criminal Justice \(Scotland\) Act 1980](#)

⁵⁵ [Forestry and Land Management \(Scotland\) Act 2018](#)

⁵⁶ [Occupiers Liability \(Scotland\) Act 1960](#)

⁵⁷ [Trespass \(Scotland\) Act 1865](#)

⁵⁸ [Health and Safety at Work Act 1974](#)

⁵⁹ [Gangmasters \(Licensing\) Act 2004](#)

Scottish Forestry is the Scottish Government Agency responsible for forestry policy, support and regulations.

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