

Operations Note 57

Date 26 January 2022

Notifiable Change and Transfers Under the Urban Tree Challenge Fund

Purpose

The purpose of this Operations Note is to provide information on:

- the steps Grant Recipients need to take where there is a **Notifiable Change**, pursuant to clause 20.2 of the Terms and Conditions; and
- the process whereby, following a Notifiable Change, the Grant Recipient (“the Transferor”) may be allowed to **transfer their grant rights and obligations under the Grant Agreement and the Terms and Conditions (“Transfer”)** to a third-party (“the Transferee”).

Introduction

Unless otherwise defined in this Operations Note, definitions used in this Operations Note have the same meaning as in the Urban Tree Challenge Fund Grant Agreement (“the Grant Agreement”) and its terms and conditions (“Terms and Conditions”).

This Operations Note provides guidance only. We recommend that you consult the Terms and Conditions and take legal advice before a Notifiable Change takes place.

Key points

- **You must notify the Forestry Commission (“FC”) of a Notifiable Change within three months from the date of the Notifiable Change;**
- **Any Transferee must comply with the same requirements as the original Grant Recipient to be eligible for a Transfer;**
- **Both Transferor and Transferee must provide a completed Transfer Form within 12 months of any Transfer taking place;**
- **FC reserves the right to accept or refuse a proposed Transfer, at its sole discretion; and**
- **FC requires satisfactory evidence of any Notifiable Change and Transfer.**

Notifiable Change

If a proposed Notifiable Change affects all or part of the Land, the following applies:

The Transferor must notify the FC within three months of a Notifiable Change taking place; however it is strongly recommended that the FC be informed of a Notifiable Change as early as possible.

A Notifiable Change taking place may impact the Grant and the FC retains the right to:

1. recover all or part of the Grant funds;
2. terminate the Grant Agreement; and/or
3. withhold payment of any sums that become due under the Grant Agreement at any time following the Notifiable Change.

Transfer

The Grant Recipient can Transfer the Grant Agreement when there is a Notifiable Change, pursuant to clause 20.2 of the Terms and Conditions. This could be as a result of, but not limited to:

- Sale of the land;
- Change in tenancy;
- Surrender of a leasehold interest in the Land by the tenant to the landlord;
- Transfer of the Land as a gift;
- Death of the Grant Recipient; or
- Any other change affecting the Land.

Transferring the Grant Agreement will mean:

- a. rights and obligations under the Grant Funding Agreement are transferred from the Transferor to the Transferee (this includes transfer of the right to receive further Grant payments);
- b. the Transferor ceases to be entitled to any Grant payments under the Terms and Conditions and accepts that no further Grant payments are due to them or will be paid;
- c. the Transferor is released from future obligations under the Terms and Conditions, with the exception that they remain liable for:
 - i. any retained elements of the Grant Agreement, for example where the Transferor has only transferred part of their rights and obligations under the Grant Agreement;
 - ii. any claims under the Grant Agreement that arise prior to the date of the Grant Agreement being transferred;
 - iii. any claims that relate to the period in which the Transferor was subject to the Grant Agreement Terms and Conditions; and
 - iv. the Transferor shall remain subject to clause 26 of the Grant Agreement, regarding clawback of Grant funding.

In any Transfer, the Transferee must accept the Grant Agreement and the Terms and Conditions. If the Transferee does not accept the Terms and Conditions, the FC retains the right, at its sole discretion, to:

- refuse the Transfer;
- recover all or part of the Grant funding;
- terminate the Grant Agreement; and/or
- withhold any Grant sums owed to either the Transferor or the Transferee.

The Transferee must meet the same eligibility criteria as that applied to the original Grant Recipient at the point they were awarded the grant. **FC will not renegotiate any terms of the Grant Agreement in the event of a Notifiable Change and/or Transfer.**

Both the original Grant Recipient and Transferees should be aware of **the period over which the Grant Recipient must maintain trees planted under the Grant Agreement (“the Maintenance Period”)** to ensure successful tree establishment. All Agreements have a Maintenance Period, which begins when the final grant payment is made and lasts for five years from the date of the last grant payment.

If the Transferor proposes a Transfer, they will need to complete a Transfer Form. The Transferor and Transferee must submit a completed Transfer Form within 12 months of a Transfer taking place. If you do not return the Transfer Form within 12 months or your request for Transfer is refused, the Transferor may be required to repay the Grant monies it has received.

What the parties need to do

Notifiable Change

The Grant Recipient should discuss with the FC if a Notifiable Change is being considered, to make sure that they understand the rules that apply to a Notifiable Change.

The Grant Recipient must notify the FC of any Notifiable Change **no later than three months after the Notifiable Change takes place**. However, it is highly recommended that the Grant Recipient informs the FC of a proposed Notifiable Change as soon as possible.

The FC should be informed of a Notifiable Change by filling out and returning the Notifiable Change Form. The form can be requested by email from the FC at the following address: utcf@forestrycommission.gov.uk.

Transfer

The Grant Recipient and any Transferee considering a Transfer should consider taking independent legal advice prior to completing the Transfer.

The FC should be notified of a Transfer no later than three months after the Transfer takes place, using the Notifiable Change Form.

Copies of the Notifiable Change Form can be requested from the FC by emailing UTCF@forestrycommission.gov.uk.

On the Notifiable Change Form the Transferor should notify the FC whether they intend to Transfer the Grant Agreement. On reviewing the completed Notifiable Change Form and noting their intention to Transfer, the FC may, at its sole discretion, provide you with a copy of the Urban Tree Challenge Fund Transfer Form and once completed this form should be sent to UTCF@forestrycommission.gov.uk.

The Grant Recipient must **submit the Transfer Form no later than 12 months from the date of the Transfer**. If a Transfer Form is not received by the FC within 12 months, the FC may refuse to transfer the Grant Agreement.

For the avoidance of doubt, the Transfer will not take effect until the FC approves the Transfer and processes the Transfer Form.

If the FC decide to agree to transfer the Grant Agreement, one of the following two scenarios will apply:

- *Transfer Form received following completion of the Transfer:* the FC will process the form as soon as possible and once completed, send a new Grant Agreement to the Transferee for signing/execution. The Transferee will need to sign and return a declaration of acceptance of the Grant Agreement to complete the Transfer. The Transferor will receive a letter confirming the Transfer of the Grant Agreement has been accepted and completed; or
- *Application received prior to the Transfer taking place:* on receipt and review of the Transfer Form, the FC will confirm to the Grant Recipient whether or not the application to transfer the Grant Agreement has in principle been accepted. However, the FC will not send out a new Grant Agreement to the Transferee until they are informed the Transfer has taken place.

The Transferee and/or the Grant Recipient must provide proof of the Transfer, to the reasonable satisfaction of the FC for example a copy of the tenancy agreement, the deed for a transfer of the land. In the case of a Transfer, FC will then send a new Grant Agreement to the Transferee. The Transferee will need to sign and return a declaration of acceptance to complete the Transfer, receipt of the declaration will be acknowledged by the FC. The Transferor will receive a letter confirming the Transfer has been accepted and completed.

In both circumstances (where Transfer Forms are submitted pre-Transfer and post-Transfer) there is likely to be a delay between the Transfer taking place and a signed grant agreement being put in place with the Transferee. During this time, the Transferor remains subject to the Grant Agreement and the Transferee has no rights or obligations under the Grant Agreement or grant scheme.

The FC will pay any claims for Grant funding received during the processing of an Transfer application on the following basis:

- if the Grant Claim is made prior to the date of the Transferee signing the declaration of acceptance of the Grant Agreement, to the Transferor; and
- if the Grant Claim is made on or after the date the Transferee signs the declaration of acceptance of the Grant Agreement, to the Transferee.

If there is a part transfer of the Grant Agreement affecting some but not all the planting sites, we will send a new Grant Agreement to the Transferee for the planting sites in

scope of the Transfer and an amended Grant Agreement to the Transferor comprising of the remaining planting sites.

If you require further details for a specific case please contact UTCF@forestrycommission.gov.uk.

Death of a Grant Recipient

In the event that:

- a Grant Recipient co-owns the Land with another Grant Recipient;
- Both Grant Recipients are bound by the Grant Agreement;
- One Grant Recipient dies, leaving their legal title to the Grant Agreement and Land to the co-owning Grant Recipient;
- The deceased Grant Recipient is a natural person (as opposed to a legal person such as a business entity).

FC considers this an automatic Transfer of the Grant Agreement and no further action is required from the co-owning Grant Recipient to register such a Transfer.

Where a Grant Recipient, who is a natural person, has died and the Land and Grant are to be transferred to a new third party, the executors of the estate who are to be granted probate should notify the FC as soon as possible that the ownership of the Land will change. As in any Transfer, on the grant of probate the executors of the estate should fill in the Transfer Form (who are, for the purposes of the Transfer Form, the Grant Recipient), and ensure that the beneficiary to be or in actual receipt of the Land also completes the Transfer Form (as the Transferee). They should then arrange for the Transfer Form to be sent to the FC's Incentive Development Team for processing.

In the above situation, if the Grant Recipient dies, the FC may at their sole discretion elect not to:

- a. recover any funds from the estate of the deceased Grant Recipient;
- b. enforce the three month timescale for notification where any Notifiable Change occurs; and/or
- c. enforce the 12 month timescale for transferring the Grant Agreement.

How we will use your data

The Forestry Commission (FC) will use any information you provide, to support the administration of the scheme. Without your personal data, we will not be able to process your Transfer Form. The FC or its appointed agents may also use it, in keeping with the safeguards of the Data Protection Act, in the following ways:

- For publication on the FC's Public Register (the entry on the Register will include the name of the property, value and timing of grants applied for);

- For communication with other organisations including Defra, other government departments (and their agencies) and local authorities in the administration of the application and subsequent grant agreement;
- For producing operational information and statistics that do not identify individuals; and/or
- To contact applicants or their agents in connection with occasional research aimed at improving the services that the FC provides.

Your personal information will be stored securely in the UK and will be kept for at least 7 years after the final payment of grant, or after the last financial transaction. If post payment obligations apply, your personal information will be stored until your obligations under grant agreement expire. Your personal information will be shared with other Defra bodies for the purpose of administering and processing your Transfer Form.

You have a number of rights under the Data Protection Act 2018, which are listed out in full on the [Information Commissioner's website](#). You have the right to lodge a complaint with a supervisory authority, the Information Commissioners' Office, on their website, <https://ico.org.uk/>.

The Forestry Commission is a data controller under the Data Protection Act 2018. You can read our personal information charter on [our website](#).

Sources of further advice

The [Urban Tree Challenge Fund website](#) contains all the information needed to apply for grant support. Alternatively, information can be requested from the Forestry Commission Incentives Development Team – UTCFC@forestrycommission.gov.uk

Versions

Version 1 issued