

EWGS Terms & Conditions

Consultation Draft November 2007

Notes

The Contents on this page are for consultation purposes only and will not be in the final version. The final version will also not have paragraph numbers but clause numbers – the paragraph numbers are to assist the consultation process. The references to other clauses/paragraphs will be updated on the final version

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Introductory Statement

1. This contract defines the work, grant aid and permissions that have been agreed by Forestry Commission England and the Applicant as part of the English Woodland Grant Scheme

Parties to this Contract

2. This contract is made between the Forestry Commissioners (in all parts of this contract called “us” or “we”) and the person or persons listed in the contract (in all parts of the contract called “you”)

Signing this contract

3. By signing this contract you agree to be bound by these conditions. We also agree to be bound by the conditions.

Permission for Felling Areas

4. Where the Applicant has proposed felling trees as part of the contract, the Forestry Commission has considered the felling proposals as a Felling Licence Application. By signing this contract, the Applicant agrees to carry out any restocking which the Forestry Commission may specify in the contract as a condition of the Felling Licence. The Felling Licence will become active when the Applicant approves the contract on-line or receives a paper copy approved and signed by the Forestry Commission on behalf of the Forestry Commissioners. If the Felling Licence relates to trees that are covered by a Tree Preservation Order (TPO) and the existence of the TPO was not declared by the applicant, then the Felling Licence will not cover the felling of these trees and you may commit an offence by felling them.
5. The permission to fell trees will last for a 5-year period following contract approval. Any restocking required must be undertaken within 1 year of the felling.

Information

6. Any general information that the Applicant needs to give the Forestry Commissioners under this Contract can be given either in writing (and be delivered and sent by post), or by electronic communication to the Forestry Commission at the regional Grants & Regulations offices or National Office Cambridge.
7. If the Forestry Commissioners need to give the Applicant general information they will send it either in writing or by electronic communication to the Applicant. Unless the Forestry Commissioners have agreed otherwise, they will send it to the Applicant at his/her/their address(es) set out in this contract, or to the first of the Applicants named in this contract at the address given for that person

Notice

8. Any formal notice that the Applicant needs to give to the Forestry Commissioners under this Contract must be given in writing (and be delivered or sent by post) to the Forestry Commission at the regional Grants & Regulations offices or National Office Cambridge.
9. If the Forestry Commissioners need to give the Applicant formal notice, they will send it in writing to the Applicant. Unless the Forestry Commissioners have agreed otherwise, they will send it to the Applicant at his/her/their address(es) set out in this Contract, or to the first of the Applicants named in the Contract at the address given for that person.

Entire Agreement

10. It is accepted by us and by you that no statement or representation of any nature made prior to the Approval Date, as defined in paragraph 18, will form a term or condition of this contract unless set out in writing in this contract.

General conditions and other permissions

Restrictions on the land

11. You must tell us if there are any legal or other restrictions affecting the land, which could prevent you from completing the work or maintaining the work. It is your responsibility to find out whether any such restrictions exist and to obtain any necessary approvals or consents.
12. If you do not tell us about any restriction that may affect the work proposals then we may terminate the contract, pay no further grants and may reclaim grants paid for work already carried out.

Funding from other sources

13. You must tell us if any other public body (including the Heritage Lottery Fund and the European Union) has agreed to fund the work or maintenance or if you are claiming funding from any such body for other work on the land covered by this contract. All grant applications and claims will be "Cross Checked" against other publicly funded grant payments. Where incompatible payments are identified on an area of land, the grant payment or area, may be reduced to prevent incompatible payments being made to you. If this happens we will contact you to explain the reasons for any reduction.

Historic and Archaeological sites

14. The work you do must not damage or destroy sites identified in the contract as being of historic or archaeological importance. This contract only provides permission to carry out the operations specified in the Plan on sites of historic or archaeological importance.
15. There is additional protection for Scheduled Ancient Monuments. If English Heritage have identified the need for Scheduled Monument Consent for certain operations in the contract, or you wish to carry out other operations not specified in the contract, you must secure consent from English Heritage before starting any work.

Sites of Special Scientific Interest, National Nature Reserves, Special Protection Areas, Special Areas of Conservation

16. You must only carry out operations on these sites that we have agreed in the plan. If you want to carry out other operations that are not agreed in the plan then you must get the necessary permission from Natural England.

Public access

17. You must protect all public rights of way over the land. Unless we have agreed otherwise, or the land is "access land" within the meaning of the Countryside and Rights of Way Act 2000, you need not provide any other public access

Time scale for the contract

"Approval Period" to carry out the work

18. The approval period is the period when grant aided work can be carried out. It starts when we sign the contract (the "Approval Date") and expires on the 31st March of the financial year in which we have agreed to pay you a grant. We will not pay any grant for work carried out before the approval date or after the approval period. The exception to this is Woodland Management Grant, which expires 5 years after the Approval Date.

19. The approval period to carry out tree felling and restocking work starts when we sign the contract (the "Approval Date") and expires five years after the Approval Date. If you wish to receive any grants that are associated with the felling and restocking approval, you must adhere to the approved financial years for grant payment as set out in the Work Details.

"Contract Period"

20. The "Contract Period" is the period of maintenance that you must carry out to meet the conditions of this contract. It starts on the date each grant is paid or, if the grant is to be made in several payments, on the date when the first of those payments is made. The "Contract Period" ends after the following periods, or on such earlier or later date as we may notify to you following an inspection or review of the work to which the payments made under this contract relate.

- *Woodland Creation Grants* (for new planting and natural colonisation) – 10 years from the date a first instalment is paid
- *Additional Contributions to Woodland Creation Grants expressly for Public Access* – 30 years from the date a first instalment is paid
- *Farm Woodland Payments*
 - ⇒ a) For work areas awarded 10 annual payments (new woodland comprising 50% or less by area of broad-leaved trees) - 20 years
 - ⇒ b) For work areas awarded 15 annual payments (for creating new woodland comprising more than 50% by area of broad-leaved trees) - 30 years
- *Woodland Regeneration Grant* (for restocking by planting or natural regeneration) in respect of each payment – 10 years from the date the payment is made
- *Woodland Improvement Grant*
 - ⇒ a) Where the contract includes Woodland Improvement Grant payments for public access and the total of these is less than or equal to £10,000 – 10 Years
 - ⇒ b) Where the contract includes Woodland Improvement Grant payments for public access and the total of these exceeds £10,000 but is less than or equal to £20,000 – 20 Years
 - ⇒ c) Where the contract includes Woodland Improvement Grant payments for public access and the total of these exceeds £20,000 – 30 Years
 - ⇒ d) All other Woodland Improvement Grant payments – 5 years
- *Woodland Management Grant* (five annual instalments) – 5 years from the contract Approval Date

Claiming Grant

Woodland Management Grant

21. For contracts that include Woodland Management Grant, we take signing this contract as your claim for all 5 instalments of Woodland Management Grant. There will be no need to claim for the grant using a claim form

Standards of work expected and maintenance

22. All work must be done in accordance with this contract.

23. The contract specifies operations that are essential and others that are optional. If essential operations are not completed in accordance with the Plan then we may withhold grants for other operations or terminate the contract.

24. You must carry out the operations specified in the contract and all subsequent maintenance to achieve the expected or desired outcomes with due care, skill and diligence in line with advice given in our current best practice guidelines and the UK Forestry Standard published at the time that the work was approved by us. You must ensure that the work carried out is maintained to the end of the "Contract Period".
25. It will be your responsibility to carry out any necessary maintenance to ensure that the work specified in the contract is successful.
26. We will not be held liable for any advice that may be given to you, (other than that given by us,) in this respect during the period of the contract.
27. We will not be liable for the effects of adverse weather, fire, pests or acts of God. It is your responsibility to utilise suitable skills and resources to complete the operations agreed in the contract.

Rates of grant to be paid

28. Subject to Conditions 22-27 and to your compliance with the remaining conditions, we will pay you grants of the types specified in this contract, so long as the work is done to our reasonable satisfaction. We will work out the payments using the rates quoted in this contract, except in the case of Farm Woodland Payments where the rate payable will be that which is current at the time of each payment. On set aside land the Farm Woodland Payment rate will be reduced by an amount equal to the set aside payment rate.

Who will be paid grant

29. Any grants we decide to pay you will be paid to you or your agent via BACS, as set out in the Paying Grants section of this contract.

Area over which we will pay grant

30. The area over which we will pay grant will be based on the area we measure when we receive your grant claim, provided the claim is on land approved in the contract and the area does not exceed that approved in the contract.

Date by which you must claim grants

31. You must carry out the work agreed in the Work Details and submit your claim form to us for that work, together with a map of this area by 31st March of the claim year agreed in the Work Details, unless we agree a change to this contract. If you do not submit your claim by this date, no right to payment will arise under this contract and we will only pay grant at our absolute discretion.

Changes to the work

32. You cannot change the work approved in this contract unless we agree and approve the change with you in advance, in writing or by e-mail. Approval of any requested changes to the approved contract is at our discretion.

Inspection

33. You must let us, our officers, Rural Payments Agency officers or other persons authorised by us to enter the land at all reasonable times during the Contract Period to check that you are keeping to this contract. Failure to allow or obstructing an inspection may result in refusal to pay grant or reclaim of grants already paid with interest

Termination of the Contract

Terminating the contract - general grounds

34. We may terminate this contract immediately if:

- You do not keep to any Condition of this contract;
- You have not repaid any grant within three months of a written demand
- Any material information you gave us when you made this contract is false, misleading or incomplete;
- Any material information you gave us when you make your claim for grant is false, misleading or incomplete;
- You are declared bankrupt or make a composition or arrangements with, or grant a trust deed for your creditors, or go into liquidation (other than a members voluntary liquidation).

35. Before we terminate the contract or ask you to repay grant, we will give you notice of the reasons for termination of your contract. If we consider that the situation can be put right, we will give you the opportunity to put the situation right, within the time that we specify.

36. It will be possible to terminate the contract at other times by mutual agreement. If you wish to terminate the contract during the contract period described in paragraph 20 but the work you have done will not achieve the purpose for which it was grant aided, we may, before we agree to termination, require you to repay part or all of the grant paid to you together with interest at the rate set from time to time by HM Treasury.

Stopping occupying the land

37. You must inform us if you stop occupying the land or any part of it, to which the contract applies. This contract may not be assigned to a subsequent owner (or anyone else) without our permission.

38. New occupiers must notify their interest to take on the contract within three months of purchase. After that, agreement to take on the contract is at our discretion and we reserve the right to alter the work details and contract conditions with the new occupier.

39. In the event that the contract conditions are not fulfilled, we will reclaim grant with interest from the grant recipient, irrespective of whether they occupy the land or not. We recommend outgoing occupiers set up Private agreements to transfer liabilities during land sale.

Terminating the contract if the approved work will have an adverse effect on the environment

40. If, following the Approval Date, we become aware of information or there is a change of circumstances as a result of which it appears to us that any work, which has not been completed, should no longer be approved for the purposes of this contract because:

- the work is not permitted by, or would only be permitted if formally approved under environmental law; or
- giving a grant towards the carrying out of the work would not be consistent with our statutory duties with regard to the environment,

and we notify you accordingly; then, the contract shall apply, with any necessary adaptation, only to the work completed at the date of their notice.

41. If we give you the option of either making changes to the work or maintenance or terminating the contract, we shall notify you of the changes we are asking you to make. We will provide you with details of how future grant payments would be calculated if you choose to make the changes requested. We will tell you the amount of grant that will be paid to you in respect of works already carried out if you choose to terminate the contract.

42. If you do not notify us that you either wish to carry out the specified changes or to terminate the contract within 28 days of our notification to you of the information described in the preceding paragraph, we may terminate the contract with immediate effect.
43. In accordance with this Condition, if either you or us terminate the contract, grant will be paid to you in respect of work carried out before the date of termination but no further payments will be made under this contract.

If the work does not meet the conditions of the contract

Withholding grant payment

44. If you do not carry out the work or maintenance to the standards and timescale set out in Conditions 8 and 13, we may withhold payment of grant. Where we withhold the grant, we will explain our reasons for doing so and give you an opportunity to put it right (where reasonable to do so) before re-submitting the grant claim.

Repayment of grant

45. Where you do not carry out the work or maintenance to the standards and time scale set out in Conditions 22-27 and 31 and cannot or have not put the situation right, we will require you to repay grant with interest for work and on areas that have not been successful. The interest will be charged from the date the problem was first identified to the date the repayment invoice is raised.
46. If you are asked to repay grant, we may deduct this amount from any grants you are due now or in the future under this or any other agreement or contract with us.

Repayment of grant on termination

47. If this contract is terminated we will not pay any more grant to you under this contract.
48. If the contract is terminated because you stop occupying the land or any part of it for any reason, and the work is not successful for what would have been the rest of the contract period, you will be liable to repay any grant you have received together with interest at the rate set from time to time by HM Treasury. The interest will be charged from the date the payable order was issued until the date that we write to seek reclaim unless we agree otherwise.
49. Liability for grant repayment remains with the grant recipient until the end of the contract period, even if they no longer have an interest in the land.

Withholding grant against other RDPE Schemes

50. If you are required to repay grants under any other grant scheme within the Rural Development Plan for England, part or all of your EWGS grant claim may not be paid to you but may be used to repay what you owe to the Rural Payments Agency.
51. Similarly, if you have to repay grant under this contract, it may be collected via other grant schemes under the Rural Development Plan for England

Penalties

52. In addition to the withholding or repayment of grant under paragraphs XXXX, a penalty will be applied in the following circumstances:
- Intentional false declaration during the application or grant claim – will result in exclusion from support under the EAFRD and any grants paid under the scheme will be recovered
 - Over claiming area based grants by <3% of the correct area – the grant payment will be reduced by the difference between the claim and the correct area

- Over claiming area based grants by 3-20% of the correct area – the grant payment will be reduced by twice the difference between the claim and the correct area
- Over claiming area based grants by >20% of the correct area – no grant payment will be made for grants due that year under this contract

53. You can correct an obvious error in the application or claim at any time after submission. The obvious error must be recognised as such by us and will be detected from information given in the application or claim form. Cases that meet these criteria will not result in a reduction of payment. Errors discovered after notification of an inspection or during an inspection will not be treated as obvious errors.

Cross Compliance

54. Breaches of cross compliance requirements as set out in the Cross Compliance Handbook may result in a reduction of Farm Woodland Payment, even if the breach occurs on another part of the holding. The level of reduction will depend on the severity, extent and permanence of the breach as set out in the cross compliance regulations.

Order penalties will be applied

55. Penalties will be applied in the following order, with each successive reduction being based on the amount resulting from the previous reduction:

- Over claiming land area
- Non-respect of eligibility criteria
- Cross compliance

Grants for Public Access

56. If grants are paid for public access you must, from the date of payment of that grant let the general public, free of charge, have access to walk between dawn and dusk over the part of the land the grant is paid for. This access must be permitted for the following periods, dependant on the type and value of grant paid:

- (a) Public access Additional Contribution under the Woodland Creation Grant – 30 years;
- (b) Woodland Improvement Grant for public access:
 - Up to and including £10,000 – 10 years;
 - Up to and including £20,000 – 20 years; and
 - Over £20,000 – 30 years.

57. Appropriate signage must be provided and/or maintained to ensure that members of the public are aware of this access permission. The public can only be excluded in circumstances agreed in the Plan of Operations.

58. Details of the public access agreed may be published in written or electronic form by the FC, or anyone we approve to do so.

General Contract Clauses

Compliance with Rural Development Regulations

59. The English Woodland Grant Scheme is partly funded by European Agricultural Fund for Rural Development, (EAFRD) as part of the Rural Development Plan 2007-2013 and is therefore subject to the associated EU regulations including Cross Compliance.

60. The regulations may change during the life of this contract. If any changes affect you, we will contact you and let you know what you need to do. If changes to the regulations are not

acceptable to you, then you have the right to terminate the contract subject to you informing us within 28 days of the notification. If you terminate you must meet all your obligations in respect of grant aid received to date, and any felling licence conditions included within the contract.

Disputes

61. If we disagree with you about whether or not you have kept to the contract or about the standard or extent of the work done, either party may ask for the matter to be decided by an arbitrator chosen from a panel of arbitrators agreed jointly by you, us and the Institute of Chartered Foresters. You or us must give notice of this action to the other party. If you and us cannot agree to a suitable person within one month after notice, the President of the Institute of Chartered Foresters will appoint the arbitrator. Any other dispute shall be submitted to the courts in accordance with paragraph 71.

Force Majeure

62. You must tell us if as a result of: an act of war, terrorism, an epidemic, a disease affecting woodlands or catastrophic weather (which could not reasonably have been expected to take place during the period of the contract,) you are unable to complete or maintain the work set out in the contract. We will then discuss and agree with you certain measures such as:

- a longer period in which to complete the work
- a reinstatement plan where this is possible
- acceptance by us of a lower standard of work

63. We will not seek repayment of grants for work that was carried out satisfactorily but which is subsequently adversely affected by events described above, providing that you have made a reasonable effort to minimise the impact or make good the damage.

64. Where the events described above mean that we are unable to pay grants, we reserve the right to reschedule the years in which grants can be claimed.

65. If the event that storms, fire or disease have a significant impact on the woodland(s) covered by the Plan, we reserve the right to review the Plan with you and to modify or remove operations that are no longer appropriate.

Disclosure of information and publicity

66. The applicant agrees that all information about his or her participation in the English Woodland Grant Scheme and this Contract, including information in your application and grant claims and any other relevant information may be made public.

67. A list of all the beneficiaries receiving EU grant aid will be published annually. The list will include the name of the beneficiary, the operations supported and the amount of grant received.

68. Any promotional information you produce must acknowledge the grant aid received from the Forestry Commission

69. Contracts with a total value over £30,000 for all grants except Farm Woodland Payments and Woodland Management Grant must have plaques erected on site. The plaques will acknowledge the grant aid received from the Forestry Commission via English Woodland Grant Scheme and acknowledge that the EU and Defra provide the funding. We will provide the plaques and agree where they must be located

70. Contracts with a total value over £250,000 for all grants except Farm Woodland Payments and Woodland Management Grant must have a board of minimum size A2 erected on site. The board must include details of the scheme, acknowledge the grant aid received from the

Forestry Commission via English Woodland Grant Scheme and acknowledge that the EU and Defra provide the funding. We will agree the design and location of the board before it is produced and erected

Governing law

71. This contract will be governed by the Law of England and subject to the jurisdiction of the courts of England.