

Ancient woodland is a term used to define categories of woodland, all of which are likely to be of value for their biodiversity and cultural value by virtue of their antiquity. Ancient Woodland is defined as land that has been continually wooded since at least 1750 to the present day. Whilst there is no specific legislation to protect ancient woodlands there are a number of measures to ensure that they are protected.

Firstly, many such sites are protected through designation as Natura 2000 and Sites of Special Scientific Interest (SSSI). Several key features of ancient woodland sites are designated 'features' within Special Areas of Conservation (SACs) or SSSIs which engage important statutory mechanisms for protecting sites of ecological interest in the UK. For example, key Alder and Western Atlantic oak woodland sites are protected as SACs, and upland ash, pine and birch as SSSIs.

Protection for woodland is also in place via [felling regulations](#) under the Forestry and Land Management (Scotland) Act 2018. These were strengthened in 2018 to give additional protection to small areas of woodlands. The regulations now state that any felling in discrete native broadleaved woodland, between 0.1 and 0.5 hectares in area, requires a felling permission. It is only in exceptional circumstances however, that a felling permission would be granted for an ancient woodland of any size.

Where a felling permission is granted, specific conditions may be attached to it. Generally there will be standard conditions relating to the restocking of the site, but additional conditions can also be added when required. These will relate to specific matters, notably for ancient woodland, to avoid or mitigate impacts on the environment or biodiversity.

Scottish Forestry additionally has new powers under enforcement. A successful prosecution no longer needs to be procured to ensure that there is restocking on a site that was felled without permission. This allows a Restocking Direction to be served where an investigation shows that the felling was not legal. This can be followed up with a Remedial Notice which gives "step-in" powers should Scottish Forestry want to undertake the work. Non-compliance with either of these is a criminal offence and can be prosecuted leading to a conviction and £5000 fine for each offence. Fines can also be issued at this rate per tree if the illegal felling goes to prosecution.

Detail on these is available in the [Felling Permission – Application Guidance](#), Section 4.7 Conditions and Section 6 Enforcement.

Further protection exists through the Planning system. [Scottish Planning Policy \(SPP 2014\)](#) describes how nationally important land use planning matters should be addressed across the country. SPP sets out that "*Ancient semi-natural woodland is an irreplaceable resource and, along with other woodlands, hedgerows and individual trees, especially veteran trees of high nature conservation and landscape value, should be protected from adverse impacts resulting from development. Tree preservation orders can be used to protect trees and groups of trees considered important for amenity or their cultural or historic interest*" and makes specific reference to the Scottish Government's Control of Woodland Removal Policy.

The Scottish Government's [Control of Woodland Removal Policy](#) only permits removal of existing woodland where it would achieve significant and clearly defined additional public benefits. There is a strong presumption against removing ancient semi-natural woodland,

and woodland integral to the value of designated or special sites or areas supporting priority habitats. There is also a strong presumption against woodland removal where it would lead to fragmentation or disconnection of important forest habitat networks such as within the boundaries of priority habitats, or where it contributes to the functional connectivity of priority and associated habitats.

Under the [UK Forestry Standard](#) all native woodlands are expected to be managed to ensure their biodiversity is maintained or enhanced. The standard expects any management activity to protect or extent semi-natural features, with particular attention given to ancient semi-natural woodlands. Felling Permissions therefore would not be approved for any activities that were noncompliant with the Control of Woodland Removal policy or with the UK Forestry Standard.

In addition, there is a duty in section 159 of the Town and Country Planning Act (Scotland) Act 1997 as amended, on planning authorities to ensure, whenever appropriate, that when permission is granted for development, conditions are attached to make adequate provision for the preservation or planting of trees. Where woodland is removed in association with development, developers will generally be expected to provide compensatory planting.

SPP also sets out that, where appropriate, planning authorities should seek opportunities to create new woodland and plant native trees in association with development. If a development would result in the severing or impairment of connectivity between important woodland habitats, workable mitigation measures should be identified and implemented, preferably linked to a wider green network.

The Planning (Scotland) Act 2019 introduced a statutory requirement for authorities to prepare a forestry and woodland strategy. This includes identifying woodlands of high nature conservation value and setting out policies and proposals for their development, expansion, protection, enhancement and resilience to climate change.

Scottish Natural Heritage (SNH) use the planning system to protect ancient woodland through their engagement with the preparation of development plans. They also advise on some cases at the development management stage, specifically where the ancient woodland also has statutory protection (for example when it is part of an SAC, which would be likely to trigger a Habitats Regulations Appraisal) or where an Environmental Impact Assessment is required for the proposal.

Depending on the circumstances, this may on occasion result in SNH advising that particular plan allocations are altered or removed from a Main Issues Report or a Proposed Plan. They advise that such interventions are considered very carefully by planning authorities and by the Department of Planning and Environmental Appeals. SNH would be happy to provide some specific examples on the approach taken on request.

With regard to the specific matter of tracks, any track constructed for the purposes of recreational activity, including mountain biking, may require planning permission, regardless of the method of construction or materials used. Planning permission may also be required if the planning authority consider there has been a change of use of the land; i.e. from forestry use to recreational use. It is for the relevant planning authority to consider, on a case by case basis, whether any particular development requires planning permission to be applied for. Similarly it is for the relevant planning authority to consider enforcement action where they consider a breach of planning control has occurred.