

Ancient Woodlands: Recommendations for Strengthening the Statutory Framework¹

I. Introduction

The strength of current protection and conservation of Scottish ancient woodland has been discussed thoroughly within the submission from Help Trees Help Us and the Scottish government in August 2020. We recognize the difficulty for the government to erect and create new laws to protect these areas while echoing Help Trees Help Us objective to strengthen protection of these woodlands. As such, we would like to highlight two recommendations to be considered by the Scottish government to strengthen current laws regulating and protecting these ancient woodlands.

We believe that changes could be made to the enforcement of the Forestry (Environmental Impact Assessment) (Scotland) Regulation 2017 by Scottish Forestry to strengthen protection of these woodlands from development projects by including more types of development that would trigger an EIA. If this were applied, a wider range of developments, including bike paths, could trigger an EIA which would ensure sustainable practice. We also encourage consideration to be given to the governance for the protection of ancient monuments and archaeological areas in Scotland as it could offer further protection to ancient woodlands also through the strengthening of current legislation such as the Historic Environment (Amendment) (Scotland) Act 2011.

II. EIA

There currently is no effective mechanism in place to guide what is considered a 'man-made' trail within the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017. The current laws do highlight the necessity for an EIA for proposed forest road but due to mountain bike trails consisting of mud and other natural elements, these do not necessarily meet this requirement. Though the current law states that the assessment must ensure that there is "not a single effect on the environment", it is evident that this regulation is lenient as studies have shown that nature trails destroy key ecological systems which should see more thorough repercussions.² At present, decisions regarding the nature of harm of these projects are the responsibility of the relevant planning authority, but as these mountain trails have been approved, this displays that these authorities were incorrect in deeming there to be no ecological damage. Henceforth, it is recommended that forest road regulation should be made clearer within the assessment protocol to ensure that these trails are not permitted.

¹ This brief was drafted by Hayley-Bo Dorrian-Bak, Rebecca Ljungberg, and Thomas Paxton.

² Mark Ballantyne and Catherine Marina Pickering, 'Recreational Trails As A Source Of Negative Impacts On The Persistence Of Keystone Species And Facilitation' (2015) 159 *Journal of Environmental Management*.

Amendments should be made to the forestry regulations to ensure that the EIA process does not allow for loopholes that could cause destruction of ancient forestry and Scottish biodiversity. This regulation should ensure that any type of road construction be considered under the EIA process, including where sources and materials of trails are natural. We believe that the current penalty for breaching the EIA system of £5000 per tree fallen is lenient. Instead it is suggested that appliers pay a reparation fee as this would ensure responsibility to repair the damage caused and allow the ecosystem to regenerate. Moreover, a reparation fee would ensure more cohesion between local authorities.

III. Ancient Monument Example

The assessment report on the Felling Regulations 2018 recognises the heritage value of ancient woodlands, and the 2014 Scottish Planning Policy states that ancient woodland should be protected from adverse impacts arising from development. However, this is not sufficient to offer adequate protection to Scotland's native woodland as it does not prevent small-scale developments in close proximity to native woodlands from causing habitat and biodiversity disruption. The discretion given to local authorities to decide whether a development requires planning permission means that EIAs can be completely avoided where a local authority decides a development does not need planning permission.

As previously stated, planning permission and an EIA should be necessary if there is any chance of the development causing a disruption and should be mandatory in close proximity to ancient Scottish woodlands.

The Felling Regulations 2018 Assessment Report's recognition of ancient woodlands as heritage merits the introduction of protection that reflects this status. Through this, Scotland's ancient buildings are considered heritage and as such are subject to strong protection. Scotland's ancient monuments are protected under the Ancient Monuments and Archaeological Areas Act 1979, which directs Historic Environment Scotland to compile and maintain a schedule of ancient monuments and further protects these monuments by making it an offence to carry out unauthorised works, with ultimate authority for permitting any works to these monuments lying with the relevant Minister. The Historic Environment (Amendment) (Scotland) Act 2011 makes provision for Scottish Ministers to compile and maintain an inventory of gardens designed landscapes and battlefields. These pieces of legislation provide a model upon which stronger protection for Scotland's ancient woodlands might be based. **The Native Woodland Survey of Scotland has identified Scotland's native and ancient woodlands and we believe that this can form a basis for the formation of a list of these woodlands to be subject to strong protection.**