



Scottish  
Forestry  
Coilltearachd  
na h-Alba

# Enforcement Notice



Notice No. SFEAIN009


Scottish Statutory Instrument 2017 No.113  
The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017


“The Regulations”

<http://www.legislation.gov.uk/ssi/2017/113/contents/made>

## Notice under Regulation 29 and Schedule 4 of the Regulations

Name and address of the person on whom notice is served:

  
Pryor and Rickett Silviculture  
Skiddaw House  
Carlise Airport Business Park  
Carlisle  
CA6 4NW

The Forestry Carbon Sequestration Fund  
  
Apex Fund Administration (Guernsey) Ltd  
Royal Avenue  
St Peter Port  
GUERNSEY  
GY1 2HL  
Guernsey

### Address of issuing office:

Scottish Forestry  
South Scotland  
Weavers Court  
Forest Mill  
Selkirk  
TD7 5NY

Tel: 0300 067 6007

**Scottish Forestry may at any time vary an enforcement notice by means of a further notice served on the notified person.**





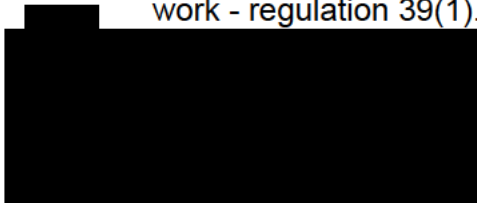
1. It appears to Scottish Forestry that work has been carried out in relation to an EIA forestry project, namely afforestation at Stobo, access point grid reference NT16983677 (contract ref: 23FGS54754) and that this work has been carried out without consent, where consent is required by regulation 3(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.
2. You have confirmed that 156.7 ha of heather and grass vegetation was oversprayed with Glyphosate at Stobo in August and September of 2023.
3. In the email you sent on 27<sup>th</sup> August 2024 you set out why you believed this spraying was exempt from screening under The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) 2017 Regulations (“the Agriculture EIA Regulations”). You considered that: (a) the herbicide spraying should be considered as agricultural restructuring, and (b) this restructuring would be exempt from screening under regulation 8(2)(b) of the Agriculture EIA Regulations because it was in a non-sensitive area and under the 200ha threshold as set out in Schedule 1.
4. We consider that the spraying was not exempt under the Agriculture EIA Regulations because:
  - The 200ha restructuring threshold only applies to improved / cultivated land, and the spraying took place on uncultivated land. Therefore regulation 6 applies which states ‘No person may begin or carry out a project involving the use of uncultivated land or semi-natural areas for intensive agricultural purposes without first obtaining a screening opinion’
  - Furthermore from an agricultural point of view, options for restructuring are extremely limited given the soils, exposure and topography of the site.
  - We also believe that regulation 3 of the Agriculture EIA Regulations is relevant. Regulation 3(1) states that the Agriculture EIA Regulations only apply to a project which is not exempt. Regulation 3(2)(b) provides that a project is exempt under this paragraph if it is a forestry project as defined in regulation 2(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017(2). Scottish Forestry considers this project is defined as being covered by regulation 2(1) of the Forestry EIA regulations.
5. Therefore we consider that this work was undertaken as part of the Stobo forestry project and in preparation for trees to be planted, as such these activities should have been brought to our attention so that we could have considered the impact of this activity as part of the EIA screening process carried out on 18<sup>th</sup> January 2024. You should have included this information in your EIA screening opinion request on 7<sup>th</sup> June 2023 but failed to do so.
6. In addition to the area of overall spraying carried out in 2023, you provided a map on 27<sup>th</sup> August 2024 set out below in Annex 2 indicating a further large area of planned overall herbicide spraying of heather.



7. Scottish Forestry has also established during site visits undertaken after the screening opinion was concluded that you have undertaken major trackway excavation works within the screened project area that was not included within the project as set out in your EIA screening request on 7<sup>th</sup> June 2023. It is unclear whether you have engaged with NatureScot to seek clarification or approval for these development works within the NSA which was necessary. These works have taken place in the Tarcreish / North Harrowhope boundary and adjacent to the John Buchan Way. An annotated map is included in Annex 2
8. A summary of matters under consideration by Scottish Forestry is set out in Annex 1 to this notice.

In accordance with the enforcement powers provided by paragraph 3 of Schedule 4 of the Regulations, Scottish Forestry now gives you notice to discontinue all work in relation to this EIA screened forestry project pending further enforcement instructions and decisions by SF.

9. It is an offence to carry out work in contravention of a requirement to discontinue the work - regulation 39(1).



Neil Murray Conservator

Date: 10<sup>th</sup> September 2024

For Scottish Forestry



### **Right to challenge the validity of the decision**

Scottish Forestry's decision is final, subject to the right of any aggrieved person to apply to the Court of Session for judicial review.

Judicial review is the mechanism by which the Court of Session supervises the exercise of administrative functions, including how the Scottish Ministers exercise their statutory function to determine applications for consent. The rules relating to the judicial review process can be found on the website of the Scottish Courts<sup>1</sup>.

Your local Citizens' Advice Bureau or your solicitor will be able to advise you about the applicable procedures.

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<sup>1</sup> <https://scotcourts.gov.uk/rules-and-practice/rules-of-court/court-of-session-rules>

**Annex 1****List of Concerns**

This Annex narrates the background to this matter as known to Scottish Forestry, and sets out Scottish Forestry's considerations. The content of this Annex is not the statement of reasons in accordance with paragraph 3(5) of Schedule 4 of the Regulations. [Within 14 days of the date of this notice or as soon as reasonably practicable thereafter] [As soon as is reasonably practicable after this notice has been served], the statement of reasons will follow separately.

**Background**

1. Pryor and Rickett are the agents working for the landowners of Stobo Woodland Creation. The Land Owners are The Forestry Carbon Sequestration Fund.
2. On 7th June 2023 Pryor and Rickett submitted an EIA Screening Opinion Request (SOR) Form for 873ha of afforestation, 13ha of road building and a 2ha quarrying at Stobo Estate.
3. On 19th January 2024 Scottish Forestry (SF) issued a screening opinion on Stobo Woodland Creation scheme, concluding that the proposed work would not require EIA consent.
4. Pryor and Rickett also applied to the Forestry Grant Scheme (FGS) and were awarded the contract to start work in 5<sup>th</sup> February 2024. FGS contract guidance states that work can only start once the contract is awarded and as such Scottish Forestry believed that all work relating to this project commenced from this date.
5. On 27<sup>th</sup> August 2024, Pryor and Rickett (P&R) confirmed that in August – September 2023, 97.3 ha of heather and 59.4 ha of predominately grass vegetation was oversprayed with Glyphosate herbicide using tractor based boom spraying equipment. They also confirmed that further herbicide overspraying was planned as indicated by the heather treatment map included as Annex 2. The particular formulation or dose rate was not provided.
6. As P&R had not formally informed SF that these operations were planned or had taken place before August 2024 and as these aspects of the forestry operation were not included in the Operational Plan or the EIA screening request form which was submitted on 7<sup>th</sup> June 2023, the likely effect of these forestry operations were not considered as part of on the EIA screening opinion. The operational plan, submitted as part of the FGS application, contained the following statement "Bracken and heather serve as considerable constraints to crop establishment. A combination of mechanical and chemical treatments will be implemented prior to cultivation to assist with establishment post-planting". There was no mention of blanket over spraying either pre-or post-screening opinion. SF considers that these applications are not consistent with good forestry practice as set out in the UK Forestry Standard (UKFS): see UKFS v4, page 34 Good Forestry Practice Guideline 24 "minimise the use of pesticides and fertilisers in

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accordance with Forestry Commission and Forest Service guidelines” ( FC Field book 8). SF had not had the opportunity to consider the proposed approach to herbicide application within the screening opinion as a result of non-disclosure by P&R

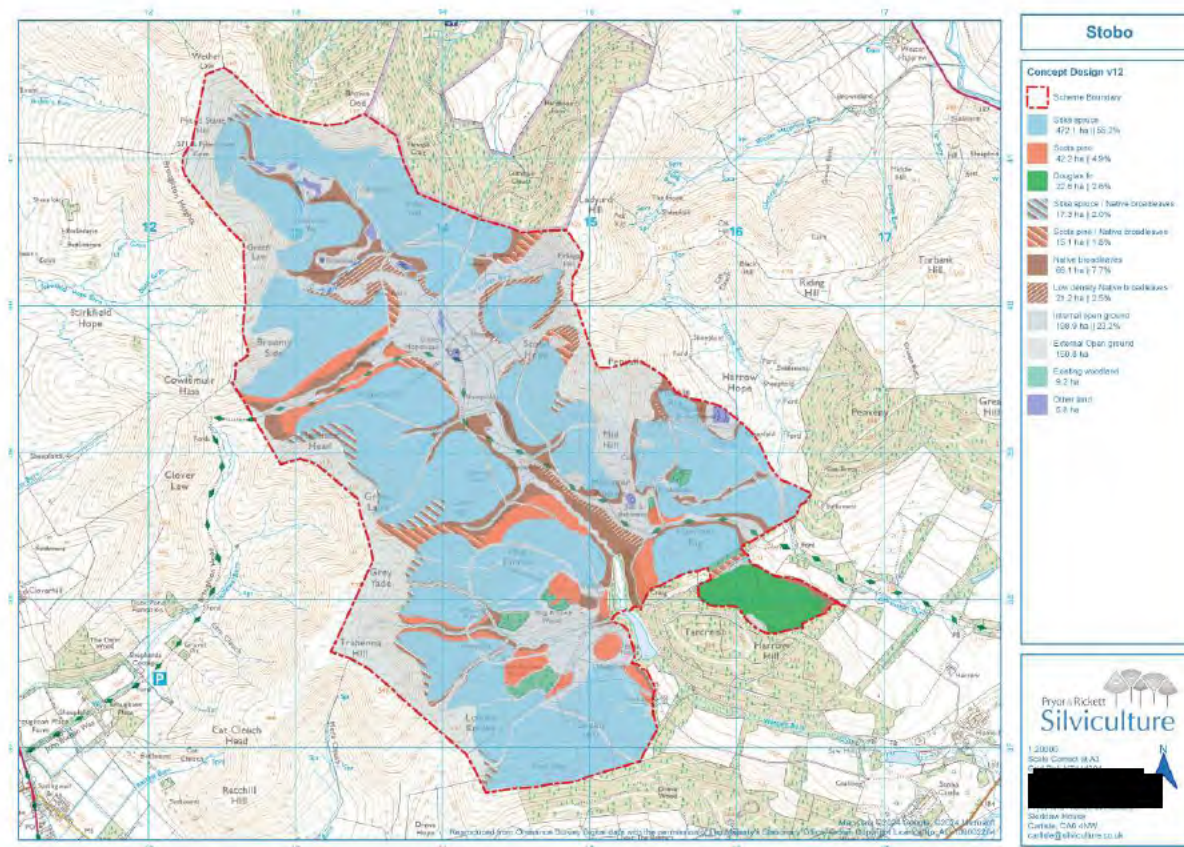
7. The spraying has resulted in the mortality of the vegetation within the 157ha. The area sprayed is highly visible from across the woodland creation site and from within the neighbouring property. The John Buchan Way footpath dissects the main area of spraying. The spraying did not take place directly on, or within, 10m of the footpath. Concern about the spraying has been raised by members of the public on social media and/or crowdfunding platforms.
8. SF has also found out during a recent site visit that an access track, noted in Annex 3 has been excavated involving major widening of the existing track and the placement of significant overburden to one side. In places this has widened the minor access track to approximately 4-5m and 1-2 m in depth. This activity was not included in the EIA screening opinion for road building but does fall within scope of the NatureScot development control regime for developments within National Scenic Areas. The track upgrading work was undertaken after the EIA screening opinion was submitted but was not included for the purposes of screening or SF advice.

### Considerations

1. The overall herbicide spraying was a significant forestry operation and did not form part of the EIA screening opinion.
2. Scottish Forestry has concluded that the forestry project that has been implemented differs from the project that was screened and as a result the project that has been carried out on the ground may now constitute an EIA forestry project. This is because we have now taken into account the environmental impacts of the overspray herbicide application, which was undertaken for and as part of the forestry project, but were not previously assessed as part of the screening opinion taken on 18<sup>th</sup> January 2024.
3. Scottish Forestry considers the impacts of the herbicide spraying on landscape and biodiversity to be uncertain, requiring further assessment.
4. Scottish Forestry also considers the impact of the herbicide spraying on public access (population and human health) to be uncertain, requiring further assessment.
5. The track way engineering works described above were not included in the screening request information and weren't assessed by Scottish Forestry. Scottish Forestry needs to consider whether the impacts of the engineering works on landscape, soil, water and biodiversity are likely to be significant.
6. Therefore, Scottish Forestry require Pryor and Rickett to cease all forestry work, pending further consideration by Scottish Forestry.



**Annex 2**

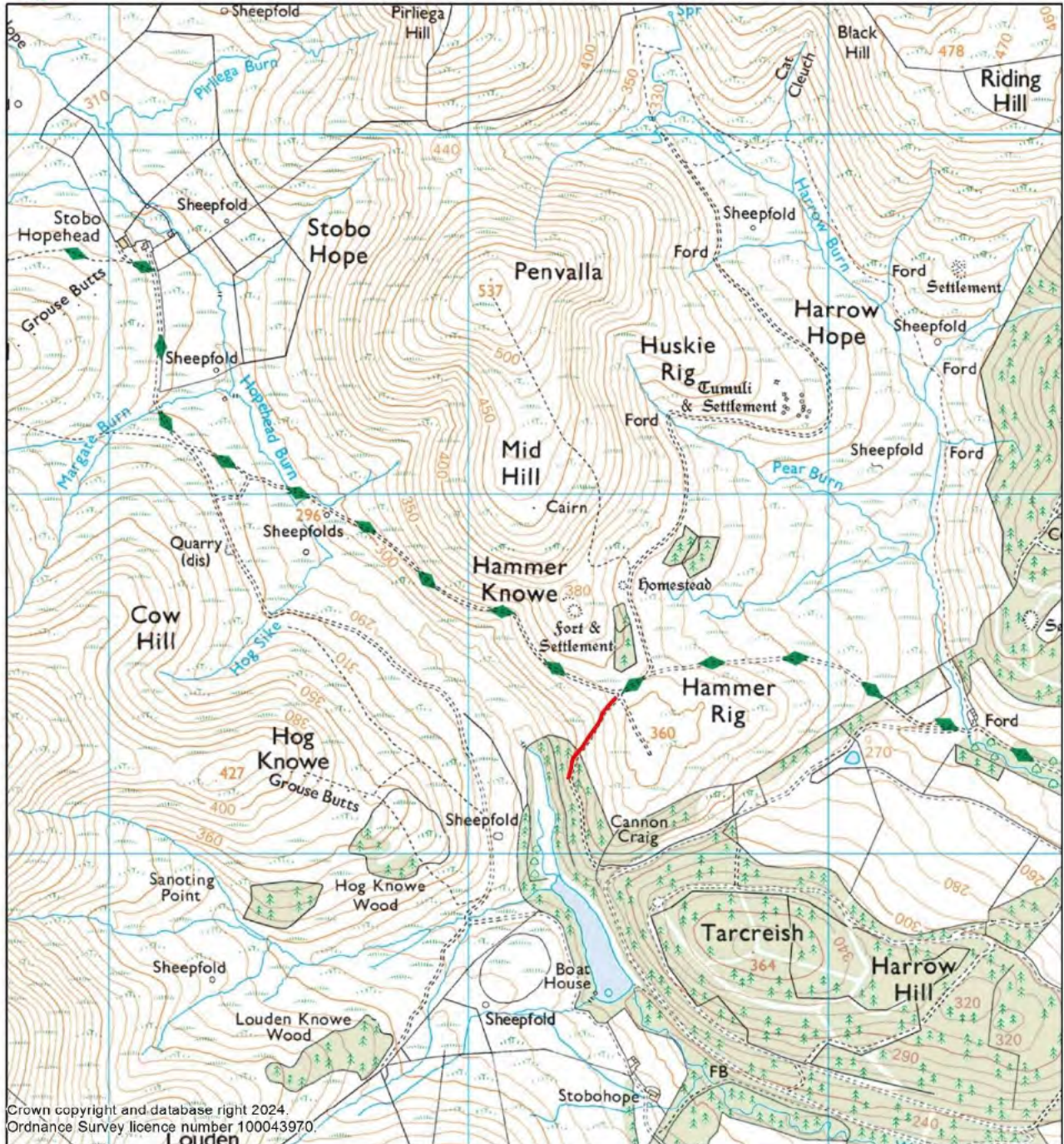






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## Stobo Excavated track



Crown copyright and database right 2024.  
Ordnance Survey licence number 100043970.

— Trackway excation works

0 0.2 0.4 0.6 0.8  
km



Printed by [Redacted]  
Printed on: 10/09/2024





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