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BY EMAIL

CC: Ian Gambles, Forestry Commission

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Dear Ministers

FORESTRY DUTIES AND THE UPCOMING ENGLISH TREE STRATEGY DURING THE CLIMATE EMERGENCY

1. We write in relation to the Government's forestry duties under the Forestry Act 1967¹ ("Forestry Act") and its wider domestic and international commitments, in light of the upcoming publication of the English Tree Strategy by the Department for Environment, Food and Rural Affairs ("Defra").
2. We acknowledge the very exceptional circumstances we are in due to COVID-19, and we would otherwise not want to expend government resources in a time of crisis; however, as we understand that Defra has decided to progress the English Tree Strategy at this time, we view this letter and a response as necessary.
3. We are concerned that previous forestry policy and targets have not discharged the Government's statutory duties under the Forestry Act sufficiently and have failed to consider wider domestic and international obligations. We would like to take this opportunity to highlight the Government's obligations and raise our concerns as to how and to what extent these are being discharged.
4. This is with the aim of informing the upcoming English Tree Strategy, which we understand is currently being prepared, and removing the risk of similar unlawfulness in future policies.
5. We urgently ask that you reflect all relevant domestic and international statutory duties, and the national interest in mitigating the climate emergency, in the upcoming English Tree Strategy and, in any future tree targets.

The Forestry Act 1967

Background and purpose

6. The Forestry Act conveys the functions of the Forestry Commission and the management and supervision of forest land. Through the Act, the Forestry Commission is given powers to control

¹ The Forestry Act 1967, available here: <http://www.legislation.gov.uk/ukpga/1967/10/introduction> (accessed 3 March 2020).

felling and to provide assistance to promote the interests of forestry, the development of afforestation and the production and supply of timber and other forest products in England.

7. The original statutory instrument was enacted in 1919, providing for the creation of a statutory Forestry Commission and supporting “the case for an active afforestation policy”.² This legislation was designed as “insurance against emergency”³ after World War One depleted timber stocks, creating a strategic risk due to the heavy reliance on timber imports.
8. The legislative purpose of the Act is thus to create a statutory body responsible for ensuring a greater quantity and quality of new and existing forests with the goal of being prepared for, and mitigating against, any future emergencies.

Duties under the Forestry Act

9. The Forestry Act creates several duties that call on forest authorities to increase and protect forest interests. It is vital that Ministers and the relevant forest authorities consider all relevant material issues in order to carry out these duties lawfully and effectively, and that Government policy, including the upcoming English Tree Strategy, reflects and discharges these duties.
10. We have outlined below four key duties under the Forestry Act that we consider must inform government policy:
 - i. *Section 1(2) creates a “general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products.”* In line with the legislative origins of the Forestry Act, we interpret this core duty to mean an active obligation to increase woodland cover to protect all forest interests and in order to mitigate any future emergencies.

The “*general duty of promoting...the production and supply of timber and other forest products*” extends beyond purely industry interests; the term “forest products” must reflect all products that forests provide, including, importantly, their vital role as carbon sinks and stocks. In 2017, UK woodland removed from the atmosphere 4% of our total greenhouse gas emissions for the year, equating to a value of £1.2bn.⁴ This statistic depicts the economic value of woodland’s service of sequestering carbon and necessarily means that the term “forest products” under this Act should encompass sequestering.⁵ An understanding of this would rationally result in a higher tree target.

- ii. *Section 1(3) builds on section 1(2), expanding the duty to include “promoting the establishment and maintenance, [in England and Wales] of adequate reserves of growing trees”.* “Adequate” has seemingly been interpreted as varying quantities since the Forestry Act’s conception, often to reflect relevant, external concerns.⁶ From

² Lord Privy Seal, Earl of Crawford, HL Hansard 7 July 1919, col 221.

³ Acland Report 1918, p.31 which was adopted by Government and led to the passing of the Forestry Act in 1919.

⁴ JNCC D1b. Removal of greenhouse gases by UK forests (2019) available at: <https://jncc.gov.uk/our-work/ukbi-d1b-greenhouse-gas-removal/>

⁵ Where product is defined as a good or service.

⁶ For example, following the UN Climate Conference in Rio de Janeiro 1992, three Rural White Papers expressed heightened ambitious views of the Government that the area of woodland should be doubled. See, (Cm 3016, 3041 and 3180).

current policy,⁷ we take the Government to have interpreted “adequate” to mean 12% wood cover in England by 2060 (the “12% policy”). This interpretation of “adequate” is discussed further below.

- iii. *Section 1(3A)*⁸ introduced the concept of sustainable forest management for the first time, with the aim of ensuring balance between environment and forestry interests. As such, when discharging its functions, the forest authority should endeavour to “*achieve a reasonable balance between*” afforestation, timber production, nature conservation and enhancing natural beauty.
- iv. *Section 8(A)* creates an umbrella duty on Ministers, when performing all functions under this Act, to “*have regard to the national interest in maintaining and expanding the forestry resources*”. The significance of this provision is discussed below.

Further relevant duties

11. Beyond the duties encompassed in the Forestry Act, other UK-wide duties and policy commitments that ought to be considered in determining the English Tree Strategy include:

- i. *Sections 13 and 15 of the Climate Change Act 2008:*⁹ This Act is the basis of the UK’s approach to tackling and responding to climate change. Under section 13, the Secretary of State has a duty to prepare proposals and policies that they consider will enable our carbon budgets to be met, and with a view to meeting the section 1 target of reducing emissions by 100% by 2050 (“net-zero target”). Section 15 creates a duty to have regard to the need for UK domestic action on climate change when meeting the net-zero target. Under this section, “*UK domestic action on climate change*” includes increases in UK removals of greenhouse gases. Forests’ capacity to sequester carbon is one of the key solutions for the success of reaching net-zero. As such, in order to discharge the Climate Change Act duties, government proposals and policies must commit to greater wood cover as a means of reaching our binding Climate Change Act target and the shorter-term carbon budgets, which we are at risk of missing.¹⁰
- ii. *Chapter 6 of the UK Forestry Standard:*¹¹ The UK Forestry Standard (“UKFS”) is the reference standard for sustainable management of forests in the UK. It applies to all woodland regardless of who owns or manages it and “*ensures that international agreements and conventions...are applied in the UK.*”¹² Chapter 6 shows a policy commitment to forest management that contributes to climate change mitigation and that enhances the potential of forests to protect society and the environment from the effects of climate change. This policy should inform and set the standard for government decisions on new forest policy and targets.

⁷ As published in ‘Government Forestry and Woodlands Policy Statement’ (2013) available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221023/pb13871-forestry-policy-statement.pdf

⁸ Following the amendment of the Forestry Act by the Wildlife and Countryside (Amendment) Act 1985.

⁹ Climate Change Act 2008, available at: <http://www.legislation.gov.uk/ukpga/2008/27/contents>

¹⁰ See here: <https://www.theccc.org.uk/tackling-climate-change/reducing-carbon-emissions/carbon-budgets-and-targets/>

¹¹ Forestry Commission, UK Forestry Standard, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687147/The_UK_Forestry_Standard.pdf

¹² Forestry Commission, UK Forestry Standard website, available at: <https://www.gov.uk/government/publications/the-uk-forestry-standard>

- iii. *Article 5 of the Paris Agreement 2015:*¹³ The Paris Agreement is an international agreement within the UN Framework Convention on Climate Change aimed at keeping global warming to 1.5°C. It commits the UK Government to taking action to conserve and enhance sinks and reservoirs of greenhouse gases, including forests.
- iv. *Article 4 of the UN Forest Instrument 2007:*¹⁴ This is a UN framework promoting sustainable forest management and articulating agreed policies and measures at an international level. It commits the UK Government to global objectives of reversing forest loss through sustainable forest management including protection, restoration, afforestation and reforestation.
- v. *Sustainable Development Goal 15:* The Sustainable Development Goals are part of the UN 2030 Agenda and incorporate seventeen global goals for a more sustainable future. The UK is committed to their delivery.¹⁵ Goal 15 commits the Government to protect, restore and promote sustainable use of terrestrial ecosystems and sustainably manage forests. This further adds to the Government's sustainability commitments under the UKFS.

Current Government policy

- 12. With the duties we have outlined above in mind, we do not believe that the Government's current policy and tree target is sufficient to meet its domestic and international obligations nor to tackle the climate emergency.
- 13. We understand that the current 12% policy¹⁶ would require a planting rate of 6,500 hectares per year.¹⁷ The Government's 2019 manifesto signalled an aspiration to increase woodland cover UK-wide, but did not specify what this would mean for England – the only nation over which the Westminster government has authority in this devolved matter. The Government's March 2020 Budget announced funding to plant only 6,000 hectares of trees per year in England during this Parliament,¹⁸ meaning that on this trajectory it will fail to meet even its own existing long-term target.

¹³ UNFCCC, Paris Agreement 2015, available at:

https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

¹⁴ UN Forest Instrument 2007, available at: https://www.un.org/esa/forests/wp-content/uploads/2018/08/UN_Forest_Instrument.pdf

¹⁵ See report on 'Implementing the Sustainable Development Goals' (2019) available at:

<https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals--2>

¹⁶ As published in 'Government Forestry and Woodlands Policy Statement' (2013) available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221023/pb13871-forestry-policy-statement.pdf; the UK Forestry Standard (2017) available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687147/The_UK_Forestry_Standard.pdf; and the 25 Year Environment Plan (2018) available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf.

¹⁷ England is c.13m hectares, 10% of which is currently woodland (1.3m ha); to reach 12% (1.56m ha) will require the addition of 260,000 ha of new woods; to do this over 40 years, 2020-2060, will require a planting rate of 6,500 ha per year. To reach 12% woodland cover earlier, by 2050, would require an accelerated planting rate of 8,666 ha per year.

¹⁸ HM Treasury, Budget March 2020, p64 (para 1.250), available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf, and tweet by HM Treasury Twitter account, 11 March 2020, <https://twitter.com/hmtreasury/status/1237729327439056896>.

14. For the reasons outlined further below, if the Government’s forthcoming English Tree Strategy reasserts these plans, it would similarly render the strategy in breach of its domestic and international duties.

Interpreting “adequate”

15. The section 1(3) duty of the Forestry Act requires the appropriate forest authority to promote the establishment and maintenance of “adequate” reserves of growing trees. We are extremely concerned that the current 12% policy is not “adequate” for the purposes established in the Act. To be adequate means to be sufficient in quantity and quality to exercise a particular purpose. Under this definition it is necessary to define what is considered to be sufficient in quantity and quality to exercise the Forestry Act’s purpose. In this case, the purpose is informed by the duties under the Act, particularly those in subsections 1(2)-(3A).
16. At the time of the policy creation, the Independent Panel on Forestry (“IPF”) interpreted “adequate” to require 15% woodland cover by 2060 in England,¹⁹ thus the Government’s commitment to the 12% policy constituted an unwarranted and unexplained reduction of ambition contrary to independent expert advice.
17. Since then, the Committee on Climate Change (“CCC”), the Government’s independent advisor on climate change, has advised that we require 17-19% wood cover in the UK by 2050, as a means of delivering emission reductions to meet our statutory net-zero target.²⁰ In 2019, the CCC reported that to reach the necessary level of CO₂ removal through afforestation by 2050 requires an increase in tree-planting rates to more than double the rate it is now.²¹ The CCC’s recommendation shows that the UK is currently not on track to meet its net-zero target. Similarly, as shown in paragraph 13, England is not on track to meet this target or its own 12% policy.
18. We request an explanation as to how devolved administrations coordinate to meet UK-wide targets and what role the England Tree Strategy plays in this. We assume that devolved administrations have equal responsibility to meet these targets. If you take a different view, we request an explanation as to the basis on which Defra holds this view and an explanation of assessments that Defra has carried out to ensure that our UK-wide targets and the recommendations of the CCC (as a minimum) will be met between the devolved administrations.
19. Further, under section 1(3A) of the Forestry Act, forest authorities must endeavour to achieve a reasonable balance between forest industry and forest environments. Climate change will have an impact on the Government’s ability to protect both forestry as an economic resource and as a critical means for achieving the conservation of nature. It is therefore in the interests of the forestry industry and forestry environments to mitigate climate change as much as possible and to manage forests in a sustainable way. As shown above, forests have an active role to play in combatting the climate crisis. The climate crisis is therefore a relevant consideration for carrying

¹⁹ Independent Panel on Forestry (2012) Final Report, p.59 available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/183095/Independent-Panel-on-Forestry-Final-Report1.pdf

²⁰ CCC (2018) Land Use: Reducing emissions and preparing for climate change, p.54 available at: <https://www.theccc.org.uk/wp-content/uploads/2018/11/Land-use-Reducing-emissions-and-preparing-for-climate-change-CCC-2018-1.pdf>

²¹ CCC (2019) Net Zero: The UK’s contribution to stopping global warming, available at: <https://www.theccc.org.uk/wp-content/uploads/2019/05/Net-Zero-The-UKs-contribution-to-stopping-global-warming.pdf>

out the balancing duty under section 1(3A) and has an impact on the interpretation of what is “adequate” policy in terms of numerical targets and the sustainability qualities of the policy.

20. The expert commentary of the CCC and IPF highlight that when relevant factors are considered in interpreting what is “adequate” for the purposes outlined in subsections 1(2)-(3A), a material difference is made to the resulting tree target recommendations. A commitment to an “adequate reserve” under the Forestry Act, would have to be of sufficient quantity and quality to promote and protect both the forestry industry and forest environments in a sustainable manner and within the context of our dangerously changing climate. As outlined, if interpreted correctly, this would necessarily result in a higher target than 12% woodland cover by 2060 in England in order to meet England’s Forestry Act duties and contribute adequately to UK-wide targets.

The climate emergency

21. The declaration by Parliament of a national climate emergency in 2019²² calls on the legislative purpose of the Forestry Act and engages the section 8A duty on Ministers to have regard to the national interest in maintaining and expanding forestry resources.
22. The declaration shows that climate issues are undoubtedly of national interest. This premise, combined with the role of forestry resources in mitigating the climate emergency, necessarily means it is in the national interest to maintain and expand forestry resources. This firmly engages section 8A and requires Ministers to have regard to the national interest in expanding forestry resources as a means of mitigating the climate emergency when performing all duties under the Forestry Act.
23. The climate crisis is the greatest emergency facing humankind and the environment and adds a newfound importance to the Government’s duties under this Act. By engaging this provision, and chiming with the original legislative purpose of the Forestry Act, the climate crisis becomes material to the interpretation of the legislative duties, and therefore necessarily heightens the national interest in greater tree targets.

Wider obligations

24. In terms of our wider domestic and international duties, the contribution offered by the 12% policy is also not satisfactory. Following the recent Court of Appeal’s decision that stated, “*it is clear, therefore, that [the Paris Agreement] was the Government’s expressly stated policy*”,²³ we expect future forest policy to reflect and be consistent with all our wider policy commitments, in particular the Paris Agreement.
25. It is evident from the Government’s UK Forestry Standard policy,²⁴ and public commitment to international agreements such as the Paris Agreement and Sustainable Development Goals, that the Government does recognise the links between the climate crisis and forestry, and trees’ “*vital role as carbon stocks and sinks*”.²⁵ However, the repeated commitment to the 12% policy for England in the *Clean Growth Strategy* and *25-year Environment Plan*, suggests the Government

²² As declared on 1 May 2019 – HoC Hansard 318.

²³ R (Friends of the Earth) v Secretary of State for Transport and Ors [2020] EWCA Civ 214

²⁴ See Chapter 6.2 specifically, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687147/The_UK_Forestry_Standard.pdf

²⁵ Ibid, p.57

believes increasing tree cover to just 12% is a sufficient policy for the purpose of meeting our UK wide carbon targets and budgets.²⁶

26. As above, the CCC advice for the UK as a whole shows that current policy is not in line with the scale and urgency of the climate crisis and is well below the levels required to contribute to the net-zero target.²⁷ This is disappointing and inconsistent with the Government's purported position as a climate leader.²⁸
27. To rectify this deficiency, UK climate policy and targets should be reflected and discharged in all devolved administrations' forestry policy. As such, current incongruities in Government policy need addressing and aligning in the upcoming English Tree Strategy and UK-wide obligations should be reflected in any future tree targets for England. This is not only required, but is an opportunity to bring England's forest policy in line with the Government's position as a climate leader. If done sufficiently, this would necessarily result in a higher tree target for England.

Action required by Defra

28. We seek confirmation that the English Tree Strategy aligns with and is consistent with England's statutory duties and the UK's forest and climate related obligations. In particular, we ask for:
 - i. a commitment to the inclusion of a strict, ambitious and adequate tree target for England in the upcoming tree strategy that reflects all statutory duties under the Forestry Act 1967 and wider domestic and international obligations;
 - ii. a commitment to the inclusion of diverse and sustainable means of meeting this target to ensure we have the right trees in the right places and do not compromise sustainability and conservation efforts;
 - iii. an explanation of what proportion of the UK's international and domestic obligations will be met by England's strategy, considering the statutory duties laid out in the Forestry Act 1967; and
 - iv. an explanation of how achieving UK-wide tree targets is coordinated between the devolved administrations, as set out in paragraph 18.
29. If you disagree with our interpretation of any of the duties and functions as set out in this letter, please provide an explanation as to what you believe the correct interpretation to be, and the basis for this interpretation.
30. We look forward to receiving a full response to this letter setting out Defra's position **within 14 days**, noting that the England Tree Strategy is anticipated to be consulted on imminently.

²⁶ 'Clean Growth Strategy' (October 2017), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700496/clean-growth-strategy-correction-april-2018.pdf; '25 Year Environment Plan' (2018), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

²⁷ CCC (2019) Progress in reducing UK emissions report, p.61 available at: <https://www.theccc.org.uk/wp-content/uploads/2019/07/CCC-2019-Progress-in-reducing-UK-emissions.pdf>

²⁸ See for example, PM speech on the environment 11 January 2017, available at:

<https://www.gov.uk/government/speeches/prime-ministers-speech-on-the-environment-11-january-2017>

31. Please acknowledge safe receipt of this letter to rosa.winter@foe.co.uk and guy.shrubsole@foe.co.uk.

Yours sincerely

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