

Operations Note 030

Updated: 5 September 2019

# How ash dieback (*Hymenoscyphus fraxineus*) may affect your legacy grant scheme or felling licence application

## Purpose

To update woodland owners and managers on how *Hymenoscyphus fraxineus* (ash dieback or *H. fraxineus*) may affect the grant and regulatory processes that supported the earlier planting of ash and the current felling of ash in England. The legacy grant schemes covered by this note include:

- Farm Woodland Scheme (FWS)
- Farm Woodland Premium Scheme (FWPS)
- English Woodland Grant Scheme (EWGS) and the associated Farm Woodland Payments (FWP)

Ash should not have been included as a planting species in either the interim Countryside Stewardship / EWGS scheme (managed by the Forestry Commission) or any of the current Countryside Stewardship (CS) woodland creation schemes.

## Background

Full supporting information on *H. fraxineus* (history, symptoms, distribution, silvicultural advice, scientific facts etc.) can be found on the Forestry Commission's [Chalara webpage](#). Silvicultural guidance for '[Managing ash trees](#)' is likely to be particularly relevant. The Government's overall approach to managing the disease can be found in the [Chalara Management Plan](#).

## Context

Below is a summary of CS/EWGS, EWGS, and Farm Woodland scheme cases involving planting and restocking of ash.

Grant stage	Action
1. Approved EWGS contracts - not yet planted	All schemes should have been planted. You should contact us to see whether planting

	can still be undertaken, and if so, agree an alternative species to any ash that may be included in the proposed planting mixture.
2. Planted and still under contract (CS/EWGS, EWGS/FWP, FWS and FWPS) – <b><i>infected</i></b> with ash dieback	<p>You should contact us, invoking your ‘force majeure’ clause (should this be included in your contract). We will agree one of three options with you:</p> <ul style="list-style-type: none"> <li>• <b>a reinstatement plan</b> - the replacement of ash with alternative species<sup>1</sup></li> <li>• <b>a lower stocking rate</b> - the woodland will be established but with the absence of the ash originally intended</li> <li>• the <b>scheme is deemed not viable</b> in the absence of ash. If no other course of action can be agreed the case will be closed, but we will be required to seek recovery of all grant, still within obligation, received by the agreement holder</li> </ul>
3. Planted and still under contract (CS/EWGS, EWGS/FWP, FWS and FWPS) – <b><i>not infected</i></b> with ash dieback	There is no immediate need to take any action. However, if you wish to replace the ash you should contact us and agree a variation to the case.

Provided that the advice in this document is heeded, it is unlikely that repayment of grant funds will be required, **unless you decide to withdraw from the scheme.**

## Questions and Answers

### New Planting

<b>For an existing scheme, will I be required to change species?</b>	<p>In the unlikely event that you still have an EWGS or interim CS/EWGS scheme which is still to be planted, you must first check that the Forestry Commission is still able to fund the work. We cannot fund the work if your five year agreement period has expired. If you still wish to undertake the tree planting you should re-apply under CS.</p> <p>If we are able to still fund the work, any ash component</p>
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<sup>1</sup> Your Woodland Officer will provide guidance on what content is required in a reinstatement plan and also whether further grants are available to support the removal of the ash and its replacement with an alternative species.

	<p>must be replaced using a suitable alternative species. If you are unsure what to plant, please contact your local woodland officer (WO) for advice. Their contact details can be found <a href="#">here</a>. We will agree any change of species in writing with you, rather than formally amend your contract. Alternatively the Practice guide <a href="#">Managing ancient and native woodland in England</a> will provide information on suitable alternatives.</p>
<p><b>Is it still acceptable to plant ash?</b></p>	<p>Currently there is a total ban on the movement of both ash seed and trees for planting.</p> <p>On the right sites, ash will seed in from a nearby woodland or individual trees, colonising an area naturally. This is acceptable and at this moment in time we would not advocate that an owner removes such ash regeneration from their site. This is mainly because some ash will be genetically resistant to the disease, and we need to identify those individuals so that we can develop naturally resistant planting stock.</p>
<p><b>I have grown on some of my own ash seed over a number of years. Surely if I want to, I can plant these on my property?</b></p>	<p>It is currently recommended that ash should not be used in any planting schemes. If you wish to proceed using your own trees, and this does not involve the movement of trees to another site, then you are able to plant these if you wish. You should be aware of the risk of doing so in that young ash trees in particular are very prone to infection by <i>Hymenoscyphus</i>. If you are not receiving grant aid for the planting work then this is your choice. However, in the event that you have one of our legacy scheme agreements, you should be aware that any such planting from October 2012 onwards has been identified as being at your own risk. If the trees contracted the disease in the future, you <b>will not</b> be able to invoke the ‘force majeure’ clause within your contract. Under the Terms and Conditions of your contract it is likely that you would be expected to replace any diseased trees <b>at your own expense</b> in order to maintain the relevant stocking level. Failure to do so may result in the reclaim of grant paid to date.</p>
<p><b>How do I invoke the ‘force majeure’ clause in my contract?</b></p>	<p>Since 2008, all EWGS contracts have carried a ‘force majeure’ clause in the terms of your contract. This means that in the event of an unexpected catastrophe, such as an outbreak of a new disease, an owner may invoke this clause.</p> <p>The clause may allow a variation of the contract and avoid the need to repay grant received to date. In order to invoke your ‘force majeure’ clause an owner <b>must</b>:</p> <ul style="list-style-type: none"> <li>• notify your Administration Team in writing within <b>fifteen days</b> of the confirmation that the ash trees in your scheme are confirmed as infected</li> <li>• provide some form of documentary evidence that the</li> </ul>

	<p>trees are infected (such as notification from the Forestry Commission's Plant Health Team or your local Area Office). In the event that you do not have any such notification you <b>must</b> provide alternative support for your claim. Good quality photographic evidence, in focus, ideally in colour and with a digital date super-imposed (if possible). The photographs must include at least one close up of an infected tree showing the recognisable symptoms of the disease, and at least one wider view of the planting site as a whole</p> <ul style="list-style-type: none"><li>• provide details of the number of trees affected, their location and year they were planted (identified in your contract)</li></ul> <p>For Forestry Commission schemes <b>approved before 2008 and not carrying</b> the 'force majeure' clause you should contact your local Woodland Officer to discuss the options in the event that any ash trees become infected. We would aim to work with you as if the 'force majeure' clause existed and ask you to follow the procedures above.</p> <p>We will work closely with you in order to ensure that we can agree a satisfactory way forward. The 'force majeure' clause refers to agreeing a reinstatement plan or accepting a <b>lower standard of work</b>. Action will vary on a case by case basis but may include one of the following:</p> <ul style="list-style-type: none"><li>• for native woodland schemes where we allow up to 40% of open ground: If you had less than this identified in your original contract, the removal of ash may simply increase the open ground element. Provided that open ground is within the limits we would not seek to reclaim any grant</li><li>• with recently planted schemes, where the maximum open ground is already included. We may seek to replace the ash with a suitable alternative species. This will be on a case by case basis and in exceptional circumstances we may allow for further open ground within the scheme without the need to recover grant</li><li>• where a scheme is in receipt of FWP (or either FWPS or FWS), and there are payments still outstanding. Provided woodland cover is maintained (<b>as above examples</b>), the annual payments will continue to be paid</li><li>• the Forestry Commission has a definition of woodland which we work to for all our grant and regulatory</li></ul>
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	<p>work. It will be for individual Woodland Officers to determine, on a case by case basis, whether this definition<sup>2</sup> will still be met <b>at the end of the individual schemes obligation period</b>. The obligation period will vary depending on the type of scheme and will run from the date that the first claim was paid:</p> <ul style="list-style-type: none"> <li>• for FWS this will be 30 or 40 years</li> <li>• for FWPS this will be 30 years</li> <li>• for EWGS/ FWP or CS/EWGS FWP this will be 30 years. For all capital Woodland Creation Grant payments the obligation period is ten years from the date of first payment</li> </ul> <p>Provided that the Woodland Officer agrees that the woodland will meet our definition at the end of the obligation period it is highly unlikely that we will seek to recover any of the funds paid to you. However, an agreement holder must <b>continue to meet the Terms and Conditions of the scheme</b> and must also ensure that <b>no agricultural activity is undertaken on the land until the obligation period ends</b>. Failure to do this, even in the event that they have claimed ‘force majeure’, will result in the recovery of all grant scheme payments that have been made, and which remain under obligation.</p>
<p><b>If I have to remove infected trees and replant further trees will I get a grant?</b></p>	<p>We agreed a support package with Defra several years ago, and this funding is currently still available through the current CS. Details are available on GOV.UK <a href="#">Woodland Tree Health Grant</a>.</p>
<p><b>I have planted several woodland areas over the last few years, all with varying levels of ash in the mixture. There is currently no evidence of infection. Should I remove the ash and replant with an alternative?</b></p>	<p>The Government and many stakeholders believe there is value in removing as many recently-planted ash trees (i.e. planted within the last five years) as possible and replanting these with alternative species. This is a precautionary approach based on the probability that some of these younger ash trees will already be infected, and the inevitability that more will become infected over the coming years.</p> <p>If the trees were planted with the benefit of grant aid and you remove them with <b>no evidence</b> that the trees were infected, you <b>will not be able</b> to invoke the ‘force majeure’ clause under either your EWGS agreement. You therefore <b>must</b> replace the trees with a suitable alternative species and maintain these for the period of the original agreement.</p>

<sup>2</sup> Must have a canopy cover of 20% or more, comprising trees which either have achieved or are capable of achieving at least five metres in height, on an area of at least 0.5 hectares and a minimum average width of 20 metres.

	You should notify us of the action you are taking. Failure to do so will result in the Forestry Commission seeking to recover any appropriate grant paid to date.
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## Replanting

<b>I have a site which was felled several years ago and was planted with a native mixture which included ash. What do I need to do?</b>	For sites planted with grant aid the rules governing replanting of felled woodland are exactly the same as for new planting (including the 'force majeure' clause). See above section for guidance.
<b>I have agreed to restock an area using natural regeneration. This will include ash. Do I need to remove the ash?</b>	<p>We would recommend that you continue allowing the natural regeneration to colonise the site. As with new planting, the risk to the replanting will depend on your location, speed of disease spread and natural resistance of the trees to the infection. In the event that infection does occur, there will be opportunities through normal management, such as cleaning and thinning, to remove infected material and to favour other species.</p> <p>The Forestry Commission no longer offers grant for restocking felled woodland. In the event that you have an existing scheme which is still within obligation (ten years from the date that the restocking grant was paid) we may be required to recover grant payments if you remove uninfected naturally regenerated or planted ash, if their removal means that the necessary stocking rate, identified in the conditions of your felling licence, is not achieved. You <b>will not be</b> able to invoke the 'force majeure' clause if you remove uninfected trees (see new planting section above).</p>

## Felling and Management

<b>Management and felling of ash</b>	The Forestry Commission and Defra has recently published new guidance for the management and felling of ash in the presence of ash dieback. This guidance can be viewed on the <a href="#">Managing ash dieback in England leaflet</a> .
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## Sources of further advice

The [Forestry Commissions pages on GOV.UK](#) contain all the information you need to apply for grant support. Or you can request this information from your local [Forestry Commission office](#).

## Versions

Version 1.0 issued 27 February 2013

Version 1.1 issued 2 April 2013

Version 2 issued 5 September 2019