



East Coast Forestry Project: Changes to Administration

Regulatory Impact Statement (RIS)

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Regulatory Impact Statement (RIS)

East Coast Forestry Project: Changes to Administration

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI).

It provides an analysis of options to address the problem of low uptake of East Coast Forestry Project ('ECFP') erosion control grants particularly on Māori land and its inefficient administration structure. MPI's preferred option is to change from the current regulatory administration to a non-regulatory approach and remove the requirement for covenants over treated land. The proposed changes would simplify the administration. This would encourage full utilisation of the ECFP's remaining financial appropriation, and maximise its impact on the soil erosion problem.

The analysis relies on the assumption that changes to the way the ECFP is administered will improve the uptake of grants and operational efficiency. Experience in operating the ECFP since 1992 and stakeholder feedback suggests this outcome is dependent on the following factors:

- a favourable response from the owners of the worst eroding land;
- multiple owners of Māori land agreeing to change their land use; and
- protection of the grant-aided erosion treatment in the long term through the Gisborne Combined Regional Land and District Plan.

MPI believes that these responses are likely to happen, especially as a result of a new collaborative approach to the soil erosion problem between MPI, the Gisborne District Council and iwi.

As many other Crown grant schemes are operated on an administrative basis, no problems or issues are expected with implementing the preferred option.

It is important (and achievable) that any regulatory amendments and changes to business processes are in place by August 2014, so that grants approved in the June 2014 application round could be administered under a new regime.

Justine Gilliland
Acting Deputy Director General – Sector Partnerships & Programmes

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Status quo

Hill country erosion and the East Coast Forestry Project

Gisborne District is susceptible to regular high intensity storms that cause soil erosion on steep slopes and downstream flooding. These storms are likely to get heavier and/or more frequent. For a mid-range global greenhouse gas emission scenario, a 1-in-100 year event now could become a 1-in-50 year event by the end of the century.¹

Overall, 26 percent of the District's land is susceptible to severe erosion, compared with only 8 percent of all land in New Zealand. This results in a significant economic impact to the District's hill country farms, infrastructure and high quality land on floodplains. The economic cost has not been estimated at the regional level, but it would comprise a significant part of the estimated national cost of \$100-150 million per year.²

The ECFP was established in 1992 with the objective of achieving sustainable land management on the worst eroding or erosion-prone land (target land) in the Gisborne District. It is administered under the Forestry (East Coast) Grants Regulations 2000 (the "Regulations").

The financial appropriation for the ECFP finishes in 2028 and approximately \$26 million of ECFP funding remains available for new grants until 2020.

Grants are issued in two instalments for three erosion control treatments: planted forest, encouragement of reversion to native forest species and wide-spaced planting of poplar or willow poles.

Iwi relationship

Ngāti Porou is the iwi in the northern East Coast. The Waiapu River comprises a large part of Ngāti Porou's rohe (**Figure 1**) and is of great spiritual, cultural, physical and economic significance. Their 2010 Treaty of Waitangi Deed of Settlement required an independent assessment of the size and scope of issues impacting on erosion in the Waiapu River catchment. The assessment, completed in 2012 (the Waiapu River Catchment Study), noted that the ECFP was not meeting its full potential, and that the uptake could be improved through more efficient and effective implementation.

The Deed of Settlement also provides for the development of a high-level relationship accord signifying a new era of collaboration between Ngāti Porou and the Crown. This accord strengthens Ngāti Porou input into government priority setting and decision-making through proposed portfolio agreements signed on 23 April 2014 including one on erosion control – the 100 year "Restoring the Waiapu Catchment" programme.

¹ NIWA Climate Change Projections for New Zealand
http://www.niwa.co.nz/sites/default/files/import/attachments/IPCC_08_report_02s.pdf

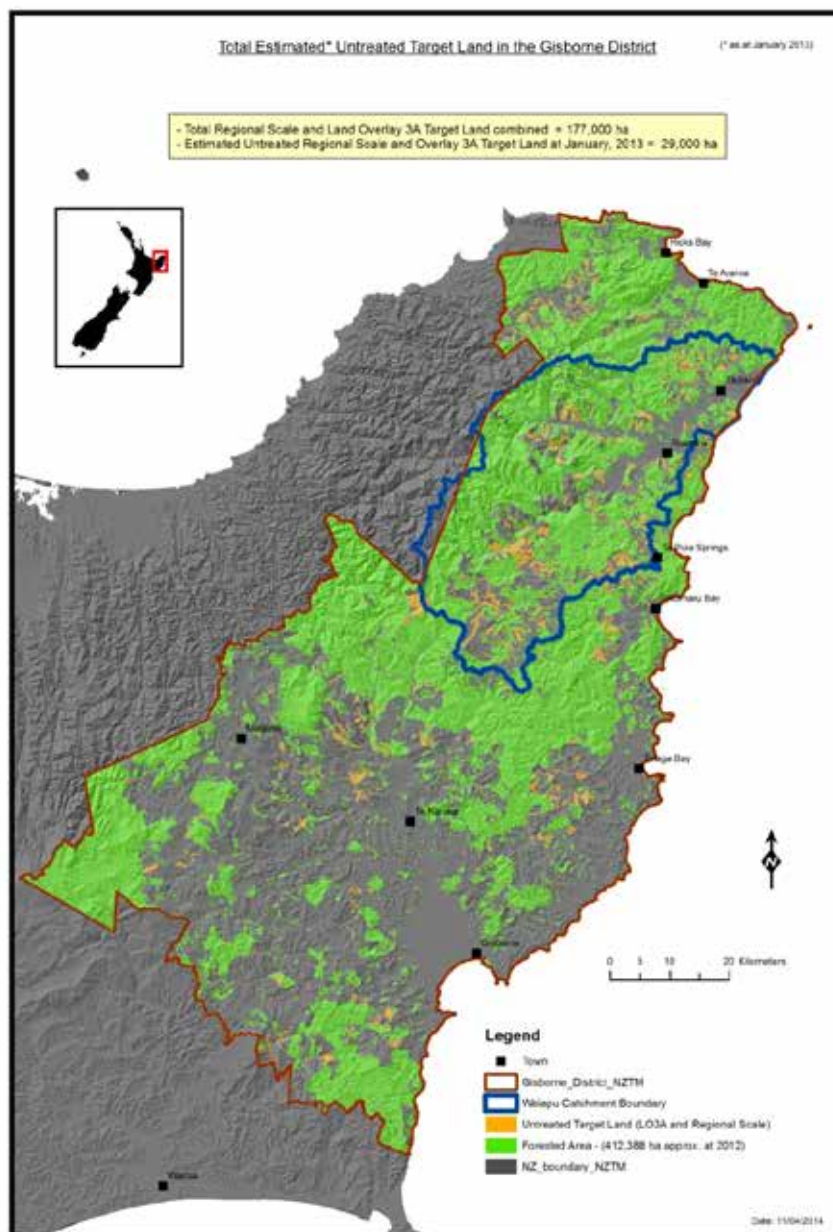
² State of the Environment Report 2007, Ministry for the Environment.

Progress to date

Forty two thousand hectares have been afforested so far under the scheme. Around 27,000 hectares of this is target land. The additional 13,000 hectares were treated because treating the whole or most of the watershed surrounding an erosion feature achieves the greatest reduction in sediment run-off. An estimated 29,000 hectares of target land remains to be treated.

The relative magnitude of the remaining problem of untreated target land is illustrated graphically in **Figure 1** which shows the forested land in the East Coast District and the 29,000 hectares of remaining target land. Forty-four percent of the remaining target land is in the Waiapu catchment.

Figure 1



Decisions already made

The Gisborne District Council is a unitary authority with the powers of a regional council that include managing the effects of using land; managing rivers and mitigating soil erosion and flood control.

In 1999, Cabinet agreed to continue funding for erosion control in the District on the condition that the Council implemented relevant regulatory controls. As a result, a variation to the Council's Combined Regional Land and District Plan was completed (Section 6.10). From 2009, all landowners with the worst eroding land (mapped as Land Overlay 3A) are required to have established effective tree cover on it by 2021. This District Plan rule is dependent on the ECFP being available to fund treatments on this land.

In December 2012, Cabinet agreed to extend the ECFP's financial appropriation to 2028. This was to allow the second payments to be made on grants issued up to 2020. A four-year multi-year appropriation was also established. Cabinet also invited the Associate Minister for Primary Industries to report back on other improvements to increase the effectiveness of the ECFP. The Associate Minister reported on proposed improvements in December 2013 and Cabinet agreed to public consultation on these proposals, and to report back on the outcome and final policy proposals.

MPI facilitated the formation of a governance group with Ngāti Porou and the Council to implement the "Restoring the Waiapu Catchment" programme. This group will coordinate the commitment that the three parties have towards improving the long term sustainability of the Waiapu catchment. The benefits of this collaboration will extend to the rest of the Gisborne District.

Current ECFP administration

The Regulations specify the core administrative requirements for operating the ECFP such as qualifying land parameters, grant amounts, processes by which grants may be made, the timing of application rounds and the payment of grants.

The Regulations require grant approval certificates to be issued, and replanting or non-use covenants to be registered that require forest cover to be maintained for 50 years. The certificates and covenants contain various terms and conditions. Approval certificates contain technical details such as planting densities and terms and conditions for grant payment instalments. Covenant conditions require replanting, non-use or the maintenance of tree cover, and may include conditions for the use of stock tracks and other site-specific conditions.

This complex documentation creates administrative difficulty for grantees as they must refer to three sources (regulations, approval certificate and covenants) to ensure full compliance.

As the Regulations are currently the only permissible way of administering the ECFP, the status quo is unlikely to change over time without intervention.

Problem definition

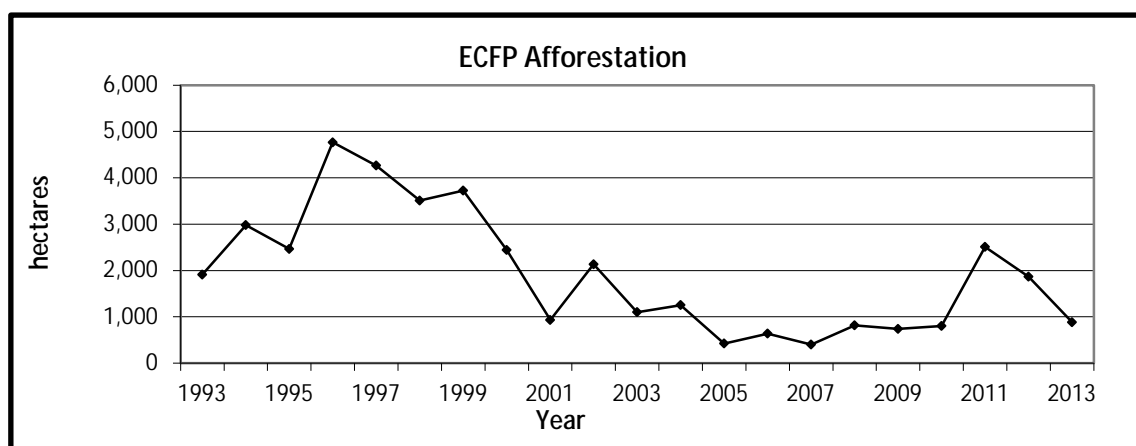
The ECFP is not fully meeting its objective of achieving sustainable land management on the worst eroding or erosion-prone land in the Gisborne District.

The problem has been identified in two independent reports commissioned by MPI:

- The 2011 Afforestation Schemes Review which reported on cost-effectiveness, implementation issues and opportunities, and interactions with other forestry schemes.
- The 2012 Waiapu River Catchment Study that investigated the geophysical, social, cultural, and economic dimensions of the erosion problem in the Waiapu River catchment in order to inform future policy decisions with respect to the catchment in the context of the Deed of Settlement between Ngāti Porou and the Crown.

Feedback from the recent public consultation also identified certain features of the current ECFP design that limit the uptake of grants. These are described below in the Consultation section.

The chart below shows a decline in area treated under the ECFP since around 2000 except for a spike in 2011 and 2012 that was caused by high carbon prices that subsequently declined (funded forests can also be registered in the Emissions Trading Scheme and Permanent Forest Sink Initiative).



The reasons for the decline identified in the review reports and through experience in operating the ECFP are:

- forestry profitability has declined compared with pastoral farming;
- the remaining land needing treatment being owned by people with less interest in retiring land from farming, or by Māori who are deterred by the covenant requirement;
- complex administration with multiple signing stages for grant applications, grant certificates, covenants and payment claims; and the frequent need for bridging finance; and
- a requirement for 50-year replanting covenants.

Some of these reasons are outside the control of the Crown, such as the profitability of forestry versus farming. Others can be mitigated by advocacy, education and coordination through the joint governance group that has been set up, and by improving the way the ECFP is operated.

Covenants

Covenants are one of the main causes of the complexity and costs which discourage uptake, and this is particularly so for Māori landowners.

The covenant requirement was added in 2005 in response to the deforestation of some relatively small erosion treatment areas. Covenants reduce some risk to the Crown regarding the deforestation of grant areas, because they “run with the land” (i.e. are legally effective even if land ownership is transferred to someone other than the grantee).

Māori landowners are a key target of the ECFP, especially in the Waiapu River Catchment. They are generally reluctant to commit to long-term obligations such as the 50-year replanting covenant on their land that will bind future generations. In addition, it is difficult to obtain the agreement of numerous owners of Māori land (many of whom are absentee) to enter into a covenant where the land has not been constituted as a Trust or Māori Incorporation.

The Regulations require that grant payments are not made until covenants are registered. The process of mapping the treatment area, and preparing and registering covenants currently takes from 3-30 months, depending on complexity. Grantees need to fund all the costs of establishing the erosion treatment before they get the grant money. These consist of buying and transporting seedlings to the site, planting, spot spraying around the newly planted trees and the supervision of contractors.

Grantees fund these costs from their own resources or by debt funding. Although the grant covers these costs when it is paid, grantees incur an interest cost if they need to borrow the money. This is an impediment to grant uptake for many potential grantees. The removal of the covenant requirement would shorten the time between operational expenditure and grant payment to 3-5 months. Bridging finance to cover the operational expenditure over this period would be a lesser burden for grantees.

As deforestation of treated areas has been minimal since 2005, covenants are now considered unnecessary. The risk to the Crown of deforestation of treated land is also mitigated because:

- once effective tree cover is established its retention is protected by District plan provisions governing vegetation clearance;
- the high cost of removing the trees after the 15 year grant agreement expires and the requirement for a resource consent for vegetation clearance;
- MPI will provide all ECFP grant areas to the Council to ensure they are considered when consent applications are received; and
- monitoring of performance will be undertaken by the governance group to ensure the longevity of funded projects.

For these reasons, two of the proposed options outlined below include removal of the covenant requirement.

Impact of the problem

The impact of the problem is that:

- Māori landowners are disadvantaged in applying for grants because of the covenant requirement;
- work on restoring the Waiapu catchment is limited;
- landowners' ability to comply with the Council's effective tree cover rule is limited;
- grantees often need bridging finance as the covenant registration process causes delays in paying grants; and
- the \$26 million available for new erosion treatments is unlikely to be fully used.

Both administrators and grantees consider that the ECFP's design is too complex for future needs. The issue of complex administration was captured by a submitter who commented that:

"landowners are overwhelmed with the multiple signing stages between grant certificates, covenants and payment claims. The confusion in the grant administration process and the duplication of paper work under the scheme is a barrier to uptake. These barriers are especially difficult for multiply owned Māori land".

Objectives

The objective is to improve the operation of the ECFP and uptake of grants to maximise sustainable land management on the remaining 29,000 hectares of target land in the East Coast District.

To achieve this objective, it is necessary to:

- improve grant uptake by reducing administrative complexity for grantees, while ensuring that a mechanism is retained to prevent erosion treatment areas being deforested;
- improve participation by owners of Māori land because 44% of the remaining 29,000 hectares of target land is in the Waiapu catchment and is mostly Māori land; and
- improve operational efficiency for the Government and grantees by simplifying grant administration.

It is desirable for improvements to be in place for grantees who will be approved in the application round that closes on 30 June 2014.

Options and impact analysis

Range of options considered

Options considered in consultation were:

- the status quo;
- improving the current regulatory regime; and
- the non-regulatory approach (preferred option).

These were consulted on during February and March 2014. The consultation process and key issues raised are summarised in the Consultation section below.

The table below summarises the impact of each option on the objectives with the preferred option highlighted.

(P meets the objective; --- partially meets the objective; O does not meet the objective)

Assessment of impact of options	Improve grant uptake while managing deforestation risk	Improve Māori land Participation	Improve operational efficiency
Option 1: Status quo	O	O	O
Option 2: Improved Regulatory Approach	---	P	---
Option 3: Non-Regulatory Approach (preferred)	P	P	P

The next section describes each option and its benefits and risks in detail.

Option 1: Status quo

Description

The ECFP would continue to operate under the current regulations and processes. The benefit of continuing the current approach would be that no changes would need to be implemented or communicated. However, the risk of remaining with the status quo is that it would not solve the identified problems.

Option 2: Improved regulatory approach

Description

The Regulations would need to be substantially amended to remove the covenant and approval certificate requirements and provide for grants to be made under 15-year grant agreements.

All substantive obligations (e.g. relating to minimum establishment standards, fencing requirements, etc), would be in the grant agreement template. Some machinery provisions, including application and approval, and an obligation on the landowner not to deforest the land, would be retained in the Regulations.

The regulations would include an enforceable obligation on the grantee to transfer the grant agreement to a new owner³ if the land is transferred.

When a grant agreement expires, enforcement of replanting, and non-use of reversion areas, would primarily rely on enforcement by the Council under its District Plan, but would be backed up by penalties that would be included in the Regulations.

Benefits

This option would remove the costs, complexities and delays associated with the covenant requirement. It should therefore be more attractive than the status quo to landowners, Māori in particular.

After the grant agreement expires, and in the event the Council's enforcement under the RMA is unsuccessful, the Regulations would remain in force. This would allow MPI to impose penalties against the grantee should deforestation occur. However, as noted above, this is considered to be a very small risk given the Council's district plan and likely high cost of removing the trees after the expiry of a grant agreement.

Risks

There are a number of costs with this approach which include continued duplication of the Council's role by MPI, and less flexibility (as regulations take longer to amend) compared to the non-regulatory approach. It would also take longer to implement and for the improvements to be realised compared with option 3.

As most other Government-administered grant schemes operate on an administrative rather than a regulatory basis, the current ECFP Regulations are anomalous.

Option 3: Non-regulatory approach (preferred)

Description

New grants would be made entirely on an administrative approach under 15-year grant agreements. The Regulations would be revoked except for a transitional provision that would allow existing grantees the option to transfer to grant agreements.⁴ The agreements would include the relevant terms and conditions that are currently split across the Regulations, approval certificates and covenants.

There would be no covenant requirement. During the term of a proposed grant agreement, a grantee would be required to maintain effective treatment over the grant area. Agreements would expire 15 years after trees are planted or farming ceases on reversion areas. This would provide sufficient time for erosion treatments to become well established, while minimising the period for which the agreements need to be enforced.

Future grants will be subject to the rules of the District Plan. After grant agreements expire, retention of effective tree cover will be maintained through provisions governing vegetation clearance in the Plan.

³ Under the Afforestation Grants Scheme (AGS) agreements, grantees who are proposing to transfer an interest in the land are required to "notify the Scheme Administrator, and transfer the grant agreement via a deed of novation" (AGS Guidelines 2010, pg 11).

⁴ Regulations are not required in order to make grants for afforestation. They are made under section 15(2) of the Forests Act 1949 which empowers the responsible Minister to make financial grants or loans to persons and bodies engaged in the forestry sector.

Benefits

This option would remove the costs, complexities and delays associated with the covenant requirement. It should therefore be more attractive than the status quo to landowners, Māori in particular.

Managing the ECFP under a non-regulatory approach would allow for administrative flexibility, so that the conditions could more easily be changed during the remaining life of the scheme if necessary. MPI administers other grant schemes on a non-regulatory approach, so this option would make the ECFP's administration more consistent and aligned across Government.

Risks

Unlike option 2, this option does not include the regulatory back-stop to manage the risk to the Crown of deforestation after the term of the grant expires.

As noted above, however, MPI considers this to be a very small risk given that enforcement after the expiry of a grant agreement can be adequately achieved via the District Plan and the actions of the Council. This is recognised by the Council who have confirmed that once effective cover has been established, its retention is able to be secured through provisions governing vegetation clearance in the District Plan. In addition, the Waiapu catchment restoration governance group is considering the development of complementary actions to ensure treatment areas are maintained for erosion control purposes. Also the 15-year grant agreement and the high costs of tree removal minimise the risks in the medium term.

The key difference between options (ii) and (iii) is that option (ii) would continue to operate under the Regulations, but would require a complete revision; whereas option (iii) would operate under a simpler non-regulatory approach. A regulatory approach is no longer considered to be necessary, and the ECFP could be administered, consistent with other government grant schemes, under a more flexible non-regulatory approach which would be simpler and easier to understand for grantees and would likely lead to improved grant uptake. Submissions received in the 2014 consultation, and the two review reports support a change to a non-regulatory option.

Therefore option (iii) is preferred.

Consultation

In January 2014, MPI released for consultation a document on the three options discussed above. Ministry officials also discussed the options with landowners and organisations at local meetings.

Process

The consultation document was published on the MPI website and advertised in the Dominion Post, the NZ Herald, the Gisborne Herald, the weekly email newsletter of the New Zealand Institute of Forestry, and MPI's Sustainable Forestry Bulletin.

Officials were available to discuss the proposed changes at "drop-in" sessions at MPI's Gisborne office every Wednesday afternoon during the consultation period.

Te Runanganui o Ngāti Porou was engaged throughout the development of the proposed changes. The consultation was promoted through the Council and the Runanga's communications channels. Landowners with eroding land that is a high priority for treatment were notified of the consultation. A hui was held at Mangarua Marae on 14 March 2014 which was well attended by Ngāti Porou landowners.

Nature of written submissions

There were 12 written submissions received. Submitters were individuals, farmers, forestry organisations, the NZ Farm Forestry Association, forestry investors, the Council, an accountant, a research provider, tangata whenua and representatives of several Māori land blocks.

The key points made in submissions in relation to the three options were:

- (i) A non-regulatory approach to grant management was supported by 11 of the 12 submissions.
- (ii) The reduced uptake of the ECFP in recent years is directly related to the complexity of the scheme and the restrictive conditions imposed by regulations.
- (iii) Grantees should be accountable for ensuring an erosion treatment is not deforested.
- (iv) Covenants are cumbersome, a deterrent to virtually all applicants and very difficult to implement on Māori land.
- (v) Covenants are unnecessary as protection of erosion control treatments can be enforced through the vegetation clearance provisions in the District Plan.
- (vi) The District Plan should be the mechanism relied on for enforcement.
- (vii) The need to bridge the gap between paying for operations, and receiving a grant is a problem under the current grant administration for some landowners.
- (viii) Removing the covenant requirement will speed up the payment process but bridging finance would remain a significant barrier to some landowners, particularly Māori.

A summary of submissions has been prepared that reports on the submissions. It provides an overview of opinions that emerged and strong support for the non-regulatory option.

Overall the consultation confirmed that the non-regulatory option was preferred by stakeholders.

Conclusion & Recommendation

It is concluded that a change to the way the ECFP is administered is necessary to address the problems of poor grant uptake, limited coverage of Māori land and operational inefficiency. Adopting a simpler non-regulatory approach is the preferred solution.

The outcomes from the change are expected to be:

- an increase in landowners' uptake of the ECFP by reducing barriers to participation;
- the ECFP would appeal more to Māori landowners;
- the ability of the Crown to meet its agreements with Ngāti Porou through the 2010 Deed of Settlement the Relationship Accord and the Restoring the Waiapu Catchment programme would be improved;
- the ability of the Crown to meet its commitment to provide grant funding to allow landowners to comply with the District Plan would be improved;
- the use of the ECFP's remaining financial appropriation would be maximised;
- more flexibility in ECFP administration; and
- accelerated payments to ECFP grantees by removing covenant timeframes.

Implementation plan

The following implementation process will be followed:

by 30 June 2014:

- report back to Cabinet with an analysis of submissions and final proposals; and
- obtain Cabinet approval to amend the Regulations.

by 30 August 2014:

- develop new business rules; update the guide for applicants, a grant agreement template and communication; and
- issue new grants under grant agreements.

Monitoring, evaluation and review

The initial decision in 1992 to approve the ECFP was conditional on a full review being carried out every five years. The effectiveness of the preferred option will be reviewed at the next review of the ECFP. No date has been set for this review, but the ECFP was last reviewed (in part) in the 2011 Afforestation Schemes Review. Grant uptake will be monitored to ensure the changes are having the expected impact, and to enable further changes to be made if necessary before 2020.