

2019 No. 49

FORESTRY

The Felling (Scotland) Regulations 2019

Made - - - - *13th February 2019*

Laid before the Scottish Parliament *15th February 2019*

Coming into force - - *1st April 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25(3), 27(8) and (9), 32(1) and (2), 34(6) and (7), 36(8) and (9), 47(1) and (3), 54(6), 68(2) and (3), 76(3) and 77(1) of the Forestry and Land Management (Scotland) Act 2018(a) and all other powers enabling them to do so.

PART 1

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Felling (Scotland) Regulations 2019 and come into force on 1 April 2019.

(2) In these Regulations —

“applicant” means a person who has made an application for felling permission,

“application for felling permission” means an application made to the Scottish Ministers under section 25(1) of the Act,

“the Act” means the Forestry and Land Management (Scotland) Act 2018,

“the felling area” means the area of land specified in an application for felling permission within which a tree or trees are proposed to be felled, and

“working day” means a day other than—

(a) Saturday,

(b) a Sunday, or

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(b).

(a) 2018 asp 8.

(b) 1971 c.80.

PART 2

APPLICATIONS FOR FELLING PERMISSION

Applications for felling permission

2.—(1) The Scottish Ministers may only accept an application for felling permission if it contains the information specified in paragraph (2).

(2) The information is —

- (a) the name, address and telephone number of the applicant,
- (b) where the applicant is a person mentioned in section 25(2)(b) of the Act^(a), the name and address of the owner of the land,
- (c) a map of the felling area,
- (d) a statement as to whether or not the felling area is, wholly or partly, within a conservation area,
- (e) the information required by regulation 3,
- (f) where felling of more than one species in the felling area is proposed, the size of the area over which the felling is to occur in relation to each species,
- (g) information specifying whether the proposed felling in the felling area involves—
 - (i) thinning,
 - (ii) clear felling,
 - (iii) selective felling,
 - (iv) coppicing, or
 - (v) the felling of individual trees,
- (h) where thinning is proposed, information indicating—
 - (i) an estimate of the number of trees before and after thinning has occurred and the total number of trees to be removed,
 - (ii) an estimate of the basal area before and after thinning has occurred and the total basal area to be removed, or
 - (iii) an estimate of the volume of trees to be removed expressed in m³,
- (i) whether the application includes the proposed felling of any trees that are the subject of a tree preservation order and, if so, information specifying which trees,
- (j) the proposed date of the commencement and the projected date of completion of the felling,
- (k) where the application proposes restocking
 - (i) the type of restocking,
 - (ii) the species of tree to be used for restocking, and
 - (iii) the restocking density, or the number of the trees to be replanted in the felling area or in an area other than the felling area as appropriate, and
- (l) where the application does not involve restocking, a statement of the reasons for that.

(3) In this regulation —

“clear felling” means felling most or all of the trees in the felling area,

(a) An occupier of the land on which the tree is located may apply for permission to fell with the written permission of the owner of that land.

“conservation area” means an area designated as a conservation area under section 61 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997^(a) (designation of conservation areas),

“type of restocking” means any of the following types of activity—

- (a) replanting in the felling area,
- (b) replanting in an area other than the felling area,
- (c) natural regeneration in the felling area,
- (d) natural regeneration in an area other than the felling area, or
- (e) coppice regrowth in the felling area,

“selective felling” means the selected removal of groups of trees, identified in the application for felling permission, in the felling area,

“restocking density” means the number of live trees replanted per hectare in the felling area or in an area other than the felling area,

“thinning” means the removal of selected live trees to improve the growth of the remaining trees or for the sustainable management of the woodland, and

“tree preservation order” means an order made or having effect as if made under section 160 of the Town and Country Planning (Scotland) Act 1997^(b).

Felling applications: identification of species and coverage

3.—(1) Where the felling area specified in an application for felling permission consists of trees of a species which cover 20% or more of that area (in this regulation, a “main species”), the application must identify—

- (a) each main species and the percentage of the area covered by that species,
- (b) the percentage of the remainder of the area covered by broadleaves, and
- (c) the percentage of the remainder of the area covered by conifers.

(2) Where paragraph (1) does not apply, the application must identify the species of trees to be felled as either “mixed broadleaves” or “mixed conifers” and the percentage of the felling area covered by that species.

Felling applications: additional information and powers of entry

4.—(1) The Scottish Ministers may—

- (a) request from the applicant such additional information, and
- (b) consult such persons and make such other inquiries,
- (c) as they may consider necessary or relevant for the purposes of making a decision on an application for felling permission.

(2) The Scottish Ministers may at any reasonable time—

- (a) enter the felling area with the consent of an owner or occupier of that land, and
- (b) take onto the felling area such other persons or such equipment as they consider necessary,
- (c) for the purposes of making a decision on an application for felling permission.

(3) An application for felling permission may be rejected by the Scottish Ministers without further consideration if—

^(a) 1997 c. 9

^(b) 1997 c. 8

- (a) the applicant does not supply information that has been requested under paragraph (1)(a) within such reasonable timescale as the Scottish Ministers may have specified, or
- (b) the Scottish Ministers are unable to access the felling area because consent under paragraph (2) is not given.

Felling permission: conditions

5.—(1) The Scottish Ministers may only impose conditions on a felling permission which relate to a matter mentioned in paragraph (2).

(2) The matters are—

- (a) avoidance or mitigation of impact on communities or individuals,
- (b) avoidance or mitigation of impact on the environment, biodiversity or species,
- (c) the retention of, or increase in, woodland cover.

Notification of decisions on applications

6.—(1) Where the Scottish Ministers make a decision to grant (with or without conditions), or to refuse, an application for felling permission they must—

- (a) notify the applicant of the decision, with a statement of the reasons for it, and
- (b) inform the applicant of the right of appeal against the decision under section 68(1) of the Act.

(2) Where the Scottish Ministers make a decision to refuse an application for felling permission they must inform the applicant of the restriction on making further applications provided for by regulation 7.

Restriction on further applications

7.—(1) Where the Scottish Ministers have refused an application for felling permission (“the original application”), a further application for felling permission may not be made in relation to the same circumstances.

(2) Where an application is made in contravention of paragraph (1), the Scottish Ministers may reject it without consideration.

(3) Paragraphs (1) and (2) do not apply where the Scottish Ministers are satisfied that the applicant has provided further information, in response to the statement of reasons given for the refusal of the original application, such as to merit the acceptance of a further application for consideration.

PART 3

RESTOCKING DIRECTIONS

Restocking directions: notification

8.—(1) A restocking direction under section 36(2) of the Act—

- (a) must contain the information specified in paragraph (2), and
- (b) may—
 - (i) specify the species of trees to be planted,
 - (ii) where more than one species of tree is to be planted specify the percentage, relative to the total number of trees to be planted, of each species, and
 - (iii) include conditions.

- (2) The information is—
- (a) a description of the area of land to which the restocking direction relates,
 - (b) the number of trees to be planted,
 - (c) a completion date in respect of any requirement within the restocking direction, and
 - (d) the reasons for the restocking direction, by reference to—
 - (i) the felling of a tree—
 - (aa) which was not exempt by virtue of section 24 of the Act, and
 - (bb) which was not carried out in accordance with a felling permission, a felling direction, a restocking direction, a registered notice to comply, a remedial notice or a registered remedial notice^(a), or
 - (ii) a continuing condition on a felling permission which has not been complied with.

Conditions on a restocking direction

9.—(1) The Scottish Ministers may only impose conditions on a restocking direction which relate to a matter mentioned in paragraph (2).

- (2) The matters are—
- (a) avoidance or mitigation of the impact on communities or individuals,
 - (b) avoidance or mitigation of the impact on the environment, biodiversity or protection of species, and
 - (c) the retention of, or increase in, woodland cover.

Restocking directions: restrictions

10. The Scottish Ministers may not give a restocking direction in connection with the felling of a tree that was the subject of a tree preservation order where the felling was carried out—

- (a) before 1 April 2019, and
- (b) in accordance with the consent of the authority which made the order or the Scottish Ministers, as the case may be, following a referral under section 15(1)(b) or 15(2)(a) of the Forestry Act 1967^(b).

PART 4

FELLING DIRECTIONS

Felling directions

- 11.**—(1) A felling direction under section 34(2) of the Act must—
- (a) be addressed to the owner of the land on which the trees to be felled are located, and
 - (b) contain the information specified in paragraph (2).
- (2) The information is—
- (a) a description of the area of land on which the trees to be felled are located,
 - (b) the date by which the felling must be completed, and
 - (c) a statement of the reasons why the felling is required, by reference to one or more of the following factors—

^(a) The terms felling permission, felling direction, restocking direction, registered notice to comply, remedial notice and registered remedial notice are defined in section 22 of the 2018 Act.

^(b) 1967 c.10.

- (i) preventing deterioration or further deterioration in the quality of timber comprised in the trees,
 - (ii) improving the growth of other trees, or
 - (iii) preventing or reducing harm caused by the presence of the trees.
- (3) The Scottish Ministers may only impose conditions on a felling direction which relate to a matter mentioned in paragraph (4).
- (4) The matters are —
- (a) avoidance or mitigation of the impact on communities or individuals,
 - (b) avoidance or mitigation of the impact on the environment, biodiversity and species, and
 - (c) the retention of, or increase in, woodland cover.
- (5) The Scottish Ministers may not give a felling direction in respect of trees situated in the places referred to in regulation 4(b) of the Forestry (Exemptions) (Scotland) Regulations 2019.

PART 5

REMEDIAL NOTICES: CONDITIONS

Remedial notices: conditions

12.—(1) The Scottish Ministers may only impose conditions on a remedial notice which relate to a matter mentioned in paragraph (2).

- (2) The matters are —
- (a) avoidance or mitigation of the impact on communities or individuals,
 - (b) avoidance or mitigation of the impact on the environment, biodiversity and species, and
 - (c) the retention of, or increase in, woodland cover.

PART 6

APPEALS

Appeals: who may appeal

13.—(1) An owner or occupier of land who is subject to a decision of a type referred to in section 68(1) of the Act may appeal to the Scottish Ministers against that decision.

- (2) In this Part—
- (a) the person making an appeal under paragraph (1) is referred to as “the appellant”,
 - (b) the decision referred to in paragraph (1) is “the relevant decision”.

Appeals: notice of appeal

14.—(1) To make an appeal, the appellant must send a notice of appeal to the Scottish Ministers in accordance with this regulation.

- (2) The notice of appeal must be received by the Scottish Ministers—
- (a) in the case of decisions of the types referred to in section 68(1)(a), (b), (e) to (h), (j) and (k) of the Act, within 40 working days beginning with the date on which notice of the decision was sent, or

- (b) in the case of decisions of the types referred to in section 68(1)(c), (d) and (i) of the Act, within 40 working days beginning with the date on which the restocking direction, felling direction or remedial notice was sent.

(3) The notice of appeal, which must be on a form obtained from the Scottish Ministers, must include or, as the case may be, be accompanied by—

- (a) the name, address and telephone number of the appellant,
- (b) the date of the relevant decision,
- (c) the reference number, if any, assigned to the relevant decision,
- (d) a copy of the relevant decision, including any statement of reasons and any document or other material that accompanied that decision,
- (e) a statement setting out the full particulars of the appeal, including all submissions and matters that the appellant considers should be taken into account in determining the appeal, and
- (f) all documents, materials and evidence on which the appellant relies in support of the appeal.

(4) Where a notice of appeal is received by the Scottish Ministers in relation to a decision of the type referred to in section 68(1)(a)(ii), (c), (d) or (i) of the Act, the effect of that decision is suspended until the appellant is notified of—

- (a) a new decision made by the Scottish Ministers or an appointed person, or
- (b) refusal of the appeal,

pursuant to regulation 15 or 16.

Appeals: determination by the Scottish Ministers

15.—(1) Following consideration of the material provided under regulation 14(3), the Scottish Ministers must—

- (a) determine the appeal by upholding it (whether wholly or partly), or
- (b) refer the appeal to be determined by a person appointed by them for that purpose.

(2) If the Scottish Ministers determine the appeal they must substitute a new decision for the relevant decision.

(3) For all purposes (including the right to appeal under section 68(1) of the Act), the new decision is deemed to have been made under the same provision of the Act as the relevant decision.

(4) When making and notifying the new decision, the Scottish Ministers must comply with any requirement of the Act or regulations made under it that applied to the making and notification of the relevant decision.

Appeals: determination by an appointed person

16.—(1) Where the Scottish Ministers refer an appeal for determination under regulation 15(1)(b), they must send to the appointed person—

- (a) all material provided to them by the appellant under regulation 14(3),
- (b) in so far as not covered by paragraph (a), a copy of any other material that was before them when they made the relevant decision,
- (c) a note of response to the appeal, setting out all submissions and matters that they consider should be taken into account in determining the appeal, and
- (d) any other documents, materials and evidence that they consider should be taken into account in determining the appeal.

(2) The Scottish Ministers must, at the same time as sending the material referred to in paragraph (1) to the appointed person—

- (a) notify the appellant that they have referred the appeal to the appointed person, and
- (b) send a copy of the material referred to in paragraph (1)(b) to (d) to the appellant.

(3) The appointed person must not determine the appeal without first giving the appellant the opportunity to consider and respond to the material provided to the appellant by the Scottish Ministers under paragraph (2)(b).

(4) The appointed person may decide that the appeal is to be conducted by one of, or by a combination of, the following procedures:-

- (a) written submissions,
- (b) the holding of one or more oral hearings,
- (c) an inspection of the land to which the appeal relates,

and may otherwise follow such procedure as the appointed person considers to be conducive to the effective and efficient determination of the appeal.

(5) In determining the appeal the appointed person may decide to-

- (a) uphold the appeal (wholly or partly) and refer the matter back to the Scottish Ministers for reconsideration and a new decision,
- (b) uphold the appeal (wholly or partly) and substitute the appointed person's decision for the relevant decision, or
- (c) refuse the appeal.

(6) For all purposes (including the right to appeal under section 68(1) of the Act), a new decision made by the Scottish Ministers following reconsideration after referral under paragraph (5)(a), or the appointed person's decision under paragraph 5(b), is deemed to have been made under the same provision of the Act as the relevant decision.

(7) When making and notifying a decision pursuant to paragraph (5)(a) or (b), the Scottish Ministers, or as the case may be, the appointed person, must comply with any requirement of the Act or regulations made under it that applied to the making and notification of the relevant decision.

(8) A decision made under paragraph (5)(b) or (c) is not subject to a right of appeal under section 68(1) of the Act.

PART 7

COMPENSATION

Refusal of felling permission: compensation

17.—(1) An applicant who—

- (a) was refused felling permission under section 27(1) of the Act, and
- (b) suffered loss in consequence of that refusal,

may claim compensation from the Scottish Ministers under section 32(1) of the Act.

(2) For the purposes of regulations 17 to 19, a person making a claim under paragraph (1) is referred to as a “claimant”.

(3) No compensation is payable in respect of an application for felling permission that has been rejected under regulation 4(3) or regulation 7(2).

Refusal of felling permission: notice of claim for compensation

18.—(1) A claim for compensation under section 32(1) of the Act must be made by giving notice of the claim in accordance with this regulation.

(2) The claim for compensation must be received by the Scottish Ministers within 12 months beginning with the date on which notice of the decision to refuse felling permission was sent to the applicant under regulation 6(1).

(3) The claim for compensation, which must be submitted on a form obtained from the Scottish Ministers, must include or, as the case may be, be accompanied by-

- (a) the name, address and telephone number of the claimant,
- (b) a map of the felling area,
- (c) a statement setting out the full particulars of the claim by reference to the matters set out in regulation 19(1) and (2),
- (d) any supporting evidence on which the claimant wishes to rely, which must include evidence that the claimed losses were suffered by the claimant as a result of the application for felling permission being refused.

Refusal of felling permission: calculation of compensation

19.—(1) The compensation to which a person may be entitled under section 32(1) of the Act is limited to the depreciation in the value of the trees that is attributable to deterioration in the quality of the timber comprised therein, over the period referred to in paragraph (2), in consequence of the refusal of felling permission.

(2) Any compensation payable under section 32(1) of the Act must be calculated by reference to the period beginning with the date that notification of refusal of felling permission under regulation 6(1) was sent to the claimant until—

- (a) the date that the claim for compensation was received by the Scottish Ministers, or
- (b) if earlier, the date that a felling permission was notified to the claimant following a successful appeal against that refusal.

(3) In calculating any compensation that may be payable under section 32(1) of the Act, the Scottish Ministers must-

- (a) take no account of deterioration in the quality of the timber that is attributable to neglect of the trees after the felling permission was refused, and
- (b) ascertain the value of the trees on the basis of current market prices at the date the claim was received by Scottish Ministers in accordance with regulation 18.

(4) The Scottish Ministers may request from the claimant any information that the Scottish Ministers consider to be necessary for the purpose of making a determination in relation to compensation.

(5) The claimant must give the Scottish Ministers any information requested under paragraph (4) within—

- (a) a period of 28 working days beginning with the day on which the request was sent to the claimant, or
- (b) such longer period as the Scottish Ministers may notify to the claimant in writing.

(6) If the claimant fails to provide requested information within a timescale required by or under paragraph (5), the Scottish Ministers may reject the claim for compensation without further consideration.

Temporary stop notice: compensation

20.—(1) A person who is entitled to claim compensation under section 47(1) of the Act may claim compensation from the Scottish Ministers in accordance with regulations 21 and 22.

(2) For the purposes of regulations 20 to 23, a person making a claim under paragraph (1) is referred to as a “claimant”.

Temporary stop notice: notice of claim for compensation

21.—(1) A claim for compensation under regulation 20(1) must be received by the Scottish Ministers within 12 months beginning with the date that the temporary stop notice was revoked under section 45(5) of the Act.

(2) The claim for compensation, which must be submitted on a form obtained on request from the Scottish Ministers, must include or, as the case may be, be accompanied by—

- (a) the name, address and telephone number of the claimant,
- (b) a map of the felling area,
- (c) a statement setting out the full particulars of the claim by reference to the matters set out in regulation 22(1) and (2), and
- (d) any supporting evidence that the claimant wishes to rely on.

Temporary stop notice: calculation of compensation

22.—(1) The compensation to which a person may be entitled under section 47(1) of the Act is limited to losses suffered over the period referred to in paragraph (2) as a consequence of the prohibition of felling effected by the temporary stop notice.

(2) Any compensation payable under section 47(1) of the Act must be calculated by reference to the period beginning on the date that the temporary stop notice had effect under section 45(8) of the Act until the date the temporary stop notice was revoked under section 45(5) of the Act.

(3) In calculating any compensation that may be payable under section 47(1) of the Act, the Scottish Ministers must—

- (a) take no account of deterioration in the quality of the timber that is attributable to neglect of the trees after the temporary stop notice was sent to the applicant, and
- (b) ascertain the value of the trees on the basis of current market prices at the date the claim was received by the Scottish Ministers in accordance with regulation 21.

(4) The Scottish Ministers may request from the claimant any information that the Scottish Ministers consider to be necessary for the purpose of making a determination in relation to the claim for compensation.

(5) The claimant must give the Scottish Ministers any information requested under paragraph (4) within—

- (a) a period of 28 working days beginning with the day on which the request was sent to the claimant, or
- (b) such longer period as the Scottish Ministers may notify to the claimant in writing.

(6) If the claimant fails to provide requested information within a timescale required by or under paragraph (5), the Scottish Ministers may reject the claim for compensation without further consideration.

Determination of questions of disputed compensation

23. Any question of disputed compensation under this Part is to be determined by the Lands Tribunal for Scotland.

FERGUS EWING

A member of the Scottish Government

St Andrew's House,
Edinburgh
13th February 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision regarding the regulation of felling in Scotland, pursuant to Part 4 of the Forestry and Land Management (Scotland) Act 2018.

Regulations 2 and 3 concern information which must be included in an application for felling permission.

Regulation 4 sets out circumstances where the Scottish Ministers may request additional information from the applicant for the purposes of making a decision on the application for felling permission. It also sets out circumstances where the Scottish Ministers may enter the felling area.

Regulation 5 is concerned with conditions on felling permission, and provides that conditions imposed on felling permission must relate to certain matters, for example, avoidance or mitigation of impact on communities or individuals.

Regulation 6 contains certain requirements in relation to notifying the applicant of a decision on an application for felling permission.

Regulation 7 is concerned with restrictions on applications for felling permission, where made in the same circumstances as a prior application which has been refused.

Regulation 8 sets out the information to be included in a restocking notice.

Regulation 9 is concerned with conditions on a restocking notice, and provides that the conditions imposed on a restocking notice must relate to certain matters, for example, the avoidance or mitigation of impact on communities or individuals.

Regulations 10 sets out circumstances where a restocking notice may not be given.

Regulation 11 contains requirements in relation to felling directions such as information which must be included in a felling direction and circumstances where a felling direction may not be given. Regulation 11 also provides that conditions imposed on a felling direction must relate to certain matters, such as the avoidance or mitigation of the impact on communities or individuals.

Regulation 12 is concerned with conditions on remedial notices, and provides that conditions imposed on a remedial notice must relate to certain matters, for example, avoidance or mitigation of the impact on communities or individuals.

Regulations 13 to 16 provide for appeals against relevant decisions.

Regulations 17 to 19 make provision in relation to claims for compensation for refusal of felling permission.

Regulations 20 to 23 make provision in relation to claims for compensation in respect of temporary stop notices.

A business and regulatory impact has been prepared in relation to these Regulations and placed in the Scottish Parliament Information Centre. A copy of this can be obtained from the Scottish Government, Victoria Quay, Edinburgh EH6 6QQ.

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