



# Forestry Act 1967

## 1967 CHAPTER 10

### PART II

#### COMMISSIONERS' POWER TO CONTROL FELLING OF TREES

##### *Restriction of felling*

#### **9 Requirement of licence for felling.**

- (1) A felling licence granted by the Commissioners shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.
- (2) Subsection (1) above does not apply—
  - (a) to the felling of trees with a diameter not exceeding [<sup>F1</sup>8 centimetres] or, in the case of coppice or underwood, with a diameter not exceeding [<sup>F15</sup> centimetres]; or
  - (b) to the felling of fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space; or
  - (c) to the topping or lopping of trees or the trimming or laying of hedges.
- (3) Subsection (1) above does not apply to the felling by any person of trees on land in his occupation or occupied by a tenant of his—
  - (a) where the trees have a diameter not exceeding [<sup>F10</sup> centimetres] and the felling is carried out in order to improve the growth of other trees; or
  - (b) where the following conditions are satisfied, that is to say—
    - (i) the aggregate cubic content of the trees which are felled by that person without a licence (exclusive of trees to whose felling subsection (1) above does not apply) does not exceed [<sup>F25</sup> cubic metres] in any quarter; and
    - (ii) the aggregate cubic content of the trees so felled which are sold by that person whether before or after the felling (exclusive as aforesaid) does

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not exceed [<sup>F2</sup>2 cubic metres] in any quarter, or such larger quantity as the Commissioners may in a particular case allow.

- (4) Subsection (1) above does not apply to any felling which—
- (a) is for the prevention of danger or the prevention or abatement of a nuisance;
  - (b) is in compliance with any obligation imposed by or under an Act of Parliament, including this Act;
  - (c) is carried out by, or at the request of, [<sup>F3</sup>an electricity operator, because the tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the operator as to have the effect mentioned in paragraph 9(1)(a) or (b) of Schedule 4 to the Electricity Act 1989;]
  - (d) is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under [<sup>F4</sup>the Town and Country Planning Act 1990] or the enactments replaced by that Act, or under [<sup>F5</sup>the <sup>M1</sup>Town and Country Planning (Scotland) Act 1972].
- (5) Regulations made by the Commissioners under this Part of this Act may modify subsections (2) to (4) above as follows, that is to say—
- (a) they may provide for additional exceptions from the application of subsection (1) above and may in particular substitute—
    - (i) in subsection (2)(a), for the reference to [<sup>F1</sup>8 centimetres] a reference to a larger diameter;
    - (ii) in subsection (3)(a), for the reference to [<sup>F1</sup>10 centimetres] a reference to a larger diameter;
    - (iii) in subsection (3)(b) for the reference to [<sup>F1</sup>30 cubic metres] or the reference to [<sup>F1</sup>5·5 cubic metres] in either case a reference to a larger quantity;
  - (b) they may substitute in subsection (2)(a) for the reference to [<sup>F1</sup>15 centimetres] a reference to a smaller diameter; and
  - (c) they may restrict or suspend the exception in subsection (3)(b) and may in particular substitute, for the reference in sub-paragraph (i) to [<sup>F1</sup>30 cubic metres], or for the reference in sub-paragraph (ii) to [<sup>F1</sup>5·5 cubic metres], in either case a reference to a smaller quantity;

and the said subsections shall have effect with any modification made by regulations under this subsection.

- (6) In this section—

[<sup>F6</sup>“electricity operator” means a licence holder within the meaning of Part I of the Electricity Act 1989 by whom the powers conferred by paragraph 9 (tree lopping) of Schedule 4 to that Act are exercisable;]

[<sup>F6</sup>“electric line” and “electric plant” have the same meanings as in Part I of the Electricity Act 1989;]

“public open space” means land laid out as a public garden or used (otherwise than in pursuance of section 193 of the <sup>M2</sup>Law of Property Act 1925 or of Part V of the National Parks and Access to the <sup>M3</sup>Countryside Act 1949 [<sup>F7</sup>or of Part II or section 48 of the <sup>M4</sup>Countryside (Scotland) Act 1967]) for the purpose of public recreation, or land being a disused burial ground;

“quarter” means the period of three months beginning with the 1st January, 1st April, 1st July or 1st October in any year;

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and references to the diameter of trees shall be construed as references to the diameter, measured over the bark, at a point [<sup>F1</sup>1·3 metres] above the ground level; . . . <sup>F8</sup>

#### Textual Amendments

- F1** Words substituted by [Forestry Act 1979 \(c. 21, SIF 54\)](#), s. 2(1), **Sch. 1**
- F2** Words substituted by virtue of [S.I. 1985/1958](#), **reg. 2**
- F3** Words substituted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), **Sch. 16 para. 13(2)**, **Sch. 17 paras. 33, 35(1)**
- F4** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2**, para. 14(1)
- F5** Words substituted by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), **Sch. 21 Pt. II**
- F6** Definition substituted by [Electricity Act 1989 \(c. 29, SIF 44:1\)](#), s. 112(1)(3), **Sch. 16 para. 13(3)**, **Sch. 17 paras. 33, 35(1)**
- F7** Words inserted by [Countryside \(Scotland\) Act 1967 \(c. 86, SIF 46:1\)](#), s. **58(5)**
- F8** Words repealed by [Forestry Act 1979 \(c. 21, SIF 54\)](#), s. 3(2), **Sch. 2**

#### Modifications etc. (not altering text)

- C1** [S. 9](#) excluded by [S.I. 1979/792](#), **reg. 4**
- C2** Definition of “public open space” restricted by [Countryside Act 1968 \(c. 41, SIF 46:1\)](#), s. **24(4)**

#### Marginal Citations

- M1** [1972 c. 52\(123:2\)](#)
- M2** [1925 c. 20\(98:1\)](#)
- M3** [1949 c. 97\(46:1\)](#)
- M4** [1967 c. 86\(46:1\)](#)

## 10 Application for felling licence and decision of Commissioners thereon.

- (1) An application for a felling licence may be made to the Commissioners in the prescribed manner by a person having such an estate or interest in the land on which the trees are growing as enables him, with or without the consent of any other person, to fell the trees.
- (2) Subject to the provisions of this Act (and, in particular, to their duty to take advice under section 37(3), the Commissioners may on any such application grant the licence, or grant it subject to conditions, or refuse it, but shall grant it unconditionally except in a case where it appears to them to be expedient to do otherwise—
- in the interests of good forestry or agriculture or of the amenities of the district; or
  - for the purpose of complying with their duty of promoting the establishment and maintenance in Great Britain of adequate reserves of growing trees.
- (3) A felling licence shall continue in force for such period (not being less than one year from the date on which it is granted) as may be specified therein.
- (4) If in the case of any trees the Commissioners refuse an application for a felling licence, the consequences shall be as follows:—
- except in a case to which section 14(4) below applies, any person who is for the time being the owner of the trees shall be entitled to compensation under and in accordance with the next following section; and

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- (b) if the land on which the trees are growing is, or in the opinion of the Commissioners will be, managed in a manner approved by them, the Commissioners may (subject to section 14(5) below), if they think fit and subject to the approval of the treasury, make to persons interested in the land advances by way of loan of such amounts, upon such terms and subject to such conditions, as they may determine.
- (5) At any time after a felling licence has been refused by them in the case of any trees, the Commissioners may, if they think fit, give notice to the owner of the trees that they are prepared to grant a felling licence for the trees either unconditionally or subject to conditions described in the notice; and if the Commissioners give such a notice and an application is duly made to them for a felling licence, they shall grant a licence in accordance with the notice, subject to sections 13(2) and 15 below.
- (6) When the Commissioners refuse to grant a felling licence, they shall give notice in writing to the applicant of the grounds for the refusal.
- (7) Where application is made for a felling licence for trees on land which is subject to a forestry dedication covenant or agreement, and the licence is refused, no breach of the covenant or agreement shall be deemed to have occurred by reason of anything done or omitted in consequence of the refusal.

## **11 Terms of compensation on refusal of licence.**

- (1) The compensation to which a person may become entitled under section 10(4)(a) above is for any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber comprised therein in consequence of the refusal of a felling licence for them.
- (2) Compensation under this section shall be recoverable from the Commissioners on a claim made in the prescribed manner.
- (3) Claims for compensation in the case of any trees may be made from time to time in respect of deterioration taking place after the refusal of a felling licence for those trees, but—
  - (a) no such claim shall be made in respect of deterioration taking place more than ten years before the date of the claim; and
  - (b) if the trees have been felled, no such claim shall be made after the expiration of one year from the date of the felling.
- (4) In calculating compensation,—
  - (a) no account shall be taken of deterioration in the quality of the timber which is attributable to neglect of the trees after the refusal of a felling licence for them; and
  - (b) the value of the trees at any time shall be ascertained on the basis of prices current at the date of the claim.
- (5) If after refusing a felling licence the Commissioners under section 10(5) above subsequently give notice to the owner of the trees that they are prepared to grant a licence, then in calculating compensation payable in consequence of the previous refusal no account shall be taken of deterioration occurring after the giving of the notice.

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- (6) Any question of disputed compensation shall be determined in accordance with section 31 of this Act.

## 12 Conditional licences.

- (1) The conditions which may under section 10(2) above be attached to a felling licence are such as the Commissioners, after consultation with the applicant for the licence, determine to be expedient for securing—
- (a) the restocking or stocking with trees of the land on which the felling is to take place, or of such other land as may be agreed between the Commissioners and the applicant; and
  - (b) the maintenance of those trees in accordance with the rules and practice of good forestry for a period not exceeding ten years.
- (2) No conditions shall be imposed on the grant of a felling licence where it is for trees on land subject to a forestry dedication covenant or agreement [<sup>F9</sup>and the felling is in accordance with a plan of operations or other working plan approved by the Commissioners and in force under the covenant or agreement].

### Textual Amendments

**F9** Words added by [Trees Act 1970 \(c. 43, SIF 54\)](#), s. 2

## 13 Deferred decision on application.

- (1) Where a person applies for a felling licence and the Commissioners do not within three months after receiving the application, or within such further time as may be agreed with the applicant, give notice to him of their decision on the application (including any reference of the application under section 15 of this Act) the provisions of this Part of this Act shall apply in relation to the application as if it had been refused.
- (2) If on an application for a felling licence—
- (a) the Commissioners determine to grant the licence subject to conditions; and
  - (b) it appears to them that the applicant is not entitled to an interest in land which would enable him to comply with those conditions;

they may give notice in writing to that effect to the applicant and postpone consideration of the application until the person entitled to such an interest is joined as a party thereto.

Where a notice under this subsection is given, subsection (1) above shall apply as if, instead of referring to a period of three months after the Commissioners receive the application, it referred to a period of three months after the date on which the person entitled to such interest in the land as is mentioned in the notice is joined as a party to the application.

## 14 Tree-felling in accordance with approved working plan etc.

- (1) The following provisions shall apply where application is made to the Commissioners for a felling licence and relates to the felling of trees in accordance with a plan of operations or other working plan approved by the Commissioners under a forestry

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dedication covenant or agreement, or otherwise approved by them in writing for the purposes of this section.

- (2) The Commissioners shall not refuse the licence unless the Minister certifies that, by reason of an act of God or other emergency which has taken place or arisen since the approval of the plan, the granting of a felling licence in respect of those trees, or in respect of trees of any class which comprises those trees, would be detrimental to the national interest.
- (3) If the Commissioners refuse the licence, the applicant may by notice given to the Commissioners in the prescribed manner and within the prescribed time require them to buy the trees or such of them as may be specified in the notice.
- (4) If a notice is served under the foregoing subsection,—
  - (a) no compensation shall be payable under section 11 in respect of any trees to which the notice relates; and
  - (b) the Commissioners shall be deemed to have contracted with the applicant to buy the trees on the date of the service of the notice at such prices as may in default of agreement be determined in accordance with section 31 of this Act, and shall fell and remove the trees at such time or times as they may determine.
- (5) Where such a notice is served, and the land on which the trees are growing is subject to a forestry dedication covenant or agreement, the power of the Commissioners under section 10(4)(b) above to make an advance by way of loan shall not be exercisable in respect of the trees, but this subsection shall not prejudice their power to make an advance in respect of any other trees on the land.

## **15 Trees subject to preservation order under Planning Acts.**

- (1) If an application is made to the Commissioners for a felling licence in respect of trees to which a tree preservation order relates, and consent under the order is required for the felling of those trees, then—
  - (a) the Commissioners, if they propose to grant the licence, shall give notice in writing to the authority by whom the order was made; and
  - (b) the Commissioners may in any case refer the application to the said authority.
- (2) Where the Commissioners give the notice required by subsection (1)(a) above and the authority within the prescribed period after receipt of the notice object to the Commissioners' proposal to grant a felling licence and do not withdraw their objection, then—
  - (a) the Commissioners shall not deal with the application, but shall refer it to the Minister, and the application shall then be dealt with under the Town and Country Planning Acts; and
  - (b) if in pursuance of the application the Minister consents to the felling, section 9(1) of this Act shall not apply so as to require a felling licence for the felling of any trees in accordance with the consent.
- (3) Where the Commissioners refer an application under subsection (1)(b) above,—
  - (a) the application shall be dealt with under the Town and Country Planning Acts; and
  - (b) so long as the tree preservation order applying to the trees remains in force, section 9(1) shall not apply so as to require a felling licence for the felling of any trees to which the application relates.

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- (4) Where in the case of any trees—
- (a) the Commissioners under this section refer an application for a felling licence to the Minister or an authority who have made a tree preservation order relating to the trees; and
  - (b) a felling licence in respect of the trees has been previously refused by the Commissioners,
- no account shall be taken, in calculating any compensation payable under section 11 of this Act in consequence of the previous refusal, of deterioration occurring after the date of the reference.
- This subsection shall be without prejudice to section 11(5) of this Act, in a case to which that subsection applies.
- (5) Except as provided by the foregoing provisions of this section, no application shall be entertained under a tree preservation order for consent thereunder in respect of the felling of trees in the case of which section 9(1) of this Act applies so as to require a felling licence.
- (6) Where, in the case of trees to which a tree preservation order relates, a felling licence is granted by the Commissioners after the date on which the order comes into force, the licence shall, notwithstanding anything in that order, be sufficient authority for the felling of any trees to which the order relates.
- (7) Schedule 3 to this Act shall have effect for explaining the procedure applicable where this section requires an application to be dealt with under the Town and Country Planning Acts.
- (8) In this section “the Minister”, in relation to England, means the [<sup>F10</sup>Secretary of State] and not the Minister of Agriculture, Fisheries and Food.

#### Textual Amendments

**F10** Words substituted by virtue of S.I. 1970/1681 arts. 2(1), 6(3)

## 16 Review of refusal or conditions of licence.

- (1) The following provisions shall have effect for enabling the decision of the Commissioners on an application for a felling licence to be reviewed where they refuse to grant a felling licence or grant it subject to conditions.
- (2) A person aggrieved by the refusal or conditions may by a notice served within the prescribed time and in the prescribed manner request the Minister to refer the matter to a committee appointed in accordance with section 27 below and—
- (a) the Minister shall, unless he is of opinion that the grounds for the request are frivolous, refer the matter accordingly;
  - (b) the committee, after compliance with section 27(3), shall thereupon make a report on the reference to the Minister.
- (3) The Minister shall, after considering the committee's report, confirm the decision of the Commissioners on the application, or reverse or modify that decision and direct the Commissioners to give effect to the reversal or modification.

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- (4) No request may be made under this section in respect of a refusal to grant a felling licence unless a previous application for a licence in respect of the trees has been refused and the application to which the request relates is made after the following date, that is to say—
- (a) where a reference under this section has been made in respect of a previous application, the third anniversary of the last such application in respect of which such a reference has been made; and
  - (b) in any other case, the third anniversary of the first previous application.

## 17 Penalty for felling without licence.

- (1) Anyone who fells a tree without the authority of a felling licence, the case being one in which section 9(1) of this Act applies so as to require such a licence, shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F11</sup>level 4 on the standard scale] or twice the sum which appears to the court to be the value of the tree, whichever is the higher.
- (2) Proceedings for an offence under this section may be instituted within six months from the first discovery of the offence by the person taking the proceedings, provided that no proceedings shall be instituted more than two years after the date of the offence.

### Textual Amendments

- F11** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#); and (S.) by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#); [ss. 289F, 289G](#)

## 17A Power of Commissioners to require restocking after unauthorised felling.

- (1) Where a person is convicted of an offence under section 17 of this Act and he is a person having, as regards the land on which the felling which gave rise to the conviction took place, such estate or interest as is mentioned in section 10(1) of this Act, the Commissioners may serve on him a notice (in this Act referred to as a “restocking notice”) requiring him—
  - (a) to restock or stock with trees the land or such other land as may be agreed between the Commissioners and him; and
  - (b) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding ten years, specified in the notice.
- (2) A restocking notice shall be served within three months after the date of the conviction or of the dismissal or withdrawal of any appeal against the conviction.
- (3) Subject to the provisions of this Act, in considering whether to issue a restocking notice the Commissioners shall—
  - (a) have regard to the interests of good forestry and agriculture and of the amenities of the district;
  - (b) have regard to their duty of promoting the establishment and maintenance in Great Britain of adequate reserves of growing trees; and
  - (c) take into account any advice tendered by the regional advisory committee for the conservancy comprising the land to which the restocking notice would relate.



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- (4) This section shall not apply in relation to trees to which a tree preservation order relates or in relation to trees the felling of which took place before the date of coming into force of the Forestry Act 1986.

### **17B Appeal against restocking notice.**

- (1) A person on whom a restocking notice has been served who objects to the notice or to any condition contained therein may by notice served within the prescribed time and in the prescribed manner request the Minister to refer the matter to a committee appointed in accordance with section 27 of this Act; and—
- (a) the Minister shall, unless he is of the opinion that the grounds of the request are frivolous, refer the matter accordingly; and
  - (b) the committee, after compliance with subsection (3) of that section, shall thereupon make a report to the Minister.
- (2) The Minister may, after considering the committee's report, direct the Commissioners to withdraw the notice or to notify the objector that it shall have effect subject to such modification as the Minister shall direct.

### **[<sup>F12</sup>17C Enforcement of restocking notice.**

The provisions of sections 24 (notice to require compliance with conditions or directions), 25 (appeal against notice under section 24) and 26(1), (3) and (4) (expenses) of this Act shall apply in relation to a restocking notice as they apply in relation to a felling licence; and for the purposes of such application—

- (a) references in those sections to a felling licence shall be construed as references to a restocking notice; and
- (b) the reference in the said subsection (3) to the applicant for the licence shall be construed as a reference to the person on whom the restocking notice has been served.]

#### **Textual Amendments**

**F12** Ss. 17A–17C inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), s. 1(a)

### *Power of Commissioners to direct felling*

### **18 Felling directions.**

- (1) Subject to the provisions of this Act (and, in particular, to the duty of the Commissioners to take advice under section 37(3), if it appears to the Commissioners that it is expedient in the interests of good forestry, or for purposes connected with their duty of promoting the establishment and maintenance in Great Britain of adequate reserves of growing trees, that any growing trees should be felled—
- (a) in order to prevent deterioration or further deterioration in the quality of the timber comprised therein; or
  - (b) in order to improve the growth of other trees,

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they may give directions (in this Act referred to as “felling directions”) to the owner of the trees requiring him to fell them within such period, being not less than two years after the directions have become operative, as may be specified in the directions.

- (2) In considering whether to give felling directions, the Commissioners shall have regard to the interests of agriculture and the amenity or convenience of any farm or dwelling-house or park usually occupied with a dwelling-house, or of any land held inalienably by the National Trust or the National Trust for Scotland.
- (3) Felling directions given by the Commissioners shall contain a statement of the grounds upon which they are given.
- (4) A person who is given felling directions by the Commissioners may comply with the directions notwithstanding any lease, covenant or contract relating to the trees or land affected by the directions.
- (5) In the case of trees to which a tree preservation order relates, felling directions given by the Commissioners after the date on which the order comes into force shall, notwithstanding anything in the order, be sufficient authority for the felling.

## 19 Restrictions on Commissioners' power under s. 18.

- (1) Felling directions shall not be given in the case of—
  - (a) fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space (as defined in section 9(6) above);
  - (b) trees on land which is subject to a forestry dedication covenant or agreement; or
  - (c) trees which are being managed to the satisfaction of the Commissioners in accordance with a plan of operations or other working plan approved by them as mentioned in section 14(1) above, but otherwise than under a forestry dedication covenant or agreement.
- (2) If an application for a felling licence is made to the Commissioners in the case of trees to which a tree preservation order relates and the Commissioners refer the application under section 15 above to the authority who made the order, then so long as the order remains in force no felling directions shall be given in respect of the trees.
- (3) If the Commissioners propose to give felling directions in respect of trees to which a tree preservation order relates, they shall give notice in writing of the proposal to the authority by whom the order was made; and if within the prescribed period after the receipt of the notice the authority object to the proposal and do not withdraw the objection, the Commissioners shall not give the directions except with the consent of the Minister, who shall consult with the said authority before deciding whether to grant or refuse his consent.
- (4) In subsection (3) above “the Minister”, in relation to England, means the [F13Secretary of State] and not the Minister of Agriculture, Fisheries and Food.

### Textual Amendments

F13 Words substituted by virtue of S.I. 1970/1681 arts. 2(1), 6(3)

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## **20 Review of felling directions.**

- (1) If a person to whom felling directions are given in respect of any trees is aggrieved by the directions on the ground that the felling is not expedient as mentioned in section 18(1), he may by notice served within the prescribed time and in the prescribed manner request the Minister to refer the matter to a committee appointed in accordance with section 27 below and the Minister shall, unless he is of opinion that the grounds for the request are frivolous, refer the matter accordingly.
- (2) The committee to whom a matter is referred under this section, after complying with section 27(3), shall thereupon make a report on the reference to the person by whom the notice was served and to the Commissioners, and the Commissioners shall confirm, withdraw or modify the directions in accordance with the report.

## **21 Courses open to person adversely affected by felling directions.**

- (1) The provisions of this section shall have effect where a person to whom felling directions are given claims that compliance with the directions would involve him in a net loss after taking into account any benefit arising therefrom in respect of other trees of which he is the owner.
- (2) The person may by notice given to the Minister in the prescribed manner and within the prescribed period—
  - (a) if he has the right to sell the trees for immediate felling, require the Commissioners to buy the trees to which the directions relate; or
  - (b) in any case, require the Minister to acquire his interest in the land affected by the directions.

A notice under this section requiring the Minister to acquire an interest in land shall be deemed to include an offer by the person entitled to that interest to convey to the Minister such easement or servitude or other right for the benefit of the land over adjoining land in which that person has an interest as may be agreed between that person and the Minister or as may, in default of agreement, be determined in accordance with section 31 of this Act.

- (3) The Minister may within the prescribed period after receiving the notice either—
  - (a) accept the notice; or
  - (b) refer it to a committee appointed in accordance with section 27 below; or
  - (c) revoke the directions to which it relates.
- (4) The committee to whom a matter is referred under this section, after complying with section 27(3), shall thereupon make a report to the Minister and to the person by whom the notice under this section was given and shall state—
  - (a) whether in the opinion of the committee compliance with the felling directions would involve that person in such a loss as aforesaid; and
  - (b) if so, what modifications (if any) of the directions would be sufficient to avoid that loss.
- (5) Where the committee report that compliance with the directions would not involve the person in such loss as aforesaid, the notice shall be of no effect; but in any other case the Minister may, within the prescribed period after receiving the report, either—
  - (a) accept the notice; or
  - (b) revoke the directions; or

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- (c) modify the directions in accordance with the report, according as he thinks fit.
- (6) If within the prescribed period after receiving a notice or the report of a committee under this section the Minister has not taken any such action as is authorised by subsection (3) or subsection (5) above, as the case may be, the directions to which the notice relates shall cease to have effect at the expiration of that period.
- (7) In determining for the purposes of this section whether compliance with felling directions would involve a person in a net loss, regard shall be had to any compensation received by that person under a tree preservation order in respect of a refusal of consent for the felling of the tree.

## 22 Consequences of acceptance by Minister of notice under s. 21

- (1) The following shall be the consequences where a notice given by a person under section 21 is accepted by the Minister.
- (2) The felling directions in respect of which the notice was given shall cease to have effect.
- (3) If the notice requires the Commissioners to buy the trees to which the directions relate, the Commissioners shall be deemed to have contracted with that person to buy the trees on the date of acceptance of the notice at such price and on such terms (including terms as to the time within which the Commissioners may fell and remove the trees) as may in default of agreement be determined in accordance with section 31 of this Act.
- (4) If the notice requires the Minister to acquire the person's interest in the land affected by the directions,—
  - (a) the Minister shall be deemed to be authorised to acquire that interest compulsorily under section 39 of this Act and to have served a notice to treat in respect thereof on the date of the acceptance of the notice;
  - (b) the interest shall for that purpose include any such easement or servitude or other right as, by virtue of section 21(2), the person is deemed to have offered in his notice to convey.
- (5) The power conferred by section 31(1) of the <sup>M5</sup>Land Compensation Act 1961 or section 39(1) of the <sup>M6</sup>Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.

### Marginal Citations

**M5** 1961 c. 33(28:1)

**M6** 1963 c. 51(28:2)

## 23 Proceedings in respect of felling directions.

- (1) A request under section 20 of this Act, and a notice under section 21 of this Act, may be made and given in respect of the same directions; and regulations made by the Commissioners under this Part of this Act may make provision for securing—
  - (a) that in any such case proceedings under those sections respectively on the request and on the notice are taken concurrently;

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- (b) that proceedings on any such request or notice in respect of any felling directions may be postponed until the expiration of the period within which a notice or a request, as the case may be, might be given or made in respect of those directions.
- (2) Felling directions shall be inoperative until the expiration of the period during which such a request or notice as aforesaid may be made or given in respect of the directions and, where a request is made or a notice is given, until the conclusions of any proceedings under section 20 or 21 pursuant to the notice or request.

*Enforcement of licence conditions and felling directions*

**24 Notice to require compliance with conditions or directions.**

- (1) The provisions of this section shall apply if—
- (a) any works required to be carried out in accordance with conditions of a felling licence are not so carried out; or
  - (b) any felling directions given by the Commissioners are not complied with.
- (2) The Commissioners may give to the person responsible a notice requiring such steps as may be specified therein to be taken within such time (not being less than the prescribed period after the notice has become operative) as may be so specified for remedying the default; and for purposes of this subsection, “the person responsible” is—
- (a) in the case of non-compliance with conditions of a felling licence, the owner of the land; and
  - (b) in the case of non-compliance with felling directions, the owner of the trees.
- (3) If after the expiration of the time specified in the notice any steps required by the notice have not been taken, the Commissioners may, subject to the following section, enter on the land and take those steps.
- (4) Without prejudice to the powers of the Commissioners under the foregoing subsection, a person who without reasonable excuse fails to take any steps required by a notice given to him under this section shall be guilty of an offence and be liable on summary conviction to a fine not exceeding [<sup>F14</sup>level 5 on the standard scale]; and proceedings in respect of such an offence may be instituted within six months of the first discovery of the offence by the person taking the proceedings, provided that no proceedings shall be instituted more than two years after the date of the offence.
- (5) A person who is required by a notice under this section to carry out works or take any steps may carry out those works or take the steps notwithstanding any lease, covenant or contract relating to the trees or land affected by the notice.

**Textual Amendments**

- F14** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#); ss. 39, 46, [Sch. 3](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [Sch. 7D](#) and expressed to be substituted (S.) (1.4.1996) by [1995 c. 40, ss. 3, 7\(2\)](#), [Sch. 1 para. 10](#), [Sch. 2 Pt.III](#)

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## **25 Appeal against notice under s. 24.**

- (1) If a person to whom a notice under section 24 is given claims—
  - (a) that the works in question have been carried out in accordance with the conditions of the felling licence or, in the case of felling directions, that they have been complied with; or
  - (b) that the steps required by the notice to be taken are not required by the conditions or directions,he may by a notice served on the Minister in the prescribed manner and within the prescribed period after the receipt of the notice under section 24, request the Minister to refer the matter to a committee appointed in accordance with section 27 below.
- (2) A notice under section 24 shall be inoperative until the expiration of the prescribed period for the purposes of subsection (1) above and, where a request to the Minister under that subsection is made, until the conclusion of any proceedings under this section in pursuance of the request.
- (3) Where such a request is made by a person receiving a notice under section 24, the Minister shall, unless he is of opinion that the grounds for the request are frivolous, refer the matter accordingly to a committee so appointed.
- (4) The committee to whom a matter is referred under this section, after complying with section 27(3), shall make a report on the reference to the Minister and the Minister shall, after considering the report, confirm or cancel the notice to which the reference relates.

## **26 Expenses etc. in connection with notices under s. 24.**

- (1) If the Commissioners, in the exercise of their powers under section 24, enter on land and take any steps required by a notice under that section, they may recover from the person to whom the notice was given any expenses reasonably incurred in connection therewith.
- (2) The Commissioners may remove and either retain or dispose of trees felled by them in the exercise of their said powers, and shall, on a claim made in the prescribed manner by the owner of any trees so removed, pay to him a sum equal to the value of those trees after deducting any expenses reasonably incurred by them in connection with the removal or disposal.
- (3) Subject to any express agreement to the contrary, any expenses incurred by a person for the purpose of complying with a notice under section 24, and any sums paid by a person in respect of expenses of the Commissioners under that section, shall be deemed to be incurred or paid by that person—
  - (a) where the notice relates to works required to be carried out in pursuance of conditions of a felling licence, for the use and at the request of the applicant for the licence;
  - (b) where the notice requires compliance with felling directions, for the use and at the request of the person to whom the directions were given.
- (4) Any sums recoverable by or from the Commissioners under this section may be recovered as a simple contract debt.

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### Supplementary

#### 27 †Committees of reference for purposes of ss. 16, 20, 21 and 25.

(1) References in sections 16, [F15 17B,] 20, 21 and 25 of this Act to a committee appointed in accordance with this section are to a committee consisting of—

- (a) a chairman appointed by the Minister; and
- (b) two other members selected by the Minister from a panel of persons appointed by him, after such consultation as is provided for below, for the conservancy in which the trees are growing:

Provided that no Forestry Commissioner or person employed by the Commissioners shall be a member of any such committee.

(2) The consultation required by subsection (1)(b) above is to be with—

- (a) the regional advisory committee for the said conservancy; and
- (b) organisations appearing to the Minister to represent the interests of owners of woodlands and timber merchants respectively; and
- (c) organisations concerned with the study and promotion of forestry.

(3) On any reference being made to them under this Part of this Act a committee appointed in accordance with this section shall—

- (a) afford to the person concerned with the subject-matter of the reference an opportunity of appearing before them and of making representations to them on the matter in question;
- (b) if they think fit, or are so required by the said person, inspect the trees or land to which the reference relates; and
- (c) take into consideration any information furnished to them by the Commissioners as to the performance within the conservancy in which the trees are growing of their duty of promoting the establishment and maintenance in Great Britain of adequate reserves of growing trees.

For purposes of this subsection “the person concerned with the subject-matter of the reference” is the person at whose request the reference was made, except that in the case of a reference by the Minister of a notice under section 21 it is the person by whom the notice was given.

(4) The Minister may pay to the members of a committee appointed by him under this section such remuneration as he may, with the consent of the Treasury, determine.

#### Textual Amendments

F15 Words inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), s. 1(b)

#### Modifications etc. (not altering text)

C3 Unreliable margin note

#### 28 Identification of trees.

A person authorised by the Commissioners may take such steps, whether by marking or otherwise, as the Commissioners consider necessary for identifying trees which are

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the subject of a felling licence or felling directions, or in respect of which a felling licence has been refused.

## 29 Provisions relating to mortgages, heritable securities and settled land.

- (1) Where the interest of the owner of trees in England or Wales is for the time being subject to a mortgage—
  - (a) a claim for any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees may be made either by the mortgagor or by the mortgagee;
  - (b) in either case the compensation or sum shall be paid to the mortgagee or, if more than one, to the first mortgagee, and shall be applied by him as if it were proceeds of the sale of the trees.
- (2) Where the interest of the owner of trees in Scotland is for the time being subject to a heritable security,—
  - (a) a claim for any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees may be made either by the debtor in the heritable security or by the creditor in the heritable security;
  - (b) in either case the compensation or sum shall be paid to the creditor in the heritable security or, if more than one, to the creditor whose heritable security has priority over any other heritable security secured on the land, and shall be applied by him as if it were proceeds of the sale of the trees.
- (3) Subject to the foregoing provisions of this section, where the owner of trees comprised in a settlement within the meaning of the <sup>M7</sup>Settled Land Act 1925 is a tenant for life who is impeachable for waste in respect of the trees, any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees shall be paid to the trustees of the settlement, and shall be applied by them in accordance with section 66(2) of the Settled Land Act 1925 as if it were proceeds of sale of timber cut and sold with the consent of the trustees under that section.

### Marginal Citations

M7 1925 c. 18(98:3)

## 30 Service of documents.

- (1) Any document required or authorised to be served under this Part of this Act may be served on a person either by delivering it to him, or by leaving it at his proper address, or by sending it through the post in a registered letter addressed to him at that address or in a letter sent by the recorded delivery service and so addressed.
- (2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.
- (3) For the purposes of this section and of [<sup>F16</sup>section 7 of the <sup>M8</sup>Interpretation Act 1978], the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person to be served:



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Provided that, where the person to be served has furnished an address for service, his proper address for the said purposes shall be the address furnished.

- (4) If it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of “owner”, “lessee” or “occupier” of the land (describing it) to which it relates, and by delivering it to some responsible person on the land or, if there is no such person on the land to whom it may be delivered, by affixing it or a copy of it to some conspicuous part of the land.
- (5) The Commissioners may, for the purpose of enabling them to serve or give any document or direction under this Part of this Act, require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land, to state in writing the nature of his interest therein and the name and address of any other person known to him as having an interest therein, whether as a freeholder or owner, mortgagee or creditor in a heritable security, lessee or otherwise; and anyone who, having been required in pursuance of this subsection to give any information, fails to give it, or knowingly makes any mis-statement in respect thereof, shall be liable on summary conviction to a fine not exceeding [<sup>F17</sup>level 1 on the standard scale].

#### Textual Amendments

- F16** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), [s. 17\(2\)\(a\)](#)  
**F17** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#); and (S.) by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#); [ss. 289F, 289G](#)

#### Marginal Citations

- M8** [1978 c. 30\(115:1\)](#)

### 31 Determination of matters arising under ss. 11, 14, 21 and 22.

- (1) Where a provision of this Part of this Act requires a thing to be determined in accordance with this section, that provision shall—
  - (a) in its application to England and Wales, be taken as requiring it to be determined by the Lands Tribunal; and
  - (b) in its application to Scotland, be taken as requiring it to be determined by the Lands Tribunal for Scotland, subject however to the following subsection.
- (2) Until sections 1 to 3 of the <sup>M9</sup>Lands Tribunal Act 1949 come into force as regards Scotland, the said provision shall be taken as requiring the thing in question to be determined by reference to an official arbiter appointed under Part I of the <sup>M10</sup>Land Compensation (Scotland) Act 1963; and sections 3 and 5 of that Act shall apply, subject to any necessary modifications, in relation to the determination of any question under this Act by an arbiter so appointed.

#### Marginal Citations

- M9** [1949 c. 42\(127\)](#)  
**M10** [1963 c. 51\(28:2\)](#)

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### **32 Regulations.**

- (1) The Commissioners may, subject to their duty of consultation under section 37(2) below, by statutory instrument make regulations for prescribing anything which by this Part of this Act is authorised to be prescribed.
- (2) A power conferred by this Part of this Act to prescribe the manner in which a claim or notice may be made or given thereunder shall include power to require that any particulars specified in the claim or notice shall be verified by statutory declaration.
- (3) A statutory instrument containing regulations made under this Part of this Act—
  - (a) if the regulations are made under section 9(5)(b) or (c), shall be of no effect unless approved by a resolution of each House of Parliament; and
  - (b) in a case not falling within the foregoing paragraph, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **33 Application of Part II to Crown land.**

- (1) In this section “Crown land” means land an interest in which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, and land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (2) Subject to the following provisions of this section, the provisions of this Part of this Act shall apply in relation to Crown land and trees growing thereon to the extent only of any estate or interest therein which is for the time being held otherwise than on behalf of the Crown.
- (3) Except with the consent of the appropriate authority as defined in this section,—
  - (a) no conditions relating to the restocking or stocking of Crown land shall be imposed on the grant of a felling licence;
  - (b) no felling directions shall be given in respect of trees growing on Crown land.
- (4) The Minister shall not be authorised to acquire the interest of any person in Crown land by virtue of a notice under section 21 unless an offer has previously been made by that person to dispose of that interest to the appropriate authority on terms that the price payable therefor shall be equal to (and shall be determined in default of agreement in like manner as) the compensation which would be payable in respect of that interest if it were acquired in pursuance of such a notice, and that offer has been refused by that authority.
- (5) In this section “the appropriate authority” in relation to any land means—
  - (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question;
  - (b) in the case of land belonging to Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - (d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;

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and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

### 34 Meaning of “owner” in Part II.

- (1) In this Part of this Act the expression “owner” has the meaning ascribed to it by this section.
- (2) In relation to land in England or Wales, “owner” means the person in whom for the time being is vested the legal estate in fee simple, except that where in relation to all or any of the provisions of this Part of this Act,—
  - (a) all persons appearing to the Minister to be concerned agree, with the approval of the Minister, that some person shall be treated as the owner of land other than the person who would be so treated apart from the agreement; or
  - (b) on an application in that behalf to the Agricultural Land Tribunal established under Part V of the <sup>M11</sup>Agriculture Act 1947 the Tribunal determine, having regard to the respective interests of the persons interested in the land, that some person shall be treated as the owner of the land other than the person who would be so treated apart from the determination,  
that person shall be so treated, but without prejudice to a subsequent agreement or determination, or to his ceasing to be so treated, if the Minister withdraws his approval under paragraph (a) of this subsection.
- (3) In relation to land in Scotland, “owner” means the person who for the time being is the proprietor of the *dominium utile* or, in the case of land other than feudal land, is the owner thereof, except that where, in relation to all or any of the provisions of this Part of this Act,—
  - (a) all persons appearing to the Minister to be concerned agree, with the approval of the Minister, that some person shall be treated as the owner of land other than the person who would be so treated apart from the agreement; or
  - (b) on an application in that behalf to the Scottish Land Court the Court determines, having regard to the respective interests of the persons interested in the land, that some person shall be treated as the owner of the land other than the person who would be so treated apart from the determination,  
that person shall be so treated, but without prejudice to a subsequent agreement or determination, or to his ceasing to be so treated, if the Minister withdraws his approval under paragraph (a) of this subsection.
- (4) In relation to trees, “owner” means the owner of the land on which the trees are growing and, in the case of trees which have been felled, means the person who was the owner immediately before the felling.

#### Marginal Citations

M11 1947 c. 48(2:1)

### 35 Interpretation of other expressions in Part II.

In this Part of this Act—

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“conservancy” means any area in Great Britain which may for the time being be designated by the Commissioners as a conservancy for the purpose of the performance of their functions;

“felling” includes wilfully destroying by any means;

“felling directions” means directions given by the Commissioners under section 18 of this Act for the felling of trees;

“felling licence” means a licence under this Part of this Act authorising the felling of trees;

“mortgage” and “heritable security” include any charge for securing money or money’s worth, and references to a mortgagee, or to a creditor or a debtor in a heritable security, shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Commissioners under this Part of this Act; and

[<sup>F18</sup>“restocking notice” shall be construed in accordance with section 17A(1) of this Act;]

“tree preservation order” means an order made or having effect as if made under [<sup>F19</sup>section 198 of the Town and Country Planning Act 1990] or [<sup>F20</sup>section 58 of the <sup>M12</sup>Town and Country Planning (Scotland) Act 1972].

#### Textual Amendments

- F18** Definition inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), **s. 1(c)**
- F19** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2**, para. 14(2)
- F20** Words substituted by [Town and Country Planning \(Scotland\) Act 1972 \(c. 52, SIF 123:2\)](#), **Sch. 21 Pt. II**

#### Marginal Citations

- M12** [1972 c. 52\(123:2\)](#)

### 36 Application of Part II to London.

This Part of this Act shall not apply to trees standing or growing on land within the area of Greater London other than the outer London Boroughs within the meaning of the <sup>M13</sup>London Government Act 1963.

#### Marginal Citations

- M13** [1963 c. 33\(81:1\)](#)

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