



# 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 3 inches or, in the case of coppice or underwood, with a diameter not exceeding 6 inches; 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 4 inches 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 825 cubic feet 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 not exceed 150 cubic feet in any quarter, or such larger quantity as the Commissioners may in a particular case allow.

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- (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, an Electricity Board because the tree obstructs the construction by the Board of a main transmission line or other electric line, or interferes or would interfere with the maintenance or working of such a line belonging to the Board ;
  - (d) is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act 1962 or the enactments replaced by that Act, or under the Town and Country Planning (Scotland) Act 1947.

- (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 3 inches a reference to a larger diameter;
  - (ii) in subsection (3)(a), for the reference to 4 inches a reference to a larger diameter ;
  - (iii) in subsection (3)(b), for the reference to 825 cubic feet or the reference to 150 cubic feet in either case a reference to a larger quantity;
- (b) they may substitute in subsection (2)(a) for the reference to 6 inches 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 825 cubic feet, or for the reference in sub-paragraph (ii) to 150 cubic feet, 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—

" Electricity Board " means an Electricity Board within the meaning of the Electricity Act 1947, as amended by the Electricity Reorganisation (Scotland) Act 1954 and other enactments;

" electric line " and " main transmission line " have the same meaning as in the Electric Lighting Act 1882 and the Electricity (Supply) Act 1919 respectively;

" public open space " means land laid out as a public garden or used (otherwise than in pursuance of section 193 of the Law of Property Act 1925 or of Part V of the National Parks and Access to the Countryside Act 1949) 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 ;

and references to the diameter of trees shall be construed as references to the diameter, measured over the bark, at a point five feet above the ground level; and references to the cubic content of trees shall be construed as references to that content as ascertained in the prescribed manner.

## **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—
  - (a) in the interests of good forestry or agriculture or of the amenities of the district; or
  - (b) 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:—
  - (a) 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
  - (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.

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- (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.
- (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.

## **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 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

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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.
- (4) Where in the case of any trees—
- (a) the Commissioners under this section refer an application for a felling licence to the Minister of 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 Minister of Housing and Local Government and not the Minister of Agriculture, Fisheries and Food.

## **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.
- (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 £10 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.