Forestry and Land Management (Scotland) Act 2018

2018 asp 8

PART 4

FELLING

CHAPTER 3

FELLING PERMISSION

25 Applications for felling permission

(1) A person mentioned in subsection (2) may apply to the Scottish Ministers for permission to fell a tree (a "felling permission").

(2) Those persons are—

(a) an owner of the land on which the tree is located,

(b) with the written permission of an owner of the land, an occupier of that land.

(3) The Scottish Ministers may by regulations make further provision about applications for felling permission.

(4) Regulations under subsection (3) may, in particular, include provision about—

(a) the way in which applications are to be made,

(b) the information to be provided in applications.

Commencement Information

I1 S. 25 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

26 False or misleading information in applications: offence

(1) A person commits an offence if the person knowingly or recklessly provides false or misleading information in an application for felling permission.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I2 S. 26 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

27 Decisions on applications

(1) The Scottish Ministers may—

(a) grant an application for felling permission (with or without conditions), or

(b) refuse the application.

(2) In making a decision on the application, the Scottish Ministers must have regard to their duty to promote sustainable forest management.

(3) If the Scottish Ministers refuse the application, they must give reasons for the refusal.

(4) A condition on felling permission may, in particular, set out—

(a) how felling is to be carried out,

(b) when felling is to be carried out,

(c) persons who may carry out felling,

(d) steps that must be taken after felling is carried out (a "continuing condition").

(5) A continuing condition on felling permission may, in particular, require persons to provide information to the Scottish Ministers.

(6) The Scottish Ministers may not impose conditions on felling permission if—

(a) the application relates to trees which are on land that is subject to a forestry dedication agreement, and

(b) the proposed felling is in accordance with a plan of operations for that land that has been approved by the Scottish Ministers.

(7) The Scottish Ministers may vary or revoke a condition imposed on felling permission.

(8) The Scottish Ministers may by regulations make further provision about decisions on applications for felling permission.

(9) Regulations under subsection (8) may, in particular, include provision about—

(a) power for the Scottish Ministers to enter land on which a tree to which an application relates is located in order for them to make a decision in relation to the application,

(b) how decisions are to be notified,

(c) the imposition of conditions on felling permission,

(d) the information which continuing conditions may require,

(e) situations in which persons who have made an unsuccessful application for felling permission may be restricted from making a further application in relation to the same circumstances.

Commencement Information
I3 S. 27 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

28 Continuing conditions on felling permission: offence

(1) A person commits an offence if the person fails, without reasonable excuse, to comply with a continuing condition on felling permission granted to the person.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information
I4 S. 28 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

29 Variation of felling permission

(1) The Scottish Ministers may vary a felling permission—
- (a) by agreement with the person to whom the felling permission was granted,
- (b) if the Scottish Ministers have reason to believe that, to prevent or minimise harm to the environment or to any living thing—
  - (i) in a case where felling has not begun, felling should not begin,
  - (ii) in a case where felling has begun, felling should stop immediately.

(2) The Scottish Ministers must give a notice varying a felling permission under subsection (1)(b) to the person to whom the felling permission was granted.

(3) The notice must—
- (a) set out the Scottish Ministers' reasons for making the variation,
- (b) specify the effect of the variation on the felling permission, and
- (c) specify the date on which the variation takes effect (which must not be earlier than the date on which the notice is given under subsection (2)).

Commencement Information
I5 S. 29 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

30 Suspension of felling permission

(1) The Scottish Ministers may suspend a felling permission if subsection (2) or (3) applies.

(2) This subsection applies if the Scottish Ministers have reason to believe—
- (a) that a felling permission has not been complied with, is not being complied with or is likely not to be complied with,
- (b) that that has resulted in, is resulting in, or is likely to result in, harm to the environment or to any living thing, and

Status: *Point in time view as at 01/04/2019.*
Changes to legislation: *There are currently no known outstanding effects for the Forestry and Land Management (Scotland) Act 2018, CHAPTER 3. (See end of Document for details)*

(c) that, for the purpose of allowing the Scottish Ministers to investigate the circumstances mentioned in paragraphs (a) and (b)—

(i) in a case where felling has not begun, felling should not begin,

(ii) in a case where felling has begun, felling should stop immediately.

(3) This subsection applies if the Scottish Ministers have reason to believe that, to prevent or minimise harm to the environment or to any living thing—

(a) in a case where felling has not begun, felling should not begin,

(b) in a case where felling has begun, felling should stop immediately.

(4) The Scottish Ministers must give a notice suspending a felling permission to the person to whom the felling permission was granted.

(5) The notice must—

(a) set out the Scottish Ministers' reasons for making the suspension,

(b) specify the effect of the suspension on the felling permission,

(c) specify the date on which the suspension takes effect (which must not be earlier than the date on which the notice is given under subsection (4)), and

(d) specify the period for which the suspension is to have effect.

Commencement Information

I6 S. 30 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

31 Revocation of felling permission

(1) The Scottish Ministers may revoke a felling permission if—

(a) the Scottish Ministers have reason to believe that, to prevent or minimise harm to the environment or to any living thing—

(i) in a case where felling has not begun, felling should not begin,

(ii) in a case where felling has begun, felling should stop immediately, and

(b) they consider that the harm cannot be prevented or minimised by the variation or suspension of the felling permission.

(2) The Scottish Ministers must give a notice revoking a felling permission to the person to whom the felling permission was granted.

(3) The notice must—

(a) set out the Scottish Ministers' reasons for making the revocation, and

(b) specify the date on which the revocation takes effect (which must not be earlier than the date on which the notice is given under subsection (2)).

Commencement Information

I7 S. 31 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

32 Compensation for refusal of felling permission

(1) If the Scottish Ministers refuse an application for felling permission, a person who suffers loss as a result of the refusal is entitled to compensation in accordance with provision made in regulations made by the Scottish Ministers.

(2) Regulations under subsection (1) may, in particular, include provision about—
- (a) persons who are entitled to compensation,
- (b) the procedure for applying for compensation,
- (c) the information to be provided in applications,
- (d) the way in which the amount of compensation is to be determined,
- (e) the way in which any disputes about compensation are to be determined,
- (f) appeals about decisions relating to compensation.

Commencement Information

I8 S. 32 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

33 Felling of trees subject to tree preservation orders

(1) If an application for felling permission relates to a tree that is covered by a tree preservation order, the Scottish Ministers may—
- (a) after complying with subsection (2), decide whether to grant permission, or
- (b) if consent under the order is required for the felling of the tree, refer the application to the planning authority that made the order.

(2) The Scottish Ministers must—
- (a) consult the planning authority that made the order, and
- (b) have regard to any representations made by that planning authority.

(3) Where an application is referred to a planning authority, the provisions of the order and any provisions of the Town and Country Planning (Scotland) Act 1997 relating to the order apply as if the application were an application to the planning authority for consent to fell the tree under the order.

(4) Section 23 (offence of unauthorised felling) does not apply to felling where—
- (a) an application has been referred under subsection (1)(b),
- (b) the planning authority has consented to the felling, and
- (c) the felling is carried out in accordance with the consent.

(5) Felling of a tree that is covered by a tree preservation order is not a breach of the order if the felling is carried out in accordance with—
- (a) a felling permission,
- (b) a felling direction,
- (c) a restocking direction,
- (d) a registered notice to comply,
- (e) a remedial notice, or
- (f) a registered remedial notice.

(6) In this section and section 34, a tree is covered by a tree preservation order if the tree—
- (a) is subject to a tree preservation order, or

(b) forms part of a group of trees or woodland that is subject to a tree preservation order.

(7) A "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.

Commencement Information

I9 S. 33 in force at 1.4.2019 by S.S.I. 2019/47, **reg. 2** (with regs. 3-22)

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Changes to legislation:
There are currently no known outstanding effects for the Forestry and Land Management (Scotland) Act 2018, CHAPTER 3.