



Forestry and Land Management (Scotland) Act 2018

2018 asp 8

PART 4

FELLING

CHAPTER 8

COMPLIANCE

Temporary stop notices

45 Temporary stop notices

- (1) Subsection (2) applies if—
- (a) the Scottish Ministers have reason to believe that a tree is being felled and—
 - (i) the felling is not exempt under section 24, and
 - (ii) the felling is 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, and
 - (b) the Scottish Ministers consider it expedient that the felling (or other activity related to the felling) should stop immediately.
- (2) The Scottish Ministers may give a notice (a “temporary stop notice”).
- (3) A temporary stop notice must—
- (a) specify the activity which the Scottish Ministers believe is being carried out,
 - (b) prohibit the carrying out of that activity (or of so much of the activity as is specified in the notice),
 - (c) specify the land in relation to which that activity is prohibited,
 - (d) specify the period during which the notice has effect,
 - (e) contain a statement about the effect of section 46, and
 - (f) set out the Scottish Ministers’ reasons for giving the notice.

Status: This is the original version (as it was originally enacted).

- (4) A temporary stop notice may impose conditions.
- (5) The Scottish Ministers may vary or revoke a temporary stop notice (including any condition imposed on it).
- (6) The Scottish Ministers must display on the land to which the temporary stop notice relates—
 - (a) a copy of the notice, and
 - (b) a statement about the effect of section 46.
- (7) A copy of a temporary stop notice may be given to—
 - (a) a person who the Scottish Ministers believe is carrying out the activity,
 - (b) the owner of the land to which the temporary stop notice relates (if the owner is not the person who is given the notice under paragraph (a)).
- (8) A temporary stop notice has effect from the time a copy of it is first displayed in accordance with subsection (6).
- (9) A temporary stop notice ceases to have effect—
 - (a) at the end of the period of 28 days beginning with the day on which a copy of the notice is first displayed,
 - (b) if a shorter period beginning with that day is specified in the notice, at the end of that shorter period, or
 - (c) if the notice is revoked by the Scottish Ministers before the end of the period mentioned in paragraph (a) or (b), when it is revoked.
- (10) A person may stop any activity specified in a temporary stop notice despite any provision in any agreement relating to the trees or the land to which the notice relates that would otherwise prevent the person from stopping the activity.
- (11) The Scottish Ministers may enter the land to which the temporary stop notice relates in order to monitor compliance with the notice.
- (12) When a temporary stop notice has effect, the Scottish Ministers must not—
 - (a) grant an application for felling permission in relation to a tree that is located on land to which the notice relates,
 - (b) give a felling direction in relation to a tree that is located on land to which the notice relates,
 - (c) give a restocking direction in relation to land to which the notice relates.

46 Temporary stop notices: offence

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a temporary stop notice (including any condition imposed on it)—
 - (a) a copy of which has been given to the person, or
 - (b) a copy of which has been displayed in accordance with section 45(6).
- (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.

47 Temporary stop notices: compensation

- (1) A person who—

- (a) on the date on which a temporary stop notice is first displayed under section 45(6), has a right or interest in or over the land to which the notice relates, and
 - (b) suffers loss directly attributable to the prohibition of felling (or other activity related to the felling) effected by the temporary stop notice,
- is entitled to compensation in accordance with provision made in regulations made by the Scottish Ministers.
- (2) But subsection (1) applies only if—
- (a) the felling (or other activity related to the felling) prohibited by the temporary stop notice—
 - (i) is exempt under section 24, or
 - (ii) is 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, and
 - (b) the temporary stop notice has been revoked.
- (3) Regulations under subsection (1) may, in particular, include provision about—
- (a) the procedure for applying for compensation,
 - (b) the information to be provided in applications,
 - (c) the way in which the amount of compensation is to be determined,
 - (d) the way in which any disputes about compensation are to be determined,
 - (e) appeals about decisions relating to compensation.

Requests for information

48 Requests for information

- (1) The Scottish Ministers may request information described in subsection (2) from a person mentioned in subsection (3).
- (2) The information is information about compliance with—
- (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it),
 - (d) a registered notice to comply,
 - (e) a remedial notice (including any condition imposed on it),
 - (f) a registered remedial notice.
- (3) The persons are—
- (a) in the case of a condition on felling permission, the person to whom the permission was granted,
 - (b) in the case of a felling direction or a restocking direction, the person to whom the direction was given or an occupier of the land to which the direction relates,
 - (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, an owner or occupier of the land to which the notice relates.

49 Requests for information: offence

- (1) A person commits an offence if the person knowingly or recklessly provides false or misleading information in response to a request for information under section 48.
- (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.

*Site visits***50 Site visits with consent of owner or occupier**

- (1) The Scottish Ministers may enter land mentioned in subsection (2) with the consent of an owner or occupier of that land in order to monitor compliance with—
 - (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it),
 - (d) a registered notice to comply,
 - (e) a remedial notice (including any condition imposed on it),
 - (f) a registered remedial notice.
- (2) The land is—
 - (a) in the case of a condition on felling permission—
 - (i) the land on which the tree to which the condition relates is located,
 - (ii) where it is a continuing condition, the land to which the continuing condition relates,
 - (b) in the case of a felling direction or a restocking direction, the land to which the direction relates,
 - (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, the land to which the notice relates.

*Powers of entry***51 Power of entry: unauthorised felling**

- (1) Subsection (2) applies if the Scottish Ministers have reason to believe that a tree has been felled or is being felled and—
 - (a) the felling is not exempt under section 24, and
 - (b) the felling is not carried out in accordance with—
 - (i) a felling permission,
 - (ii) a felling direction,
 - (iii) a restocking direction,
 - (iv) a registered notice to comply,
 - (v) a remedial notice, or
 - (vi) a registered remedial notice.
- (2) The Scottish Ministers may enter the land on which the tree was or is located for the purpose of determining whether the tree has been felled or is being felled as described in subsection (1)(a) or (b).

52 Power of entry: decision to give felling directions or restocking directions

- (1) Subsection (2) applies if the Scottish Ministers have reason to believe that they may need to give—
 - (a) a felling direction in relation to a tree or in respect of land,
 - (b) a restocking direction in respect of land.
- (2) The Scottish Ministers may enter the land (or, in the case of a felling direction in relation to a tree, the land on which the tree is located) for the purpose of determining whether they need to give a felling direction or a restocking direction.

53 Power of entry: failure to comply

- (1) Subsection (2) applies if the Scottish Ministers have reason to believe that a person has failed or is failing to comply with—
 - (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it),
 - (d) a registered notice to comply,
 - (e) a remedial notice (including any condition imposed on it), or
 - (f) a registered remedial notice.
- (2) The Scottish Ministers may enter land mentioned in subsection (3) for the purpose of determining whether a person has failed or is failing to comply with the condition, the direction or (as the case may be) the notice.
- (3) The land is—
 - (a) in the case of a condition on felling permission—
 - (i) the land on which the tree to which the condition relates is located,
 - (ii) where it is a continuing condition, the land to which the continuing condition relates,
 - (b) in the case of a felling direction or a restocking direction, the land to which the direction relates,
 - (c) in the case of a registered notice to comply, a remedial notice or a registered remedial notice, the land to which the notice relates.

*Remedial notices***54 Remedial notices**

- (1) The Scottish Ministers may give a person a remedial notice if it appears to them that the person has failed or is failing to comply with—
 - (a) a condition on felling permission,
 - (b) a felling direction (including any condition imposed on it),
 - (c) a restocking direction (including any condition imposed on it), or
 - (d) a registered notice to comply.
- (2) A “remedial notice” is a notice requiring the person—
 - (a) to take such steps or stop such activity as may be specified in the notice in order to comply with or otherwise give effect to the condition, direction or (as the case may be) registered notice to comply, and

Status: This is the original version (as it was originally enacted).

- (b) to take the steps or stop the activity within such period as may be specified in the notice.
- (3) The Scottish Ministers must give a copy of a remedial notice to the owner of the land to which the condition, direction or (as the case may be) registered notice to comply relates (if the owner is not the person who is given the notice under subsection (1)).
- (4) A person may take any steps or stop any activity specified in a remedial notice despite—
 - (a) any provision in any agreement relating to the trees or the land to which the notice relates that would otherwise prevent the person from taking those steps or stopping the activity,
 - (b) any condition on felling permission, felling direction, restocking direction or registered notice to comply under this Act that would otherwise prevent the person from taking those steps or stopping the activity.
- (5) The Scottish Ministers may vary or revoke a remedial notice (including any condition imposed on it).
- (6) The Scottish Ministers may by regulations make further provision about remedial notices.
- (7) Regulations under subsection (6) may, in particular, include provision about the imposition of conditions on a remedial notice (which may include steps that must be taken after the notice is complied with).

55 Remedial notices: offence

- (1) A person commits an offence if the person fails, without reasonable excuse, to comply with a remedial notice (including any condition imposed on it) given 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.

56 Registration of remedial notices

If a remedial notice (including any condition imposed on it) has been given in respect of land, the Scottish Ministers may apply to register a notice in relation to that land specifying—

- (a) the effect of the notice and, if relevant, the date by which it must be complied with,
- (b) a description of the land to which the notice relates.

57 Registered remedial notices: offence

- (1) An owner of the land to which a registered remedial notice relates commits an offence if that person fails, without reasonable excuse, to comply with the registered remedial notice.
- (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.

*Giving documents to owner or occupier***58 Giving documents to owner or occupier**

Where in this Part a notice or other document is to be given to a person as the owner or occupier of land and the person's name or address cannot be ascertained after reasonable enquiry, it may be given by—

- (a) addressing it to the person by name or by the description of “owner” or “occupier” of the land (describing it), and
- (b) leaving it—
 - (i) with a person who is or appears to be resident or employed on the land, or
 - (ii) conspicuously affixed to some building or other object on or near the land.

*Step-in power***59 Step-in power**

If a person fails to comply with a remedial notice (including any condition imposed on it) or a registered remedial notice within the period specified in it for compliance, the Scottish Ministers may—

- (a) enter the land to which the notice relates, and
- (b) take the steps or stop the activity set out in the notice.

*Powers of entry and step-in power: application to court***60 Powers of entry and step-in power: application to court**

- (1) This section applies to the powers in sections 45, 51, 52, 53 and 59.
- (2) A sheriff, a summary sheriff or a justice of the peace may by warrant authorise the Scottish Ministers—
 - (a) to enter the land concerned, and
 - (b) if necessary, to use reasonable force in doing so.
- (3) A warrant may be granted only if the sheriff, summary sheriff or justice is satisfied, by evidence on oath—
 - (a) that there are reasonable grounds under section 45, 51, 52, 53 or (as the case may be) 59 for entering the land concerned, and
 - (b) that—
 - (i) entry to the land has been refused,
 - (ii) such a refusal is reasonably expected,
 - (iii) the land is unoccupied, or
 - (iv) the occupier is temporarily absent.
- (4) A warrant may not authorise—
 - (a) entry to Crown land,
 - (b) entry to a dwelling, or

Status: This is the original version (as it was originally enacted).

- (c) the use of force against an individual.
- (5) A warrant expires—
 - (a) when it is no longer needed for the purpose for which it was granted, or
 - (b) if earlier, when any period as may be specified in it expires.

Powers of entry and step-in power: offences

61 Powers of entry and step-in power: offences

- (1) A person commits an offence if the person intentionally obstructs the Scottish Ministers in exercising their powers under section 45, 51, 52 or 53.
- (2) A person commits an offence if the person intentionally obstructs the Scottish Ministers in exercising their powers under section 59.
- (3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Powers of entry and step-in power: further provision

62 Powers of entry and step-in power: further provision

- (1) Subsections (2) to (8) apply to the powers in sections 45, 50, 51, 52, 53 and 59.
- (2) The Scottish Ministers may—
 - (a) take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purpose of assisting the Scottish Ministers to exercise the power,
 - (b) do anything else which is reasonably required for that purpose,
 - (c) take samples of things on the land,
 - (d) mark anything on the land for identification purposes,
 - (e) require access to, inspect and take copies of, or extracts from, any information on the land,
 - (f) take away any information to enable it to be copied or kept as evidence,
 - (g) require access to, inspect and check the operation of any computer and any associated apparatus or material and, for this purpose, require any person having charge of, or otherwise concerned with the operation of, any computer, apparatus or material to give the Scottish Ministers such assistance as they may reasonably require,
 - (h) where information is kept by means of a computer, require it to be produced in a form in which it can be taken away.
- (3) The power may be exercised only at a reasonable time.
- (4) The power does not authorise entry to a dwelling.
- (5) A person exercising the power must on request produce written evidence of the person's entitlement to do so.
- (6) If the Scottish Ministers cause damage in exercising the power, the Scottish Ministers must—

- (a) take reasonable steps to remedy the damage, or
 - (b) if it is not possible to remedy the damage, pay compensation for it.
- (7) If the Scottish Ministers enter unoccupied land in exercising the power, they must leave the land as effectively secured against unauthorised entry as they found it.
- (8) If the Scottish Ministers cause loss or damage by failing to comply with subsection (7), they must pay compensation for the loss or damage.
- (9) References in the following provisions to the Scottish Ministers include reference to persons authorised in writing by the Scottish Ministers—
- (a) section 45(11),
 - (b) section 50(1),
 - (c) section 51(2),
 - (d) section 52(2),
 - (e) section 53(2),
 - (f) section 59,
 - (g) subsections (2), (6), (7) and (8).

*Step-in power: recovery of expenses***63 Step-in power: recovery of expenses**

- (1) The Scottish Ministers may recover the expenses mentioned in subsection (2) from the person who failed to comply with the remedial notice (including any condition imposed on it) or (as the case may be) the registered remedial notice.
- (2) The expenses are—
- (a) any expenses reasonably incurred by the Scottish Ministers in taking steps under section 59,
 - (b) any administrative expenses reasonably incurred by them in connection with recovering the expenses mentioned in paragraph (a), and
 - (c) interest, at such reasonable rate as the Scottish Ministers may determine, in respect of the period beginning on a date specified by the Scottish Ministers until the whole amount is paid.
- (3) The date specified under subsection (2)(c) must be after the date on which a demand for payment is served by the Scottish Ministers.
- (4) Each owner of the land is jointly and severally liable for the expenses and interest mentioned in this section.
- (5) Any sums recoverable under subsection (1) may be recovered as a debt.

64 Registration of notices of liability for expenses

The Scottish Ministers may apply to register a notice (a “notice of liability for expenses”) specifying—

- (a) the amount of the expenses payable in accordance with section 63(2)(a) and (b),
- (b) whether interest is payable under section 63(2)(c),
- (c) the action taken under section 59 to which those expenses relate,

- (d) a description of the land in respect of which an owner is liable under section 59, and
- (e) the effect of section 65 in relation to a new owner of that land.

65 Recovery of expenses from new owner of land

- (1) Subsection (2) applies where—
 - (a) a notice of liability for expenses is registered in relation to the land, and
 - (b) the notice was registered at least 14 days before the date on which a person (the “new owner”) acquires right to the land.
- (2) The new owner is severally liable with any former owner of the land for any expenses and interest for which the former owner is liable under section 63.
- (3) An owner of land who is liable for expenses and interest under section 63 does not cease to be liable for the expenses and interest by virtue only of ceasing to be the owner of the land.
- (4) Where a new owner pays any expenses and interest for which a former owner of the land is liable, the new owner may recover the amount so paid from the former owner.
- (5) A person who is entitled to recover an amount under subsection (4) does not cease to be entitled to recover that amount by virtue only of ceasing to be the owner of the land.

66 Registration of notices of discharge of liability for expenses

- (1) This section applies where liability for expenses and interest to which a registered notice of liability for expenses has been discharged.
- (2) The Scottish Ministers must apply to register a notice (a “notice of discharge of liability for expenses”) specifying—
 - (a) the date of registration of the notice of liability for expenses to which the notice of discharge relates,
 - (b) the action taken under section 59 to which that liability relates,
 - (c) a description of the land in respect of which an owner was liable under section 59, and
 - (d) that the liability for the expenses and interest has been discharged.
- (3) On registration, the notice of discharge discharges the notice of liability for expenses to which it relates.

Time limit for prosecution

67 Time limit for prosecution

- (1) Proceedings for an offence under section 23, 26, 28, 35, 37, 39, 46, 49, 55 or 57 may be commenced within the period of 6 months beginning with the date on which evidence that the prosecutor believes is sufficient to justify the proceedings came to the prosecutor’s knowledge.
- (2) No such proceedings may be commenced more than 3 years—
 - (a) after the commission of the offence, or

- (b) in the case of a continuous contravention, after the last date on which the offence was committed.
- (3) In the case of a continuous contravention, the complaint may specify the entire period during which the offence was committed.
- (4) A certificate signed by or on behalf of the prosecutor stating the date on which the evidence referred to in subsection (1) came to the prosecutor's knowledge is conclusive as to that fact (and such a certificate purporting to be so signed is to be regarded as being so signed unless the contrary is proved).
- (5) Section 136(3) of the Criminal Procedure (Scotland) Act 1995 applies for the purposes of this section as it does for those of that section.