



## 2010 CHAPTER 10

### PART 3

#### FELLING OF TREES

##### *Restriction of felling*

##### **Requirement of licence for felling**

**15.—**(1) Subject to subsection (2), a person shall not fell trees growing on land of 0.2 hectares or more in area unless a licence granted by the Department under this Part (“a felling licence”) is in force authorising the felling.

(2) Subsection (1) does not apply to—

- (a) the felling of trees with a diameter not exceeding 8 centimetres or, in the case of coppice or underwood, with a diameter not exceeding 15 centimetres;
- (b) the felling of fruit trees;
- (c) the felling of trees on land comprised in an orchard, garden, churchyard or on open space used (otherwise than in pursuance of Part 3 of the Access to the Countryside (Northern Ireland) Order 1983 (NI 18)) for the purpose of public recreation;
- (d) the topping or lopping of trees or the trimming or laying of hedges;
- (e) the felling by any person of trees on land occupied by that person or by a tenant of that person—
  - (i) where the trees have a diameter not exceeding 10 centimetres and the felling is carried out in order to improve the growth of other trees; or

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- (ii) where the aggregate cubic content of the trees which are felled by that person without a licence (exclusive of trees to whose felling subsection (1) does not apply) does not exceed 5 cubic metres in any quarter;
  - (f) the felling of trees for the prevention of danger or the prevention or abatement of a nuisance;
  - (g) the felling of a tree in compliance with any obligation imposed by or under any statutory provision (including a provision of this Act);
  - (h) the felling of a tree carried out by, or at the request of, an electricity undertaker, 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 undertaker as to have the effect mentioned in paragraph 14(1)(a) or (b) of Schedule 4 to the Electricity (Northern Ireland) Order 1992 (NI 1);
  - (i) the felling of a tree where the felling is immediately required for the purpose of carrying out development authorised by planning permission;
  - (j) the felling by statutory undertakers of a tree on land in their occupation which obstructs the construction of any works required for the purposes of the undertaking by those undertakers, or of a tree which interferes with the maintenance or operation of any works vested in those undertakers;
  - (k) the felling of trees by a government department;
  - (l) the felling of a tree which requires the consent<sup>[F1]</sup> of a council or] of the Department of the Environment under the provisions of a tree preservation order;
  - (m) the felling of a tree to which <sup>[F2]</sup>section 127 of the Planning Act (Northern Ireland) 2011 applies ] (trees in conservation area).
- (3) Any person who fells trees in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale or twice the sum which appears to the court to be the value of the trees, whichever is the higher.
- (4) Regulations may—
- (a) make provision as to the calculation of the area of any land for the purposes of subsection (1);
  - (b) amend subsection (2), whether by amending or removing an existing exemption or adding a new exemption.
- (5) In this section—
- “electricity undertaker” means a licence holder within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992 by whom the powers conferred by paragraph 14 (tree lopping) of Schedule 4 to that Order are exercisable;

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“electric line” and “electrical plant” have the same meanings as in Part 2 of the Electricity (Northern Ireland) Order 1992;

“planning permission” means permission granted or deemed to have been granted under the Planning (Northern Ireland) Order 1991;

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

“statutory undertaker” has the same meaning as in the Planning (Northern Ireland) Order 1991;

“tree preservation order” means an order made under Article 65 of the Planning (Northern Ireland) Order 1991;

and references to the diameter of trees shall be construed as references to the diameter, measured over the bark, at a point 1.3 metres above the ground level.

#### Textual Amendments

- F1** Words in s. 15(2)(l) inserted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 107\(a\)](#) (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2)
- F2** Words in s. 15(2)(m) substituted (13.2.2015 for specified purposes, 1.4.2015 in so far as not already in operation) by [Planning Act \(Northern-Ireland\) 2011 \(c. 25\), s. 254\(1\)\(2\), Sch. 6 para. 107\(b\)](#) (with s. 211); S.R. 2015/49, arts. 2, 3, Sch. 1 (with Sch. 2)

#### Commencement Information

- I1** S. 15 in operation at 17.6.2013 by [S.R. 2013/138, art. 2, Sch.](#)

### Application for felling licence

**16.—(1)** An application for a felling licence may be made to the Department in the prescribed manner by any person who has such an estate in the land on which the trees are growing as enables that person, with or without the consent of any other person, to fell the trees.

(2) On an application under this section the Department may—

- (a) grant the licence, subject to section 18; or
- (b) refuse it.

(3) Where the Department refuses to grant a felling licence, it shall give notice in writing to the applicant of the grounds for the refusal.

#### Commencement Information

- I2** S. 16 in operation at 17.6.2013 by [S.R. 2013/138, art. 2, Sch.](#)

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### **Compensation on refusal of felling licence**

17.—(1) If the Department refuses an application for a felling licence in the case of any trees, any person who is for the time being the owner of the trees is entitled to compensation 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 Department on a claim made in the prescribed manner.

(3) Claims for the 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 10 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) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

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#### **Commencement Information**

**I3** S. 17 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

### **Operation and conditions of felling licence**

18.—(1) A felling licence shall continue in force for such period (not being less than 5 years from the date on which it is granted) as is specified in the licence.

(2) A felling licence in respect of trees on any land shall be granted subject to—

- (a) the conditions set out in the felling management plan for that land; and
- (b) such other conditions (if any) as are specified in the licence.

(3) The felling management plan for any land is a document which sets out conditions regulating the felling of trees on that land authorised by a felling licence; and accordingly a felling licence authorises the felling of trees on any

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land in accordance with, and subject to, the felling management plan for the time being in force in relation to that land.

(4) The conditions in a felling management plan for any land may in particular

- (a) set out the times at which, or periods within which, the felling of specified trees is authorised;
- (b) require the restocking or stocking of that land with trees of a specified species and the maintenance of those trees in accordance with the rules and practice of good forestry for a period not exceeding the period for which the licence remains in force;
- (c) prohibit the restocking of open ground created by the felling of trees for a period not exceeding the period for which the licence remains in force.

(5) In determining the felling management plan for any land which consists of, or includes, ancient woodland, the Department shall have regard to the desirability of maintaining the special character of that woodland.

(6) Regulations may make provision about the drawing up, form, content and amendment of, and other matters relating to, felling management plans.

**Commencement Information**

**I4** S. 18 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Deferred decision on an application for felling licence**

**19.—**(1) Where a person applies for a felling licence and the Department does not within 3 months after receiving the application, or within such further time as may be agreed with the applicant, give notice to the applicant of its decision on the application, the provisions of this Part apply in relation to the application as if it had been refused.

(2) Subsections (3) and (4) apply if on an application for a felling licence it appears to the Department that the applicant is not entitled to an estate in the land which would enable the applicant to comply with the conditions of the licence (if granted).

(3) The Department may give notice in writing to that effect to the applicant and postpone consideration of the application until the person entitled to such an estate is joined as a party to the application.

(4) Where a notice under subsection (3) is given, subsection (1) applies as if, instead of referring to a period of 3 months after the Department receives the application, it referred to a period of 3 months after the date on which the person entitled to such an estate in the land as is mentioned in the notice is joined as a party to the application.

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#### Commencement Information

**I5** S. 19 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

### Appeal against decision of Department on application for felling licence

**20.**—(1) A person aggrieved by—

- (a) the refusal of the Department to grant a felling licence on an application, or
- (b) any conditions subject to which a felling licence is granted by the Department,

may appeal to a person appointed under section 26.

(2) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the decision of the Department on the application; or
- (b) in the case of an appeal under subsection (1)(a), direct the Department to issue a felling licence subject to the such conditions as are specified in the direction; or
- (c) in the case of an appeal under subsection (1)(b), direct the Department to modify the conditions subject to which the felling licence was granted.

(3) It is the duty of the Department to give effect to any direction under subsection (2)(b) or (c).

#### Commencement Information

**I6** S. 20 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

PROSPECTIVE

### Fees in connection with felling licences

**21.**—(1) Such fees as may be prescribed shall be charged by the Department in respect of—

- (a) applications for felling licences;
- (b) the issue of felling licences;
- (c) the continuation in force of felling licences.

(2) Regulations may provide—

- (a) for fees to be payable at such times as may be prescribed;
- (b) for fees to be payable in one sum or by instalments.

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(3) The Department may decline to proceed with—

- (a) any application for a felling licence, or
- (b) the issue of any felling licence,

until any fee or instalment of a fee in respect of the application or issue (as the case may be) is duly paid.

(4) If, in the case of any application for a felling licence, any fee or instalment of a fee in respect of the application for or issue of the licence is not duly paid by the prescribed time—

- (a) the application shall be treated as withdrawn at that time; and
- (b) any decision made on the application ceases to have effect at that time.

(5) If any fee or instalment of a fee in respect of the continuation in force of a felling licence is not duly paid by the prescribed time, the licence terminates at that time.

(6) The Department may, if it considers there to be exceptional circumstances that justify its doing so in any case where subsection (4) or (5) has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded.

(7) Regulations under this section may provide for fees to be remitted or refunded (in whole or part) in prescribed cases.

### *Restocking notice*

#### **Power of Department to require restocking after unauthorised felling**

**22.**—(1) The Department may serve a notice under this section (a “restocking notice”) on a person where it appears to the Department that—

- (a) the person has committed an offence under section 15(3); and
- (b) the person has such an estate in the land in question as is mentioned in section 16(1).

(2) A restocking notice is a notice requiring the person on whom it is served—

- (a) to restock or stock with trees of a specified species the land or such other land as may be agreed between the Department and that person; and
- (b) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding 5 years, specified in the notice.

#### **Commencement Information**

**I7** S. 22 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

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### **Appeal against restocking notice**

**23.—**(1) A person on whom a restocking notice has been served who objects to the notice or to any requirement contained in the notice may appeal to a person appointed under section 26.

(2) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the notice, or
- (b) direct the Department to withdraw the notice or modify it in such manner as is specified in the direction.

(3) It is the duty of the Department to give effect to any direction under subsection (2)(b).

#### **Commencement Information**

**18** S. 23 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

### *Enforcement of felling licence conditions and restocking notice*

### **Notice to require compliance with felling licence conditions or restocking notice**

**24.—**(1) The provisions of this section apply if—

- (a) any condition of a felling licence is not complied with; or
- (b) any restocking notice served by the Department is not complied with.

(2) The Department may give to the person responsible a notice (an “enforcement notice”) requiring such steps as may be specified in the notice 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.

(3) For purposes of subsection (2) “the person responsible” is—

- (a) in the case of non-compliance with the conditions of a felling licence, the person specified in subsection (4); and
- (b) in the case of non-compliance with a restocking notice, the person on whom the notice was served.

(4) The person referred to in subsection (3)(a) is—

- (a) the applicant for the licence, if on the date the notice is served the applicant has such estate in the land as is referred to in section 16(1); or
- (b) in any other case, the owner of the land.

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(5) If after the expiration of the time specified in the enforcement notice any steps required by that notice have not been taken, an authorised person may, subject to section 25, take those steps.

(6) If an authorised person, in the exercise of powers under subsection (5), takes any steps required by an enforcement notice, the Department may recover from the person to whom the notice was given any expenses reasonably incurred by the Department in connection with the authorised person taking those steps.

(7) Any sums recoverable under subsection (6) may be recovered summarily as a civil debt.

(8) A person who without reasonable excuse fails to take any steps required by an enforcement notice given to that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who is required by an enforcement notice to carry out works or take any other steps may carry out those works or take those steps notwithstanding any lease, covenant or contract relating to the trees or land affected by the notice.

#### Commencement Information

**19** S. 24 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

### Appeal against enforcement notice

**25.—(1)** A person to whom an enforcement notice is given in relation to a felling licence may appeal against the enforcement notice to a person appointed under section 26 on the grounds—

- (a) that the conditions of the licence have been complied with; or
- (b) that the steps required by the enforcement notice to be taken are not required for compliance with the conditions of the licence.

(2) A person to whom an enforcement notice is given in relation to a restocking notice may appeal against the enforcement notice to a person appointed under section 26 on the grounds—

- (a) that the restocking notice has been complied with; or
- (b) that the steps required by the enforcement notice to be taken are not required by the restocking notice.

(3) An enforcement notice shall be inoperative—

- (a) until the expiration of the period for bringing an appeal under this section; and
- (b) where an appeal is brought under this section, until the conclusion of any proceedings under this section on that appeal.

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(4) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the enforcement notice, or
- (b) direct the Department to withdraw the notice or modify it in such manner as is specified in the direction.

(5) It is the duty of the Department to give effect to any direction under subsection (4)(b).

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**Commencement Information**

**II0** S. 25 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

*Supplementary*

**Appeals under this Part**

**26.**—(1) The Department shall appoint a person to determine an appeal under section 20, 23 or 25.

(2) A civil servant employed in the Department shall not be appointed under this section.

(3) The Department may by regulations provide—

- (a) for appeals under section 20, 23 and 25 to be made in such manner and within such time as is prescribed;
- (b) for the procedure to be followed, and powers to be exercisable, by a person appointed under this section in, or in connection with, determining an appeal under section 20, 23 or 25.

(4) The Department may pay to a person appointed under this section such remuneration or allowances as it may, with the consent of DFP, determine.

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**Commencement Information**

**III** S. 26 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Identification of trees**

**27.** An authorised officer may take such steps, whether by marking or otherwise, as the Department considers necessary for identifying trees—

- (a) which are the subject of a felling licence; or
- (b) in respect of which a felling licence has been refused.

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**Commencement Information**

**I12** S. 27 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Regulations as to applications, claims and notices**

**28.** A power conferred by this Part to prescribe the manner in which an application, a claim or a notice is to be made or given under this Part includes power to require—

- (a) that any particulars specified in the application, claim or notice be verified in the prescribed manner;
- (b) that notice of the application, claim or notice be given to a prescribed person or body.

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**Commencement Information**

**I13** S. 28 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Application of this Part to Crown land**

**29.—**(1) In this section “Crown land” means—

- (a) land an interest in which belongs to Her Majesty in right of the Crown; and
- (b) 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 subsection (3), this Part applies in relation to Crown land and trees growing on such land to the extent only of any estate therein which is for the time being held otherwise than on behalf of the Crown.

(3) Except with the consent of the appropriate authority—

- (a) no conditions shall be imposed on the grant of a felling licence in respect of trees on Crown land;
- (b) no restocking notice shall be given in respect of Crown land.

(4) 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 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 DFP, whose decision shall be final.

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**Commencement Information**

**I14** S. 29 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Interpretation of this Part**

**30.** In this Part—

- “enforcement notice” has the meaning given in section 24(2);
- “felling” includes intentionally destroying by any means;
- “felling licence” has the meaning given by section 15(1);
- “government department” means a Northern Ireland department or a department of the Government of the United Kingdom;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Department;
- “restocking notice” has the meaning given by section 22(1).

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**Commencement Information**

**I15** S. 30 in operation at 17.6.2013 by S.R. 2013/138, art. 2, Sch.

**Status:**

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**Changes to legislation:**

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