
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

The Forestry (Exemptions) (Scotland) Regulations 2019

Citation and commencement

1. These Regulations may be cited as the Forestry (Exemptions) (Scotland) Regulations 2019 and come into force on 1 April 2019.

Interpretation

2. In these Regulations—

“aerodrome” means any area of land or water designed, equipped, set apart or commonly used for affording facilities for the landing and departure of aircraft but does not include any area of land or water designed, equipped, set apart or commonly used for affording facilities only for the landing and departure of any unmanned aerial vehicle,

“burial ground” has the same meaning as in section 1 of the Burial and Cremation (Scotland) Act 2016(1),

“Caledonian Pinewood” means a woodland specified in schedule 2,

“churchyard” means an enclosed piece of ground in which a church stands,

“electric line” has the same meaning as in Part I of the Electricity Act 1989(2),

“electrical plant” has the same meaning as in Part I of the Electricity Act 1989,

“electricity operator” means a holder of a licence under Part I of the Electricity Act 1989,

“public open space” is an area which is designed and maintained for use by the public and includes, but is not limited to—

- (a) a park,
- (b) a public garden,
- (c) an area of grass maintained for sport or recreation, or
- (d) a footway or footpath (within the meaning of section 151(2) of the Roads (Scotland) Act 1984(3)),

but does not include any stands of trees which have a canopy cover of more than 20% within an area of 0.1ha or greater,

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

“relevant person” means the owner of the land on which the tree is situated or the occupier of such land who is carrying out the felling with the written permission of the owner,

“Scottish Water” means the body corporate established by section 20(1) of the Water Industry (Scotland) Act 2002(4),

(1) 2016 asp 20.
(2) 1989 c.29.
(3) 1984 c.54.
(4) 2002 asp 3.

“statutory undertaker” means a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, power, lighthouse undertaking, or any undertaking for the supply of hydraulic power or of water, or a holder of a licence under section 7A of the Gas Act 1986⁽⁵⁾,

“the Act” means the Forestry and Land Management (Scotland) Act 2018,

“the Forestry Commissioners” means the Forestry Commissioners referred to in section 1(1) of the 1967 Act, and

“the 1967 Act” means the Forestry Act 1967⁽⁶⁾.

Exemption from offence of unauthorised felling

3. Section 23(1) of the Act (offence of unauthorised felling) does not apply where felling is of a type specified in regulation 4.

Specified types of felling

4. The types of felling specified for the purposes of regulation 3 are—
- (a) the felling, by a relevant person, of a tree with a diameter not exceeding 10 centimetres measured over the bark at a point 1.3 metres from the base,
 - (b) the felling, by a relevant person, of a tree situated in—
 - (i) an orchard,
 - (ii) a garden,
 - (iii) a churchyard,
 - (iv) a burial ground, or
 - (v) a public open space,
 - (c) the felling, by a relevant person, of trees where the aggregate cubic content of the trees felled does not exceed 5 cubic metres in any quarter and for the purposes of that calculation—
 - (i) trees felled in accordance with paragraphs (a) and (b) and paragraphs (d) to (p) of this regulation are disregarded, and
 - (ii) the aggregate cubic content per quarter is calculated by reference to all land owned by the relevant person,
 - (d) the felling of a tree where necessary for the prevention of immediate danger to persons or to property,
 - (e) the felling of a tree where immediately required for the purposes of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning (Scotland) Act 1997⁽⁷⁾,
 - (f) the felling of a tree which may obstruct the approach of aircraft to, or the departure of aircraft from, any aerodrome, or which may hinder the safe and efficient use of air navigational or aircraft landing equipment,
 - (g) the felling of a tree by, or at the request of, an electricity operator, where—
 - (i) the tree is in close proximity to an electric line or electrical plant which is, is being, or is to be, installed by the operator, and

⁽⁵⁾ 1986 c.44.

⁽⁶⁾ 1967 c.10.

⁽⁷⁾ 1997 c.8.

- (ii) the presence of the tree has the effect mentioned in paragraph 9(1)(a) or (b) of schedule 4 of the Electricity Act 1989⁽⁸⁾,
- (h) the felling of a tree by, or at the request of, a statutory undertaker, on land occupied by the statutory undertaker which would otherwise obstruct the construction of any works required for the undertaker's purposes or which is interfering with the maintenance of any works vested in that undertaker,
- (i) the felling of a tree by or at the request of—
 - (i) Scottish Water, where the tree is interfering, or may interfere, with the exercise of any functions of Scottish Water, or
 - (ii) a local authority, where done in accordance with the local authority's functions under section 56(1) and (2)(a) to (d) of the Flood Risk Management (Scotland) Act 2009⁽⁹⁾,
- (j) the felling of a tree of the genus *Ulmus* (commonly known as Elm) which is affected by disease caused by the fungus *Ceratocystis ulmi* (commonly known as Dutch Elm disease) to such an extent that the greater part of the crown of the tree is dead,
- (k) the felling of a tree on land which is subject to an agreement entered into with the Forestry Commissioners under section 5(1) of the 1967 Act (forestry dedication agreements) and which is being managed in accordance with a plan of operations approved by the Forestry Commissioners or the Scottish Ministers ("the plan"), where—
 - (i) the agreement is a forestry dedication agreement registered in the General Register of Sasines or the Land Register of Scotland,
 - (ii) any obligations in the forestry dedication agreement stated to be binding on the owner of the land are, at the time of felling, binding on the person who is then the owner of the land, and
 - (iii) the felling is in accordance with the plan,
- (l) the felling of a tree on land which is subject to an agreement entered into with the Forestry Commissioners under section 5(1) of the 1967 Act (forestry dedication agreements etc.) and which is being managed in accordance with a plan of operations approved by the Forestry Commissioners or the Scottish Ministers ("the plan"), where—
 - (i) the agreement is a forestry dedication agreement which is not registered in the General Register of Sasines or the Land Register of Scotland,
 - (ii) the land is, at the time of the felling, owned by the person or persons who entered into the agreement with the Forestry Commissioners or by the survivor or survivors of such person or persons, and
 - (iii) the felling is in accordance with the plan.
- (m) the felling of dead trees,
- (n) the felling of a tree where required by order of a court or tribunal or by any enactment,
- (o) the felling of a tree to which a tree preservation order relates where the felling—
 - (i) occurs after 1 April 2019, and
 - (ii) is carried out in accordance with the consent of the authority which made the order or the Scottish Ministers, as the case may be, following a referral under section 15(1) (b) or 15(2)(a) of the 1967 Act,

⁽⁸⁾ 1989 c.29.

⁽⁹⁾ 2009 asp 6.

- (p) the felling of a tree that is covered by a tree preservation order where the felling is carried out in accordance with the consent of the planning authority following a referral to the authority under section 33(1)(b) of the Act.

Circumstances where regulation 4(c) does not apply

- 5. The exemption in regulation 4(c) does not apply to the felling of trees—
 - (a) in woodlands—
 - (i) which are between 0.1ha and 0.5ha in size, and
 - (ii) where at least 50% of the woodland canopy is comprised of any of the species of trees listed in schedule 1, or
 - (b) in Caledonian Pinewoods.

St Andrew's House,
Edinburgh
Date

Name
A member of the Scottish Government