

*Draft Regulations laid before the Scottish Parliament under section 76(2)(a) of the Forestry and
Land Management (Scotland) Act 2018 (asp 8), for approval by resolution of the Scottish Parliament.*

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2019 No.

FORESTRY

The Forestry (Exemptions) (Scotland) Regulations 2019

Made - - - - 2019
Coming into force - - 1st April 2019

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 24(1) and (2) and 76(3) of the Forestry and Land Management (Scotland) Act 2018⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 76(2)(a) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

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⁽²⁾,

“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⁽³⁾,

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

(1) 2018 asp 8.
(2) 2016 asp 20.
(3) 1989 c.29.

“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⁽⁴⁾),

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⁽⁵⁾,

“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⁽⁶⁾,

“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⁽⁷⁾.

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,

(4) 1984 c.54.
(5) 2002 asp 3.
(6) 1986 c.44.
(7) 1967 c.10.

- (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⁽⁸⁾,
- (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
 - (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⁽⁹⁾,
- (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⁽¹⁰⁾,
- (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,

⁽⁸⁾ 1997 c.8.

⁽⁹⁾ 1989 c.29.

⁽¹⁰⁾ 2009 asp 6.

- (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,
- (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

SCHEDULE 1

Regulation 5(a)(ii)

SPECIES OF TREE

<i>(1) Common name</i>	<i>(2) Scientific name</i>
Ash	Fraxinus Excelsior
Aspen	Populus Tremula
Bay Willow	Salix Pentandra
Bird Cherry	Pranus Padus
Blackthorn	Prunus Spinosa
Common Alder	Alnus Glutinosa
Common Hawthorn	Crataegus Monogyna
Crab Apple	Malus Sylvestris
Dark-Leaved Willow	Salix Myrsinifolia
Downy Birch	Betula Pubescens
Eared Willow	Salix Aurita
Elder	Sambucus Nigra
Goat Willow	Salix Caprea
Grey Willow (sallow)	Salix Cinerea
Hazel	Corylus Avellana
Holly	Ilex Aquifolium
Juniper	Juniperus Communis
Pedunculate Oak	Quercus Robur
Purple Willow	Salix Purpurea
Rowan	Sorbus Aucuparia
Sessile Oak	Quercus Petraea
Silver Birch	Betula Pendula
Spindle	Euonymus Europaeus
Tea-Leaved Willow	Salix Phyllicifolia
Wild Cherry	Pranus Avium Gean
Wych Elm	Ulmus Glabra
Yew	Taxus Baccata

SCHEDULE 2

Regulations 2 and 5(b)

CALEDONIAN PINWOODS

1. In this Schedule “grid reference” means Ordnance Survey National Grid reference⁽¹¹⁾.

<i>Name of Caledonian Pinewood</i>	<i>Grid reference</i>
Abernethy	The Caledonian Pinewood known as Abernethy (grid references: NH91, NH92, NJ01, and NJ02).
Achlain	The Caledonian Pinewood known as Achlain (grid reference NH21).
Achnaconeran	The Caledonian Pinewood known as Achnaconeran (grid reference NH41).
Achnasaul	The Caledonian Pinewood known as Achnasaul (grid references NN18 and NN19).
Achnashellach	The Caledonian Pinewood known as Achnashellach (grid references NH04 and NH05).
Allt Broighleachan	The Caledonian Pinewood known as Allt Broighleachan (grid reference NN23).
Allt Chaorunn	The Caledonian Pinewood known as Allt Chaorunn (grid reference NN25).
Allt Coire Bhiochair	The Caledonian Pinewood known as Allt Coire Bhiochair (grid reference NN23).
Allt Cul	The Caledonian Pinewood known as Allt Cul (grid reference NO19).
Allt Mheuran	The Caledonian Pinewood known as Allt Mheuran (grid reference NN14).
Amat	The Caledonian Pinewood known as Amat (grid references: NH38, NH48, and NH49).
An Slochd	The Caledonian Pinewood known as An Slochd (grid reference NM97).
Ard Trilleachan	The Caledonian Pinewood known as Ard Trilleachan (grid reference NN04).
Ardessie	The Caledonian Pinewood known as Ardessie (grid reference NH08).
Attadale	The Caledonian Pinewood known as Attadale (grid reference NG93).
Baddengorm	The Caledonian Pinewood known as Baddengorm (grid reference NH82).

(11) The National Grid is the map reference system used on all Ordnance Survey maps identify the position of a feature. Further information may be found at www.ordnancesurvey.co.uk.

<i>Name of Caledonian Pinewood</i>	<i>Grid reference</i>
Ballochbuie	The Caledonian Pinewood known as Ballochbuie (grid references: NO18, NO19, NO28, and NO29).
Beinn Eighe	The Caledonian Pinewood known as Beinn Eighe (grid references NG96 and NH06).
Black Wood of Rannoch	The Caledonian Pinewood known as Black Wood of Rannoch (grid reference NN55).
Breda	The Caledonian Pinewood known as Breda (grid reference NJ51).
Bunloyne	The Caledonian Pinewood known as Bunloyne (grid references NH20 and NH21).
Callop River	The Caledonian Pinewood known as Callop River (grid reference NM97).
Carn Na Loinne	The Caledonian Pinewood known as Carn Na Loinne (grid reference NJ02).
Ceannacroc	The Caledonian Pinewood known as Ceannacroc (grid reference NH21).
Coille Coire Chuile	The Caledonian Pinewood known as Coille Coire Chuile (grid reference NN32).
Coir a' Ghamhna	The Caledonian Pinewood known as Coir a' Ghamhna (grid reference NH08).
Conaglen	The Caledonian Pinewood known as Conaglen (grid reference NM97).
Cougie	The Caledonian Pinewood known as Cougie (grid references NH21 and NH22).
Crannach	The Caledonian Pinewood known as Crannach (grid reference NN34).
Crathie	The Caledonian Pinewood known as Crathie (grid reference NO29).
Creag Ghiubhais	The Caledonian Pinewood known as Creag Ghiubhais (grid reference NO39).
Dark Mile	The Caledonian Pinewood known as Dark Mile (grid reference NN18).
Doire Darach	The Caledonian Pinewood known as Doire Darach (grid reference NN24).
Dubh Uisge	The Caledonian Pinewood known as Dubh Uisge (grid reference NM97).
Dundreggan	The Caledonian Pinewood known as Dundreggan (grid reference NH31).
Easan Dorcha	The Caledonian Pinewood known as Easan Dorcha (grid reference NH05).

<i>Name of Caledonian Pinewood</i>	<i>Grid reference</i>
Gleann Fuar	The Caledonian Pinewood known as Gleann Fuar (grid reference NN23)
Gleann Sron a Chreagain	The Caledonian Pinewood known as Gleann Sron a Chreagain (grid reference NN07)
Glen Affric	The Caledonian Pinewood known as Glen Affric (grid references: NH12, NH22, and NH32).
Glen Avon	The Caledonian Pinewood known as Glen Avon (grid reference NJ10).
Glen Barisdale	The Caledonian Pinewood known as Glen Barisdale (grid reference NG80 and NG90).
Glen Brown	The Caledonian Pinewood known as Glen Brown (grid references NJ01 and NJ11).
Glen Buck	The Caledonian Pinewood known as Glen Buck (grid reference NH30)
Glen Cannich	The Caledonian Pinewood known as Glen Cannich (grid references: NH12, NH13, NH22, NH23, and NH33)
Glen Derry	The Caledonian Pinewood known as Glen Derry (grid reference NO09).
Glen Einig	The Caledonian Pinewood known as Glen Einig (grid reference NH39).
Glen Falloch	The Caledonian Pinewood known as Glen Falloch (grid reference NN32).
Glen Ferrick	The Caledonian Pinewood known as Glen Ferrick (grid reference NO59).
Glen Feshie	The Caledonian Pinewood known as Glen Feshie (grid references: NH80, NH90, NN88, and NN89).
Glen Garry	The Caledonian Pinewood known as Glen Garry (grid reference NH10, NH20, NN19, and NN29).
Glen Gour	The Caledonian Pinewood known as Glen Gour (grid reference NM96).
Glen Kinglass	The Caledonian Pinewood known as Glen Kinglass (grid reference NN13).
Glen Loy	The Caledonian Pinewood known as Glen Loy (grid reference NN08 and NN18)
Glen Loyne	The Caledonian Pinewood known as Glen Loyne (grid reference NH00 and NH10).
Glen Lui	The Caledonian Pinewood known as Glen Lui (grid reference NO08 and NO09).
Glen Mallie	The Caledonian Pinewood known as Glen Mallie (grid references NN08 and NN18).

<i>Name of Caledonian Pinewood</i>	<i>Grid reference</i>
Glen Nevis	The Caledonian Pinewood known as Glen Nevis (grid reference NN16).
Glen Quoich	The Caledonian Pinewood known as Glen Quoich (grid references NO09 and NO19).
Glen Scaddle	The Caledonian Pinewood known as Glen Scaddle (grid reference NM96).
Glen Strae	The Caledonian Pinewood known as Glen Strae (grid reference NN13).
Glen Strathfarrar	The Caledonian Pinewood known as Glen Strathfarrar (grid references: NH13, NH14, NH23, NH33, and NH34)
Glen Tanar	The Caledonian Pinewood known as Glen Tanar (grid references: NO48, NO49, and NO59).
Glen Tromie	The Caledonian Pinewood known as Glen Tromie (grid reference NN79).
Glen Ure	The Caledonian Pinewood known as Glen Ure (grid reference NN04).
Glenmore	The Caledonian Pinewood known as Glenmore (grid references: NH90, NH91, NJ00, and NJ01).
Guisachan	The Caledonian Pinewood known as Guisachan (grid references NH22 and NH32).
Kinveachy	The Caledonian Pinewood known as Kinveachy (grid references: NH81, NH82, NH91, and NH92).
Loch Clair	The Caledonian Pinewood known as Loch Clair (grid references: NG95, NH05, and NH06)
Loch Dochard	The Caledonian Pinewood known as Loch Dochard (grid reference NN24).
Loch Hourn	The Caledonian Pinewood known as Loch Hourn (grid reference NG80 and NG90).
Loch Leven	The Caledonian Pinewood known as Loch Leven (grid reference NN16).
Loch Maree Islands	The Caledonian Pinewood known as Loch Maree Islands (grid references: NG87, NG96, and NG97)
Loch Shiel	The Caledonian Pinewood known as Loch Shiel (grid references NM87, NM97, and NM98).
Lochindorb	The Caledonian Pinewood known as Lochindorb (grid reference NH93).
Lochourn River	The Caledonian Pinewood known as Lochourn River (grid reference NG90).

<i>Name of Caledonian Pinewood</i>	<i>Grid reference</i>
Meggernie	The Caledonian Pinewood known as Meggernie (grid reference NN54).
Rhidorroch	The Caledonian Pinewood known as Rhidorroch (grid references NH19 and NH29).
Rothiemurchus	The Caledonian Pinewood known as Rothiemurchus (grid references: NH80, NH90 and NH91).
Shieldaig	The Caledonian Pinewood known as Shieldaig (grid reference NG85).
South Loch Arkaig	The Caledonian Pinewood known as South Loch Arkaig (grid references: NN08, NN09, NN18, and NN19)
Strath Oykel	The Caledonian Pinewood known as Strath Oykel (grid reference NC40)
Strath Vaich	The Caledonian Pinewood known as Strath Vaich (grid reference NH37).
Taodail	The Caledonian Pinewood known as Taodail (grid reference NG94).
Torphantrick	The Caledonian Pinewood known as Torphantrick (grid references NO39 and NO49)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the exemptions to the offence of unauthorised felling under Part 4 of the Forestry and Land Management (Scotland) Act 2018 (“the Act”).

Regulation 3 provides that section 23(1) of the Act (offence of unauthorised felling) does not apply to felling of a type mentioned in regulation 4. The exemption includes, for example, the felling of a tree situated in an orchard, garden, churchyard, burial ground or public open space.

Regulation 5 makes provision about the circumstances in which regulation 4(c) does not apply. The effect of which is that, for example, the exemption in regulation 4(c) does not apply to the felling of trees where at least 50% of the woodland canopy is comprised with a species of tree listed in schedule 1, or to the felling of trees in Caledonian Pinewoods as specified in schedule 2.