
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 47 (C. 1)

FORESTRY

**The Forestry and Land Management (Scotland)
Act 2018 (Commencement, Transitional
and Saving Provisions) Regulations 2019**

<i>Made</i>	- - - -	<i>13th February 2019</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>15th February 2019</i>
<i>Coming into force</i>	- -	<i>1st April 2019</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 85(2) and (7) of the Forestry and Land Management (Scotland) Act 2018⁽¹⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019 and come into force on 1 April 2019.

(2) In these Regulations—

“the 1967 Act” means the Forestry Act 1967⁽²⁾,

“the 1979 Act” means the Forestry Act 1979⁽³⁾,

“the 1979 Regulations” means the Forestry (Felling of Trees) Regulations 1979⁽⁴⁾,

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

“the appointed day” means the day appointed by regulation 2,

“Forestry Commissioners” means the Forestry Commissioners constituted under the Forestry Acts 1919 to 1945 and continued in force by section 1(1) the 1967 Act,

and any reference to a numbered regulation is, unless expressly indicated otherwise, a reference to the regulation so numbered in these Regulations.

(1) 2018 asp 8.

(2) 1967 c.10.

(3) 1979 c.21.

(4) S.I. 1979/791, as amended by S.I. 1987/632.

Appointed day

2. 1 April 2019 is the day appointed for the coming into force of the 2018 Act, so far as not already in force⁽⁵⁾.

Transitional: applications for a felling licence made but not determined before the appointed day – cases which are to be treated as applications for felling permission

3.—(1) An application for a felling licence under section 10 of the 1967 Act⁽⁶⁾ which was made, but not determined, before the appointed day is, on and after that day, to be treated as if it were an application for a felling permission under section 25 of the 2018 Act.

(2) Paragraph (1) does not apply to an application for a felling licence—

- (a) which was postponed before the appointed day by a notice served on the applicant under section 13(2) of the 1967 Act,
- (b) which was postponed under section 13(2) of the 1967 Act, but is under consideration again having satisfied the requirement set out in the notice of postponement before the appointed day,
- (c) which was made before the appointed day in response to a notice served on the applicant under section 10(5) of the 1967 Act,
- (d) which was made before the appointed day and which relates to the felling of trees in accordance with a plan of operations or other working plan approved by the Forestry Commissioners as described in section 14(1) of the 1967 Act,
- (e) in which the Forestry Commissioners have indicated to the applicant during consultation under section 12(1) of the 1967 Act⁽⁷⁾, in writing before the appointed day, that they are minded to grant a licence under section 10(2) of the 1967 Act subject to specified conditions.

(3) A person who has made an application of the type referred to in paragraph (1) is to be treated for all purposes as if they were a person entitled to make such an application under section 25 of the 2018 Act.

(4) For the purposes of this regulation, “determined” means that the application has been disposed of by the Forestry Commissioners by way of—

- (a) a decision to grant a felling licence (with or without conditions), under section 10(2) and, as applicable, 12(1) of the 1967 Act,
- (b) a decision to refuse to grant a felling licence under section 10(2), or a deemed refusal to grant a licence under section 13(1), of the 1967 Act, or
- (c) a decision to refer an application relating to trees to which a tree preservation order relates to the authority that made the order or to the Scottish Ministers, as the case may be, in terms of section 15(1)(b) or by a referral required under section 15(2)(a) of the 1967 Act.

Saving: applications for a felling licence made but not determined before the appointed day – cases which are to be determined under the 1967 Act

4.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

⁽⁵⁾ Sections 76 to 78, 82 to 84 and 86 came into force on 2 May 2018 by virtue of provision made in section 85(1) of the 2018 Act.

⁽⁶⁾ Section 10 was amended by the Nature Conservation (Scotland) Act 2004 ([asp 6](#)) (“the 2004 Act”), schedule 7, paragraph 2(2).

⁽⁷⁾ Section 12(1) was amended by the 2004 Act, schedule 7, paragraph 2(3).

(2) This paragraph applies to an application for a felling licence in the circumstances referred to in regulation 3(2).

(3) The provisions are—

- (a) sections 10, 12 to 15, 30, 34, 35, 48 and 49 and schedule 3 of the 1967 Act⁽⁸⁾, and
- (b) regulations 1, 3, 6 and 7 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

- (a) section 10 of the 1967 Act is to be read as if—
 - (i) references in that section to “the appropriate forestry authority” were references to “the Scottish Ministers”,
 - (ii) the words “complying with their duty of” in subsection (2)(b) were omitted, and
 - (iii) subsection (4)(b) were omitted,
- (b) section 12 of the 1967 Act is to be read as if the references to “the appropriate forestry authority” in subsection (1) were references to “the Scottish Ministers”,
- (c) section 13 of the 1967 Act is to be read as if—
 - (i) subsection (1) were omitted,
 - (ii) the references to “the appropriate forestry authority” in subsection (2) were references to “the Scottish Ministers”, and
 - (iii) the words from “Where” to the end of subsection (2) were omitted,
- (d) section 14 of the 1967 Act is to be read as if—
 - (i) the first reference in subsection (1) and all references in subsections (2) and (3) to “the appropriate forestry authority” were references to “the Scottish Ministers”, and
 - (ii) subsection (5) were omitted,
- (e) section 15 of the 1967 Act is to be read as if—
 - (i) references in that section to “the appropriate forestry authority” were references to “the Scottish Ministers”, and
 - (ii) references to “the Minister” were references to “the Scottish Ministers”,
 - (iii) for subsection (2)(a) there were substituted—
 - “(a) the Scottish Ministers shall deal with the application and in doing so shall have regard to that objection;”
- (f) section 30 of the 1967 Act is to be read as if the reference in that section to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
- (g) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,

(8) Section 14 was relevantly amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999 ([S.I. 1999/1747](#)) (“the 1999 Order”) paragraph 4(11). Section 30 was relevantly amended by the Criminal Procedure (Scotland) Act 1975 ([c.21](#)) (“the 1975 Act”), sections 289F and 289G. Section 34 was relevantly amended by the Abolition of Feudal Tenure etc. (Scotland) Act 2000 ([asp 5](#)) (“the 2000 Act”), schedule 13(1), paragraph 1 and the 1999 Order, paragraph 4(26)(a) and (b). Section 35 was amended by the Forestry Act 1986 ([c.30](#)), section 1(c) and the Planning (Consequential Provisions) (Scotland) Act 1998 ([c.11](#)), schedule 2, paragraph 13(2). Section 48 was amended by the 1975 Act, schedule 7D. Section 49 was amended by the 2000 Act, schedule 13(I), paragraph 1, the 1999 Order [S.I. 2013/755](#) and [S.I. 2017/524](#). Schedule 3 was amended by the Planning Act 2008 ([c. 29](#)), schedule 8, paragraph 6.

- (h) regulation 6 of the 1979 Regulations is to be read as if—
 - (i) the reference to “the Conservator” were a reference to “the Scottish Ministers”, and
 - (ii) the second reference to “the Commissioners” were a reference to “the Scottish Ministers”,
- (i) regulation 7 of the 1979 Regulations is to be read as if the reference to “the Commissioners” in that regulation were a reference to “the Scottish Ministers”,
- (j) Form 3 in schedule 1 of the 1979 Regulations is to be read as if—
 - (i) the reference to “the Forestry Commissioners” were a reference to “the Scottish Ministers”, and
 - (ii) the reference to “the Commissioners” were a reference to “the Scottish Ministers”.

Transitional: felling licences granted under the 1967 Act after the appointed day – to be treated as felling permissions

5.—(1) A felling licence granted by the Scottish Ministers in determining an application in the circumstances referred to in regulation 3(2) after the appointed day is, on and after the date on which it is granted, to be treated as if it were a felling permission granted under section 27 of the 2018 Act.

(2) Paragraph (1) does not apply for the purposes of making, considering or determining a request for a review of the Scottish Ministers’ decision—

- (a) to refuse to grant a felling licence, or
- (b) to grant a felling licence subject to conditions,

which the applicant would have been entitled to make in terms of section 16 of the 1967 Act⁽⁹⁾ and regulation 8 of the 1979 Regulations (as applied and modified by regulation 6), but has not requested before the expiry of the period referred to in regulation 8 of the 1979 Regulations.

(3) A condition attached to a felling licence referred to in paragraph (1) is to be treated as if it were a condition applied to a felling permission under section 27(4) of the 2018 Act.

(4) The provision made in—

- (a) section 27(7) (variation and revocation of conditions),
- (b) section 38 (registration of notices to comply),
- (c) section 39 (registered notices to comply: offence),
- (d) section 40 (registration of notices of variation),
- (e) section 41 (registration of notices of discharge from compliance),
- (f) section 42 (meaning of “register”),
- (g) section 43 (descriptions of land),
- (h) section 44 (receipt of notices by Keeper),
- (i) section 56 (registration of remedial notices), and
- (j) section 57 (registered remedial notices: offence),

of the 2018 Act does not apply to a condition referred to in paragraph (3) or to any restocking direction issued under section 36 of the 2018 Act in relation to such a condition.

(9) Section 16 was amended by the 1999 Order, schedule 12(II), paragraph 4(12)(a),(b) and (c).

Saving: applications for a felling licence determined under the 1967 Act after appointed day - review

6.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day, as they did immediately before that day.

(2) This paragraph applies to a request for a review of a decision of the Scottish Ministers under section 10(2) or 13(1) of the 1967 Act (as modified by regulation 4(4))—

- (a) to refuse to grant a felling licence, or
- (b) to grant a felling licence subject to conditions,

in determining an application in the circumstances referred to in regulation 3(2).

(3) The provisions are—

- (a) sections 16, 30, 34 and 35 and 49 of the 1967 Act, and
- (b) regulations 1, 3 and 8 and schedule 1 of the 1979 regulations.

(4) The modifications are—

(a) section 16 of the 1967 Act is to be read as if—

- (i) the reference in subsection (1) to “the appropriate forestry authority” were a reference to “the Scottish Ministers”, and
- (ii) for subsection (2) there were substituted—

“(2) A person aggrieved by the refusal or conditions may by a notice served within the prescribed time and in the prescribed manner request the Scottish Ministers to refer the matter to a person appointed by them for that purpose.”,

(b) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,

(c) regulation 8 of the 1979 Regulations is to be read as if—

- (i) the reference in paragraph (1) to “the appropriate Minister” were a reference to “the Scottish Ministers”,
- (ii) paragraph (1)(b) were omitted, and
- (iii) for paragraph (2) there were substituted—

“(2) Any notice under section 16(2) of the Act shall be in Form 4 or Form 6 according to whether the case falls within sub-paragraph (a) or (c) of paragraph (1).”,

(d) Form 4 in schedule 1 of the 1979 Regulations is to be read as if—

- (i) the references to “the Forestry Commissioners” were a reference to “the Scottish Ministers”,
- (ii) for the words “to a committee appointed under section 27 of the 1967 Act” there were substituted “a person appointed under section 16 of the 1967 Act”,
- (iii) the reference in numbered paragraph (1) to “the committee” were a reference to “a committee appointed under section 27 of the 1967 Act”,
- (iv) the reference in numbered paragraph (2) to “a committee” were a reference to “a committee appointed under section 27 of the 1967 Act”, and
- (v) the references to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”,

(e) Form 6 in schedule 1 of the 1979 Regulations is to be read as if—

- (i) the reference to “the Forestry Commissioners” were a reference to “the Scottish Ministers”, and
- (ii) the reference to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”.

Saving – applications for felling licence determined under the 1967 Act after the appointed day - compensation

7.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

(2) This paragraph applies to a decision of the Scottish Ministers to refuse to grant a felling licence in determining an application in the circumstances referred to in regulation 3(2).

(3) The provisions are—

- (a) section 10(4)(a), 11, 29 to 31, 34, 35, 48 and 49 of the 1967 Act⁽¹⁰⁾, and
- (b) regulation 1, 3 and 5 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

- (a) section 10(4)(a) of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
- (b) section 11 of the 1967 Act is to be read as if—

- (i) the references to “the appropriate forestry authority” were references to “the Scottish Ministers”,

- (ii) for subsections (2) and (3) there were substituted—

- “(2) Compensation under this section shall be recoverable from the Scottish Ministers on a claim made in the form prescribed for that purpose in regulation 5 and Form 2 of the 1979 Regulations.

- “(3) Claims for 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 no such claim shall be made more than 12 months after the date the applicant is notified of the decision to refuse to grant the licence under section 10(6).”, and

- (iii) subsection (5) were omitted,

- (c) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,

- (d) section 48 of the 1967 Act is to be read as if—

- (i) the references to “the appropriate enforcement authority” and “the appropriate forestry authority” were references to “the Scottish Ministers”,

- (ii) subsection (1A)(a) were omitted, and

- (iii) subsection (2) were omitted,

- (e) regulation 5 of the 1979 Regulations is to be read as if the reference to “the Conservator” were a reference to “the Scottish Ministers”, and

- (f) Form 2 in schedule 1 of the 1979 Regulations is to be read as if—

⁽¹⁰⁾ Section 11 was amended by the 2004 Act, schedule 7, paragraph 2(2).

- (i) the references to “the Forestry Commissioners” were references to “the Scottish Ministers”,
- (ii) the alternative paragraph 2 were omitted, and
- (iii) the reference to “the Conservator, Forestry Commission” were a reference to “the Scottish Ministers”.

Saving: applications for felling licence for trees subject to a tree preservation order – referred before appointed day

8.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, on and after the appointed day, as they did immediately before that day.

(2) This paragraph applies to a referral—

- (a) under section 15(1)(b) of the 1967 Act, to the authority that made the tree preservation order, and
- (b) under section 15(2)(a) of the 1967 Act, to the Scottish Ministers,

which was made but not determined before the appointed day.

(3) The provisions are section 15 and schedule 3 of the 1967 Act.

Saving: tree felling in accordance with an approved working plan – felling licence refused before the appointed day

9.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day, as they did immediately before that day.

(2) This paragraph applies where—

- (a) an application for a felling licence related to the felling of trees in accordance with an approved plan of operations or other working plan was refused under section 14(2) of the 1967 Act, and
- (b) the applicant—
 - (i) served a notice requiring the appropriate forestry authority to buy the trees specified in the notice under section 14(3) of the 1967 Act before the appointed day, or
 - (ii) serves a notice requiring the Scottish Ministers to buy the trees specified in the notice under section 14(3) of that Act before the expiry of the period referred to in regulation 6 of the 1979 Regulations.

(3) The provisions are—

- (a) sections 14, 30, 31, 34, 35, 48 and 49 of the 1967 Act,
- (b) regulations 1, 3 and 6 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

- (a) section 14 of the 1967 Act is to be read as if—
 - (i) the second reference in subsection (3) to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
 - (ii) the reference in subsection (4)(b) to “the appropriate forestry authority” were a reference to “the Scottish Ministers”, and
 - (iii) subsection (5) were omitted,
- (b) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,

- (c) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
- (d) regulation 6 of the 1979 Regulations is to be read as if the reference to “the Conservator” were a reference to “the Scottish Ministers”,
- (e) Form 3 in schedule 1 of the 1979 Regulations is to be read as if—
 - (i) the reference to “the Commissioners” were a reference to “the Scottish Ministers”, and
 - (ii) the reference to “the Conservator, Forestry Commission” were a reference to “the Scottish Ministers”.

Transitional: felling licences granted before the appointed day - to be treated as felling permissions

10.—(1) Any felling licence granted under section 10 of the 1967 Act before the appointed day is, on and after that day, to be treated as if it were a felling permission granted by the Scottish Ministers under section 27 of the 2018 Act.

(2) Paragraph (1) does not apply for the purposes of making, considering or determining a request for a review of a decision to grant a felling licence subject to conditions, which the applicant would be entitled to request under section 16 of the 1967 Act and regulation 8 of the 1979 Regulations (as applied and modified by regulation 11(4)), but has not requested before the expiry of the period referred to in regulation 8 of the 1979 Regulations.

(3) A condition attached to a felling licence referred to in paragraph (1) is to be treated as if it were a condition applied to a felling permission under section 27(4) of the 2018 Act.

(4) The provision made in—

- (a) section 27(7) (variation and revocation of conditions),
- (b) section 38 (registration of notices to comply),
- (c) section 39 (registered notices to comply: offence),
- (d) section 40 (registration of notices of variation),
- (e) section 41 (registration of notices of discharge from compliance),
- (f) section 42 (meaning of “register”),
- (g) section 43 (descriptions of land),
- (h) section 44 (receipt of notices by Keeper),
- (i) section 56 (registration of remedial notices), and
- (j) section 57 (registered remedial notices: offence),

of the 2018 Act does not apply to a condition referred to in paragraph (3) or to any restocking direction issued under section 36 of the 2018 Act in relation to such a condition.

Saving: refusal or grant of a felling licence subject to conditions before the appointed day - review

11.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

(2) This paragraph applies to a review of—

(a) a decision to refuse to grant a felling licence under section 10(2) of the 1967 Act in which—

- (i) a notice requesting a review of such a decision was sent in accordance with section 16 of that Act and regulation 8 of the 1979 Regulations before the appointed day, or
- (ii) a notice requesting a review of such a decision is sent in accordance with section 16 of that Act and regulation 8 of the 1979 Regulations before the expiry of the period prescribed in regulation 8 of the 1979 Regulations for that purpose,

(b) a deemed refusal to grant a felling licence in terms of section 13(1) of the 1967 Act in which—

- (i) a notice requesting a review of such a decision was sent in accordance with regulation 8 of the 1979 Regulations before the appointed day, or
- (ii) a notice requesting a review of such a decision is sent in accordance with regulation 8 of the 1979 Regulations before the expiry of the period prescribed in regulation 8 of the 1979 Regulations for that purpose, and

(c) a decision to grant a felling licence subject to conditions under sections 10(2) and 12(1) of the 1967 Act in which—

- (i) a notice requesting a review of such a decision was sent in accordance with section 16 and regulation 8 of the 1979 Regulations before the appointed day, or
- (ii) a notice requesting a review of such a decision is sent in accordance with section 16 and regulation 8 of the 1979 Regulations before the expiry of the period prescribed in regulation 8 of the 1979 Regulations for that purpose.

(3) The provisions are—

- (a) sections 10, 12, 13, 16, 27, 30, 35, 48 and 49 of the 1967 Act⁽¹¹⁾, and
- (b) regulations 1, 3 and 8 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

(a) section 16 of the 1967 Act is to be read as if for subsection (3) there were substituted—

“(3) The Scottish Ministers shall after considering the committee’s report confirm the decision of the appropriate forestry authority on the application or reverse or modify that decision.”.

(b) section 27 of the 1967 Act is to be read as if—

- (i) subsection (2)(a) were omitted, and
- (ii) for subsection (3)(c) there were substituted—

“(c) take into consideration any information provided to them by the Scottish Ministers as to the promotion of the establishment and maintenance of adequate reserves of growing trees within the conservancy in which the trees are growing”.

(c) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”.

⁽¹¹⁾ Section 27 was amended by the 1999 Order (S.I. 1999/1747), schedule 12, paragraph 4(9) and 4(22)(a) to (d).

- (d) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
- (e) regulation 8 of the 1979 Regulations is to be read as if the reference in paragraph (1) to “the appropriate Minister” were a reference to “the Scottish Ministers”, and
- (f) Form 4, Form 5 and Form 6 in schedule 1 of the 1979 Regulations are to be read as if the references in those forms to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were references to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”.

Transitional: felling licences granted on review – to be treated as felling permissions

12.—(1) A felling licence granted (with or without conditions) by the Scottish Ministers in determining a review requested in the circumstances set out in regulations 6 and 11 is, on and after the date on which it is granted, to be treated as if it were a felling permission granted under section 27 of the 2018 Act.

(2) A condition attached to a felling licence referred to in paragraph (1) is to be treated as if it were a condition applied to a felling permission under section 27(4) of the 2018 Act.

(3) The provision made in—

- (a) section 27(7) (variation and revocation of conditions),
- (b) section 38 (registration of notices to comply),
- (c) section 39 (registered notices to comply: offence),
- (d) section 40 (registration of notices of variation),
- (e) section 41 (registration of notices of discharge from compliance),
- (f) section 42 (meaning of “register”),
- (g) section 43 (descriptions of land),
- (h) section 44 (receipt of notices by Keeper),
- (i) section 56 (registration of remedial notices), and
- (j) section 57 (registered remedial notices: offence),

of the 2018 Act does not apply to a condition referred to in paragraph (2) or to any restocking direction issued under section 36 of the 2018 Act in relation to such a condition.

Saving: refusal of an application for a felling licence before the appointed day – compensation

13.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

(2) This paragraph applies to any claim for compensation under section 10(2) and 11 of the 1967 Act in respect of refusal of an application for a felling licence where—

- (a) the claim for compensation was sent to the Conservator in accordance with section 11 of the 1967 Act and regulation 5 of the 1979 Regulations before the appointed day, or

- (b) the claim for compensation is sent to the Scottish Ministers in accordance with section 11 of the 1967 Act and regulation 5 of the 1979 regulations before the expiry of the period set out in section 11 for that purpose.
- (3) The provisions are—
 - (a) sections 10 (2) and (4), 11, 13, 29 to 31, 34, 35, 48 and 49 of the 1967 Act, and
 - (b) regulations 1, 3 and 5 and schedule 1 of the 1979 Regulations.
- (4) The modifications are—
 - (a) Section 11 of the 1967 Act is to be read as if—
 - (i) for subsection (2) there were substituted—

“(2) Compensation under this section shall be recoverable from the Scottish Ministers on a claim made in the form prescribed for that purpose in regulation 5 and Form 2 in schedule 1 of the 1979 Regulations.”, and
 - (ii) subsection (5) were omitted,
 - (b) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
 - (c) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
 - (d) regulation 5 of the 1979 Regulations is to be read as if the reference to “the Conservator” were a reference to “the Scottish Ministers”,
 - (e) Form 2 in schedule 1 of the 1979 Regulations is to be read as if—
 - (i) the reference in paragraph 1 to “the Forestry Commissioners” were a reference to “the Scottish Ministers”, and
 - (ii) the reference to “the Conservator, Forestry Commission” were a reference to “the Scottish Ministers”.

Transitional: land management plans and forest design plans approved before the appointed day – to be treated as felling permissions

14.—(1) Any Land Management Plan or Forest Design Plan containing proposals in respect of felling and restocking operations approved by the Forestry Commissioners before the appointed day is, on and after that day, to be treated as if it were a felling permission granted under section 27 of the 2018 Act.

(2) A condition attached to a plan referred to in paragraph (1) is to be treated as if it were a condition applied to a felling permission under section 27(4) of the 2018 Act.

- (3) The provision made in—
 - (a) section 27(7) (variation and revocation of conditions),
 - (b) section 38 (registration of notices to comply),
 - (c) section 39 (registered notices to comply: offence),
 - (d) section 40 (registration of notices of variation),
 - (e) section 41 (registration of notices of discharge from compliance),
 - (f) section 42 (meaning of “register”),

- (g) section 43 (descriptions of land),
- (h) section 44 (receipt of notices by Keeper),
- (i) section 56 (registration of remedial notices), and
- (j) section 57 (registered remedial notices: offence),

of the 2018 Act does not apply to a condition referred to in paragraph (2) or to any restocking direction issued under section 36 of the 2018 Act in relation to such a condition.

Saving: felling licence conditions – notice to require compliance issued before the appointed day - enforcement

15.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

(2) This paragraph applies to a notice to require compliance with felling licence conditions sent under section 24 of the 1967 Act⁽¹²⁾ before the appointed day.

(3) The provisions are—

- (a) sections 24, 26, 27, 29 and 30, 34, 35, 48 and 49 of the 1967 Act, and
- (b) regulations 1, 3, 13 and 15 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

- (a) sections 24(3) and (4) of the 1967 Act are to be read as if the references to “the appropriate forestry authority” were references to “the Scottish Ministers”,
- (b) section 26 of the 1967 Act is to be read as if the references to “the appropriate forestry authority” in that section were references to “the Scottish Ministers”,
- (c) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
- (d) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
- (e) regulation 15 of the 1979 Regulations is to be read as if—
 - (i) the reference to “the Commissioners” were a reference to “the Scottish Ministers”, and
 - (ii) the reference to “the Conservator” were a reference to “the Scottish Ministers”, and
- (f) Form 9 in schedule 1 of the 1979 Regulations is to be read as if the reference to “the Secretary of State for Scotland, New St Andrews House, St James Centre, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”.

Saving: felling licence conditions – notice to require compliance - appeals

16.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day, as they did immediately before that day.

⁽¹²⁾ Section 24 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), schedule 7D.

(2) This paragraph applies to an appeal against a notice requiring compliance with felling licence conditions served under section 24 of the 1967 Act before the appointed day where—

- (a) a notice requesting a review was sent in accordance with section 25(1) of the 1967 Act and regulation 14 of the 1979 Regulations before the appointed day, or
- (b) a notice requesting a review is sent before the expiry of the period prescribed for that purpose in regulation 14 of the 1979 Regulations.

(3) The provisions are—

- (a) sections 24, 25, 27, 30, 34, 35, 48 and 49 of the 1967 Act⁽¹³⁾, and
- (b) regulations 1, 3 and 14 and schedule 1 of the 1979 Regulations.

(4) The modifications are—

- (a) section 27 of the 1967 Act is to be read as if—
 - (i) subsection (2)(a) were omitted,
 - (ii) for subsection (3)(c) there were substituted—
 - “(c) take into consideration any information provided to them by the Scottish Ministers as to the promotion of the establishment and maintenance of adequate reserves of growing trees within the conservancy in which the trees are growing.”,
- (b) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
- (c) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
- (d) regulation 14 of the 1979 Regulations is to be read as if the reference in that regulation to “the appropriate Minister” were a reference to “the Scottish Ministers”, and
- (e) Form 9 in schedule 1 of the 1979 Regulations is to be read as if the reference in that form to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”.

Saving: unauthorised felling - restocking notices served before the appointed day – enforcement after the appointed day

17.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on an after the appointed day as they did immediately before that day.

(2) This paragraph applies to any restocking notice issued under section 17A of the 1967 Act⁽¹⁴⁾ before the appointed day.

(3) The provisions are—

⁽¹³⁾ Section 24 was amended by [S.I. 2006/780](#) and [S.I. 2013/755](#). Section 25 was amended by [S.I. 1999/1747](#) (“the 1999 Order”).
⁽¹⁴⁾ Section 17A was inserted by the Forestry Act 1986 (c.30), section 1 and was amended by the 1999 Order, schedule 12(II), paragraph 4(9).

- (a) sections 17A to 17C, 24, 25, 26(1), (3) and (4), 27, 30, 34, 35, 48 and 49 of the 1967 Act(15), and
- (b) regulations 1, 3, 8A, 13 and 14 and Forms 6A and 9 in schedule 1 of the 1979 Regulations.
- (4) The modifications are—
 - (a) section 17B is to be read as if for subsection (2) there were substituted—
 - “(2) The Scottish Ministers may, after considering the committee’s report, withdraw the notice or notify the objector that it shall have effect subject to such modifications as the Scottish Ministers may direct.”,
 - (b) section 24 of the 1967 Act is to be read as if the references in subsections (2) to (4) to “the appropriate forestry authority” were references to “the Scottish Ministers”.
 - (c) Section 26 of the 1967 Act is to be read as if the references to “the appropriate forestry authority” were references to “the Scottish Ministers”.
 - (d) section 27 of the 1967 Act is to be read as if—
 - (i) subsection (2)(a) were omitted, and
 - (ii) for subsection (3)(c) there were substituted—
 - “(c) take into consideration any information provided to them by the Scottish Ministers as to the promotion of the establishment and maintenance of adequate reserves of growing trees within the conservancy in which the trees are growing.”,
 - (e) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,
 - (f) section 48 of the 1967 Act is to be read as if—
 - (i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,
 - (ii) subsection (2) were omitted, and
 - (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
 - (g) regulation 8A of the 1979 Regulations is to be read as if the reference to “the appropriate Minister” were a reference to “the Scottish Ministers”,
 - (h) regulation 13 of the 1979 Regulations is to be read as if the reference to “the Commissioners” were a reference to “the Scottish Ministers”,
 - (i) Form 6A in schedule 1 of the 1979 Regulations is to be read as if the reference in that form to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”, and
 - (j) Form 9 in schedule 1 of the 1979 Regulations is to be read as if—
 - (i) the reference in that form to the “Forestry Commissioners” were a reference to “the Scottish Ministers, and
 - (ii) the reference in that form to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were a reference to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG.

(15) Sections 17B and 17C were inserted by the Forestry Act 1986 (c.30), section 1. Section 17B was amended by the 1999 Order and section 17C was amended by the 1999 Order and S.I. 2006/780.

Saving: unauthorised felling - restocking notices – enforcement commenced before appointed day

18.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications in paragraph (4), on and after the appointed day as they did immediately before that day.

(2) This paragraph applies to—

(a) any appeal against a restocking notice under section 17B of the 1967 Act where the restocking notice was issued before the appointed day and where—

(i) a notice requesting an appeal was sent in accordance with section 17B of that Act and regulation 8A of the 1979 Regulations before the appointed day, or

(ii) a notice requesting an appeal is sent in accordance with section 17B of that Act before the expiry of the period prescribed for that purpose in regulation 8A of the 1979 Regulations,

(b) any appeal against a notice to comply with a restocking notice where the notice to comply was issued before the appointed day under section 24 of the 1967 Act (as modified by section 17C of that Act), and where—

(i) a notice requesting an appeal is sent to the Scottish Ministers in accordance with section 25 of the 1967 Act (as modified by section 17C of that Act) before the appointed day, or

(ii) a notice requesting an appeal is sent to Scottish Ministers in accordance with section 25 of the 1967 Act (as modified by section 17C of that Act) before the expiry of the period prescribed for that purpose in regulation 14 of the 1979 Regulations.

(3) The provisions are—

(a) sections 17A to 17C, 24, 25, 26 (1), (3) and (4), 27, 30, 34, 35, 48 and 49 of the 1967 Act; and

(b) regulations 1, 3, 8A, 13, 14 and Forms 6A and 9 in schedule 1 of the 1979 Regulations.

(4) The modifications are—

(a) section 17B is to be read as if for subsection (2) there were substituted—

“(2) The Scottish Ministers may, after considering the committee’s report, withdraw the notice or notify the objector that it shall have effect subject to such modifications as the Scottish Ministers may direct.”,

(b) section 26 of the 1967 Act is to be read as if the references in that section to “the appropriate forestry authority” were references to “the Scottish Ministers”,

(c) section 27 of the 1967 Act is to be read as if—

(i) subsection (2)(a) were omitted, and

(ii) for subsection (3)(c) there were substituted—

“(c) take into consideration any information provided to them by the Scottish Ministers as to the promotion of the establishment and maintenance of adequate reserves of growing trees within the conservancy in which the trees are growing.”,

(d) section 30 of the 1967 Act is to be read as if the reference to “the appropriate forestry authority” were a reference to “the Scottish Ministers”,

(e) section 48 of the 1967 Act is to be read as if—

(i) the references in subsection (1A)(a) to “the Commissioners” were references to “the Scottish Ministers”,

- (ii) subsection (2) were omitted, and
- (iii) the reference to “the appropriate forestry authority” in subsection (3) were a reference to “the Scottish Ministers”,
- (f) regulation 8A of the 1979 Regulations is to be read as if the reference to “the appropriate Minister” were a reference to “the Scottish Ministers”, and
- (g) Forms 6A and 9 in schedule 1 of the 1979 Regulations are to be read as if the references in those forms to “the Secretary of State for Scotland, New St Andrews House, St James Centre, Edinburgh, EH1 3SX” were references to “the Scottish Ministers, St Andrews House, Regent Road, Edinburgh, EH1 3DG”.

Saving: acquisition of land by agreement commenced before appointed day

19.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, on and after the appointed day, as they did immediately before that day.

- (2) This paragraph applies to—
 - (a) the acquisition of land by agreement under section 39(a) of the 1967 Act which was commenced but not completed before the appointed day, and
 - (b) any claim for compensation in connection with the rights or interests in land acquired under section 39 which is made but not determined before the appointed day.
- (3) The provisions are sections 30, 39, 48 and 49 and paragraph 2 of schedule 4(b) of the 1967 Act.
- (4) For the purposes of this regulation—
 - (a) the acquisition of land by agreement is “completed” when the deed effecting the transfer of title has been validly executed and delivered to the Scottish Ministers, and
 - (b) a claim for compensation is “determined”—
 - (i) by agreement of the parties, or
 - (ii) in accordance with schedule 4 of the 1967 Act.

Saving: compulsory purchase proceedings commenced before the appointed day

20.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, on and after the appointed day, as they did immediately before that day.

- (2) This paragraph applies to—
 - (a) the compulsory purchase of land under sections 39 and 40(c) of the 1967 Act⁽¹⁶⁾ which was commenced but not completed before the appointed day, and
 - (b) any claim for compensation in connection with the rights or interests in land acquired under sections 39 and 40 which is made but not determined before the appointed day.
- (3) The provisions are sections 30, 39, 40, 48 and 49 and schedule 5(d) of the 1967 Act⁽¹⁷⁾.
- (4) For the purposes of this regulation—
 - (a) the compulsory purchase of land is “completed” when the compulsory purchase order is made and the period in which the validity of that order can be challenged in terms of paragraph 8 of schedule 5 has expired, and
 - (b) a claim for compensation is “determined” by—

⁽¹⁶⁾ Section 40 was amended by the 1999 Order (S.I. 1999/1747), schedule 12(II), paragraph 4(32)(a) and (b) and by the Local
⁽¹⁷⁾ Schedule 5 was amended by the 1999 Order (S.I. 1999/1747), schedule 12(II), paragraph 4(41)(a), (b) and (c) and by the Title
 Conditions (Scotland) Act 2003 (asp 9), section 110 and the Local Government etc. (Scotland) Act 1994 (c.39), schedule
 13, paragraph 69.

- (i) agreement of the parties under Part III of schedule 5 of the 1967 Act, or
- (ii) the Lands Tribunal for Scotland where any question of disputed compensation is referred to the Tribunal under section 8 of the Land Compensation (Scotland) Act 1963⁽¹⁸⁾.

Saving: grants and loans given under section 1 of the 1979 Act before the appointed day

21.—(1) Where paragraph (2) applies, the provisions referred to in paragraph (3) continue to have effect, subject to the modifications referred to in paragraph (4), on and after the appointed day, as they did immediately before that day.

(2) This paragraph applies to a grant or loan made under section 1(1) of the 1979 Act⁽¹⁹⁾ before the appointed day which continues to be paid on or after that day.

(3) The provisions are—

- (a) section 41 of the 1967 Act⁽²⁰⁾, and
- (b) section 1 of the 1979 Act.

(4) The modifications are—

- (a) section 41 of the 1967 Act is to be read as if subsections (1) to (3A) and (5) to (9) were omitted, and
- (b) section 1 of the 1979 Act is to be read as if for subsection (1) there were substituted—

“(1) The Scottish Ministers may make grants and loans to owners and lessees of land in Scotland for and in connection with the use and management of the land for forestry purposes.”.

Saving: general

22.—(1) Despite the repeal of the 1967 Act by section 79(2) and schedule 2 of the 2018 Act on the appointed day, the provisions referred to in paragraph (2) continue to have effect as they did immediately before that day.

(2) The provisions are paragraphs 1, 2 and 4 of Part II of schedule 7 (repeals and savings).

St Andrew’s House,
Edinburgh
13th February 2019

FERGUS EWING
A member of the Scottish Government

⁽¹⁸⁾ 1963 c.51, to which there are no relevant amendments.

⁽¹⁹⁾ Section 1 was amended by the 1999 Order (S.S.I. 1999/1747), schedule 12(II), paragraph 6(a), by the Scotland Act 1998 (Cross-Border Public Authorities) (Forestry Commissioners) Order 2000 (S.S.I. 2000/746) (“the 2000 Order”), schedule 1, paragraph 8 and by the Crofter Forestry (Scotland) Act 1991 (c.18), section 3(1).

⁽²⁰⁾ Section 41 was amended by the 1999 Order (S.S.I. 1999/1747), schedule 12(II), paragraph 4(33)(a) and by the 2000 Order (S.S.I. 2000/746), schedule 1, paragraph 5(2) to (5).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations appoint 1 April 2019 as the day on which all of the provisions contained in the Forestry and Land Management (Scotland) Act 2018 (“the 2018 Act”), other than sections 76 to 78 and 82 to 86 of the 2018 Act (which came into force on 2 May 2018 by virtue of provision made in section 85(1) of the 2018 Act) will come into force. The regulations also make certain transitional and saving arrangements in consequence of those provisions coming into force.

Background

The 2018 Act confers a range of functions on the Scottish Ministers in relation to forestry and the management of forested land and other land in Scotland.

Section 81 of the 2018 Act also provides that the functions of the Forestry Commissioners (including those related to the control of the felling of trees in Part II of the 1967 Act) which were exercisable immediately before the appointed date will no longer be exercisable in or as regards Scotland after that date.

Section 79 and schedule 2 of the 2018 Act provide for the repeal of the Forestry Act 1967 (“the 1967 Act”) and various other enactments on the appointed day.

The regulations

Regulation 3 makes provision for most applications for a felling licence (under Part II of the 1967 Act) which were made but not determined before the appointed day to be treated, on and after the appointed day, as if they were applications for a felling permission under the 2018 Act. This does not apply to applications of the type referred to in regulation 3(2) (“the excepted cases”).

Regulation 4 provides that the relevant provisions within the 1967 Act will continue to have effect (with necessary modifications) for the purposes of determining the excepted cases.

Regulation 5 provides that (subject to certain limited exceptions in regulation 5(4)) a felling licence granted in an excepted case will be treated on and after the day it is granted as if it were a felling permission granted under section 27 of the 2018 Act.

Where a felling licence is refused, or is granted subject to conditions in an excepted case, regulation 6 preserves (subject to necessary modifications) the provisions within the 1967 Act which allow for such decisions to be reviewed.

Regulation 7 preserves (subject to necessary modifications) the provisions in the 1967 Act which deal with compensation for refusal to grant a felling licence for the purposes of any refusal to grant such a licence in the excepted cases.

Regulation 8 provides that where the Forestry Commissioners have referred an application for a licence to fell trees to which a tree preservation order relates to another party to determine under provisions contained in section 15 of the 1967 Act before the appointed day but the referral has not yet been determined, the relevant provisions of the 1967 Act are continued in effect for the purposes of allowing that determination to be made.

Regulation 9 provides that where an application for a licence to fell trees in accordance with a plan of works approved by the Forestry Commissioners was refused before the appointed day, the provisions

in the 1967 Act which enable the applicant to ask the Forestry Commissioners to acquire the trees will continue to apply (subject to necessary modifications).

Regulation 10 provides that (subject to certain limited exceptions in regulation 10(3)) felling licences granted before the appointed day are to be treated on and after that day as if they were a felling permission granted under the 2018 Act and that any conditions attached to a felling licence are to be treated as if they were a condition imposed on a felling permission.

Regulation 11 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow an applicant who is given a felling licence subject to conditions before the appointed day to seek a review of that decision where the applicant has sent the notice requesting a review to the Commissioners under before the appointed day or where the period in which such a notice could be sent will not expire until after the appointed day.

Regulation 12 provides that (subject to certain limited exceptions in regulation 12(3)) where a felling licence is granted following a review (under the provisions of the 1967 act which are continued in effect for that purpose by regulations 6 and 11), it is to be treated, on and after the day it is granted, as a felling permission granted under the 2018 Act.

Regulation 13 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow an applicant who has been refused a felling licence to claim compensation where the applicant has sent a claim for compensation before the appointed day or where the period in which such a claim could be sent will not expire until after the appointed day.

Regulation 14 provides that (subject to certain limited exceptions in regulation 14(3)) any Land Management Plan or Forest Design Plan approved before the appointed day will be treated, on and after that date, as a felling permission granted under the 2018 Act.

Regulation 15 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow for enforcement of felling licence conditions, where such enforcement action has been commenced but not completed before the appointed day. Regulation 16 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow for appeals against enforcement of felling licence conditions.

Regulation 17 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow for enforcement of such a restocking notice and for an appeal against such enforcement.

Regulation 18 preserves (subject to necessary modifications) the provisions in the 1967 Act which allow for appeals against a restocking notice and a notice of compliance issued in relation to a restocking notice which are pending at the appointed day.

Regulations 19 and 20 preserve the provisions in the 1967 Act which enable the Scottish Ministers to acquire certain land by agreement or by compulsory purchase for the purposes of any such acquisition or compulsory purchase which was commenced but not completed before the appointed day and claim for compensation which was not made but not determined before the appointed day.

Regulation 21 preserves the provisions in the 1969 Act and the Forestry Act 1979 which enabled the making of grants and loans by Forestry Commissioners for the purposes of any grants or loans which were made before the appointed day and will continue to be paid after that day.

Regulation 22 preserves a number of provisions in the 1967 Act which were themselves preserved by the 1967 Act in consequence of the repeal of various enactments by section 50 and schedule 7 of the 1967 Act.