



# Forestry Act 1967

## 1967 CHAPTER 10

### PART I

#### FORESTRY AND AFFORESTATION IN GREAT BRITAIN

##### 1 The Forestry Commission.

- (1) The Forestry Commissioners constituted under the Forestry Acts 1919 to 1945 shall continue in existence and are in this Act referred to as “the Commissioners”.
- (2) The Commissioners shall be charged with the general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products [<sup>F1</sup>in Scotland, and in England and Wales] and in that behalf shall have the powers and duties conferred or imposed on them by this Act.
- [<sup>F2</sup>(2A) The Commissioners also have the general duty of using land in Scotland placed at their disposal by the Scottish Ministers under this Act in the way best calculated to contribute to the delivery of the targets set in or under Part 1 of the Climate Change (Scotland) Act 2009 (asp 12) (“the climate change targets”). ]
- (3) The Commissioners’ general duty [<sup>F3</sup>under subsection (2)]includes that of promoting the establishment and maintenance [<sup>F1</sup>in Scotland, and in England and Wales] of adequate reserves of growing trees.
- [<sup>F4</sup>(3A) In discharging their functions under the Forestry Acts 1967 to 1979 the Commissioners shall, so far as may be consistent with the proper discharge of those functions, endeavour to achieve a reasonable balance between—
  - (a) the development of afforestation, the management of forests [<sup>F5</sup>and the production and supply of timber][<sup>F5</sup>, the production and supply of timber and, in Scotland, the delivery of the climate change targets], and
  - (b) the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest.]
- (4) The Commissioners shall, in exercising their functions under this Act, and also in exercising their powers under the <sup>M1</sup>Plant Health Act 1967 (which enables them to

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make orders for the control of timber pests and diseases), comply with such directions as may be given to them by

- [<sup>F6</sup>(a) the Ministers in relation to the exercise of their functions as regards England and Wales; and
- (b) the Scottish Ministers in relation to the exercise of their functions as regards Scotland.]

(5) Directions given by the Ministers for purposes of the foregoing subsection shall be given by them jointly, except in so far as they make arrangements that this subsection shall not apply.

[<sup>F7</sup>(6) The power of the Ministers and of the Scottish Ministers to give directions for the purposes of subsection (4) above shall be exercisable as regards Great Britain by the Ministers and the Scottish Ministers acting jointly.]

#### Textual Amendments

- F1** Words in s. 1(2)(3) substituted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(2)**
- F2** S. 1(2A) inserted (S.) (1.3.2012) by **The Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (S.S.I. 2012/77)**, arts. 1, **2(a)**
- F3** Words in s. 1(3) inserted (S.) (1.3.2012) by **The Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (S.S.I. 2012/77)**, arts. 1, **2(b)**
- F4** S. 1(3A) added by **Wildlife and Countryside (Amendment) Act 1985 (c. 31, SIF 4)**, s. 4
- F5** Words in s. 1(3A)(a) substituted (S.) (1.3.2012) by **The Forestry Commissioners (Climate Change Functions) (Scotland) Order 2012 (S.S.I. 2012/77)**, arts. 1, **2(c)**
- F6** S. 1(4)(a)(b) substituted (1.7.1999) for words “the Ministers” by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(3)**
- F7** S. 1(6) added (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(4)**

#### Marginal Citations

- M1** 1967 c. 8(2:11)

## 2 Constitution, administration, etc., of Commission.

(1) The Commissioners shall consist of a chairman and not more than [<sup>F8</sup>ten] other members appointed by Her Majesty by warrant under the sign manual to be Forestry Commissioners.

(2) Of the persons for the time being appointed to be Forestry Commissioners—

- (a) at least three shall be persons who have special knowledge and experience of forestry;
- (b) at least one shall be a person who has scientific attainments and a technical knowledge of forestry; and
- (c) at least one shall be a person who has special knowledge and experience of the timber trade.

(3) The Commissioners shall by order appoint committees for England, Scotland and Wales respectively, whose membership shall consist partly of persons who are Forestry Commissioners or officers of the Commissioners and partly of persons not exceeding three in number, who are not Forestry Commissioners or officers of the Commissioners; and the Commissioners may delegate, subject to such restrictions or conditions as they think fit, any of their functions to a committee so appointed.

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- (4) Part I of Schedule 1 to this Act shall have effect with respect to the Commissioners, their staff, proceedings and other related matters and to the committees appointed under subsection (3) of this section; and Part II of that Schedule shall have effect with respect to the superannuation of Forestry Commissioners and officers employed by the Commissioners.

#### Textual Amendments

**F8** Word substituted by [Forestry Act 1981 \(c. 39, SIF 54\), s. 5](#)

### 3 Management of forestry land.

- (1) The Commissioners may manage, plant and otherwise use, for the purpose of the exercise of their functions under this Act, any land [<sup>F9</sup>in Scotland placed at their disposal by the Scottish Ministers under this Act or in England and Wales] placed at their disposal by the Minister under this Act, and—
- (a) the power of the Commissioners under this subsection to manage and use any land shall, without prejudice to the generality of that power, include power to erect buildings or execute works on the land;
  - (b) any timber produced on land so placed at the Commissioners' disposal shall belong to the Commissioners.
- (2) The Commissioners may undertake the management or supervision, upon such terms and subject to such conditions as may be agreed upon, or give assistance or advice in relation to the planting or management, of any woods or forests belonging to any person, including woods and forests under the management of the Crown Estate Commissioners or under the control of a government department, or belonging to a local authority.
- (3) The Commissioners may—
- (a) purchase or otherwise acquire standing timber, and sell or otherwise dispose of any timber belonging to them or, subject to such terms as may be mutually agreed, to a private owner, and generally promote the supply, sale, utilization and conversion of timber;
  - (b) establish and carry on, or aid in the establishment and carrying on, of woodland industries.
- (4) In this section the expression “timber” includes all forest products.

#### Textual Amendments

**F9** Words in s. 3(1) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(5\)](#)

#### Modifications etc. (not altering text)

**C1** S. 3(1) amended by [Countryside Act 1968 \(c. 41, SIF 46:1\), s. 24\(1\)](#)

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### Textual Amendments

**F10** S. 4 repealed by [Forestry Act 1979 \(c. 21, SIF 54\)](#), s. 3(2), [Sch. 2](#)

## 5 Forestry dedication covenants and agreements.

- (1) The provisions of this section shall have effect with a view to allowing land to be devoted to forestry by means of agreements entered into with the Commissioners, being agreements to the effect that the land shall not, except with the previous consent in writing of the Commissioners or, in the case of dispute, under direction of the minister [<sup>F11</sup>as regards England and Wales and the Scottish Ministers as regards Scotland], be used otherwise than for the growing of timber or other forest products in accordance with the rules or practice of good forestry or for purposes connected therewith; and in this Act—
- (a) “forestry dedication covenant” means a covenant to the said effect entered into with the Commissioners in respect of land in England or Wales without an intention being expressed contrary to the application of section 79 of the <sup>M2</sup>Law of Property Act 1925 (under which covenants relating to land are, unless the contrary is expressed, deemed to be made on behalf of the covenantor, his successors in title and persons deriving title under him or them); and
  - (b) “forestry dedication agreement” means an agreement to the said effect entered into with the Commissioners in respect of land in Scotland by a person who is the proprietor thereof for his own absolute use or is empowered by this section to enter into the agreement.
- (2) Where land in England or Wales is subject to a forestry dedication covenant,—
- (a) the Commissioners shall, as respects the enforcement of the covenant against persons other than the covenantor, have the like rights as if they had at all material times been the absolute owners in possession of ascertained land adjacent to the land subject to the covenant and capable of being benefited by the covenant, and the covenant had been expressed to be for the benefit of that adjacent land; and
  - (b) section 84 of the <sup>M3</sup>Law of Property Act 1925 (which enables the [<sup>F12</sup>Upper Tribunal] to discharge or modify restrictive covenants) shall not apply to the covenant.
- (3) A forestry dedication agreement affecting land in Scotland may be recorded in the General Register of Sasines and, on being so recorded, shall be enforceable at the instance of the Commissioners against any person having an interest in the land and against any person deriving title from him:  
Provided that such an agreement shall not be so enforceable against any third party who shall have in bona fide onerously acquired right (whether [<sup>F13</sup> title has been completed] or not) to his interest in the land prior to the agreement being recorded as aforesaid, or against any person deriving title from such third party.
- (4) Schedule 2 to this Act shall have effect to empower limited owners, trustees and others to enter into forestry dedication covenants or agreements and to provide for matters arising on their doing so.

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#### Textual Amendments

- F11** Words in s. 5(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(6)**
- F12** Words in s. 5(2)(b) substituted (1.6.2009) by **The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307)**, art. 1, **Sch. 1 para. 76** (with Sch. 5)
- F13** Words in s. 5(3) substituted (S.) (28.11.2004) by **Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5)**, ss. 71, 77(2), **Sch. 12 para. 27(2)** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Modifications etc. (not altering text)

- C2** S. 5(3)(4) extended (S.) with modifications by **Roads (Scotland) Act 1984 (c. 54, SIF 108)**, s. 46(3)

#### Marginal Citations

- M2** 1925 c. 20(98:1)
- M3** 1925 c. 20(98:1)

## 6 Requirements for haulage facilities.

- (1) The provisions of this section shall have effect where the Commissioners are of opinion that insufficient facilities exist for the haulage of timber from any wood or forest to a road, railway or waterway.
- (2) Subject to the following subsections, the Commissioners may, where they are of the said opinion, make an order that the owner and occupier of any land shall afford the necessary facilities, subject to payment by the person in whose favour the order is made of reasonable rent or wayleave and of compensation for any damage caused by the haulage, and the owner or occupier shall thereupon comply with the order.
- (3) The Commissioners shall not make an order under this section until the person proposed to be required to give the said facilities has had an opportunity of being heard.
- [<sup>F14</sup>(4) a person aggrieved by an order under this section may—
  - (a) where the order is made in respect of land in England and Wales, appeal therefrom to the Minister in such manner and upon such conditions, if any, as may be prescribed by the Minister, who may thereupon revoke or vary the order; and
  - (b) where the order is made in respect of land in Scotland, appeal therefrom to the Scottish Ministers in such manner and upon such conditions, if any, as may be prescribed by the Scottish Ministers, who may thereupon revoke or vary the order.]
- (5) The amount of rent or wayleave and compensation for damage which is payable in consequence of an order made under this section shall, in default of agreement, be assessed as follows that is to say—
  - (a) in a case relating to England and Wales, by a single arbitrator appointed by the President of the Royal Institution of Chartered Surveyors; and
  - (b) in a case relating to Scotland, by an arbiter appointed by the Chairman of the Scottish Committee of the said Institution.

#### Textual Amendments

- F14** S. 6(4) substituted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(7)**

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## 7 Prevention of damage by rabbits, hares and vermin.

- (1) The provision of this section shall have effect where the Commissioners are satisfied that trees or tree plants are being, or are likely to be, damaged by rabbits, hares or vermin owing to the failure of an occupier of land to destroy sufficiently the rabbits, hares or vermin on land in his occupation, or otherwise to take steps for the prevention of damage by them.
- (2) The Commissioners may, where they are so satisfied, authorise in writing any competent person to enter on the land and kill and take the rabbits, hares or vermin thereon; but before doing so they shall first give to the occupier and owner of the land such opportunity as the Commissioners think reasonable of destroying the rabbits, hares or vermin, or of taking steps for the prevention of the damage.
- (3) The Commissioners may recover from the occupier of the land the net cost incurred by them in connection with action taken by them under the foregoing subsection.  
  
A sum recoverable under this subsection shall, in England or Wales, be recoverable summarily as a civil debt.
- (4) Anyone who obstructs a person authorised by the Commissioners in the due exercise of his powers or duties under subsection (2) above shall be liable on summary conviction to a fine not exceeding [<sup>F15</sup>level 2 on the standard scale]; but the person authorised shall, if so required, produce his authority.
- (5) For purposes of this section—
  - (a) the person entitled to kill rabbits, hares or vermin on any common land shall be deemed to be the occupier of the land; and
  - (b) the expression “vermin” includes squirrels.

### Textual Amendments

**F15** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\), s. 46](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\), s. 289G](#)

### [<sup>F16</sup>7A Incidental powers of Commissioners

- (1) For the purpose of the exercise of their functions under this Act so far as relating to [<sup>F17</sup> land in Scotland or ] land in England and Wales, or for the purpose of the exercise of their functions under section 8(1)(b) of this Act, the Commissioners may—
  - (a) form, or participate in the forming of, a body corporate;
  - (b) invest in a body corporate;
  - (c) provide loans;
  - (d) establish a charitable trust; or
  - (e) act, or appoint a person to act, as an officer of a body corporate or as a trustee of a charitable trust.
- (2) The powers contained in subsection (1)(b) and (c) shall be exercisable only with Treasury approval.]

### Textual Amendments

**F16** S. 7A inserted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\), arts. 1\(1\), 2](#)

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**F17** Words in s. 7A inserted (S.) (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 12(1), 134(7)**; [S.S.I. 2010/221](#), art. 3(2), Sch.

### [<sup>F18</sup>7AA Renewable energy installations

- (1) The Commissioners may, for the purpose of complying with their general duty under section 1(2A)—
  - (a) promote, develop, construct and operate installations for or in connection with the generation, transmission, distribution and supply of electricity produced from renewable sources, and
  - (b) use electricity produced by virtue of the powers conferred by paragraph (a).
- (2) In subsection (1), “renewable sources” means sources other than—
  - (a) fossil fuel,
  - (b) energy derived from fossil fuel, and
  - (c) nuclear fuel.
- (3) In subsection (2), “fossil fuel” means—
  - (a) coal,
  - (b) lignite,
  - (c) peat,
  - (d) natural gas (within the meaning of the Energy Act 1976),
  - (e) crude liquid petroleum,
  - (f) petroleum products (within the meaning of that Act),
  - (g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f).
- (4) Nothing in this section is to be construed as exempting the Forestry Commissioners from the requirements of Part 1 of the Electricity Act 1989.]

#### Textual Amendments

**F18** [S. 7AA](#) inserted (S.) (8.11.2012) by [The Forestry Commissioners \(Climate Change Functions\) \(Scotland\) Order 2012 \(Consequential Modifications\) Order 2012 \(S.I. 2012/2855\)](#), arts. 1(2), **2(a)**

### [<sup>F19</sup>7B Delegation of functions of Commissioners: Scotland

- (1) The Commissioners may, to such extent and subject to such conditions as they think appropriate, delegate their functions under section 3(1) and (3) [<sup>F20</sup>and section 7AA] of this Act to such community bodies as they consider appropriate.
- (2) A delegation under subsection (1) may only be made in relation to land in Scotland—
  - (a) placed at the disposal of the Commissioners by the Scottish Ministers under this Act, and
  - (b) which is let to the community body to which the delegation is made.
- (3) A delegation under subsection (1) does not affect the ability of the Commissioners to carry out the function delegated.
- (4) A delegation under subsection (1) does not affect the ability of the Scottish Ministers to—

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- (a) determine which land in Scotland is placed at the disposal of the Forestry Commissioners,
  - (b) give directions under section 1 to the Commissioners in relation to the land in question.
- (5) A delegation under subsection (1) may be varied or revoked at any time.
- (6) In this section, “community body” has the meaning given in section 7C.

#### Textual Amendments

- F19** S. 7B, S. 7C inserted (S) (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 11, 134(7)**; [S.S.I. 2010/221](#), **art. 3(2)**, **Sch.**
- F20** Words in s. 7B(1) inserted (S.) (8.11.2012) by [The Forestry Commissioners \(Climate Change Functions\) \(Scotland\) Order 2012 \(Consequential Modifications\) Order 2012 \(S.I. 2012/2855\)](#), **arts. 1(2), 2(b)**

### 7C Delegation of functions under section 7B: community bodies

- (1) A community body is, subject to subsection (3), a company limited by guarantee the articles of association of which include the following—
- (a) a definition of the community to which the company relates,
  - (b) provision that the company must have not fewer than 20 members,
  - (c) provision that the majority of the members of the company is to consist of members of the community,
  - (d) provision by which the members of the company who consist of members of the community have control of the company,
  - (e) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts.
- (2) The Commissioners may, if they think it in the public interest to do so, disapply such requirements specified in paragraphs (b) to (d) in subsection (1) in relation to any body they may specify.
- (3) A body is not a community body unless the Commissioners have given it written confirmation that they are satisfied that the main purpose of the body is consistent with furthering the achievement of sustainable development.
- (4) Unless the Scottish Ministers otherwise direct, a community—
- (a) must be defined for the purposes of subsection (1)(a) by reference to a postcode unit or postcode units, and
  - (b) must comprise the persons from time to time—
    - (i) resident in that postcode unit or in one of those postcode units, and
    - (ii) entitled to vote, at a local government election, in a polling district which includes that postcode unit or those postcode units (or part of it or them).
- (5) In subsection (4) above, “postcode unit” means an area in relation to which a single postcode is used to facilitate the identification of postal service delivery points within the area.



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- (6) In subsection (1), “ company limited by guarantee ” has the meaning given by section 3(3) of the Companies Act 2006 (c. 46). ]

#### Textual Amendments

**F19** S. 7B, S. 7C inserted (S) (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), **ss. 11, 134(7)**; [S.S.I. 2010/221](#), **art. 3(2)**, **Sch.**

## 8 Miscellaneous powers of Commissioners.

<sup>F21</sup>(1) The Commissioners may—

- (a) undertake the collection, preparation, publication and distribution of statistics relating to forestry, and promote and develop instruction and training in forestry by establishing or aiding schools or other educational institutions or in such other manner as they think fit;
- (b) make, or aid in making, such inquiries, experiments and research, and collect, or aid in collecting, such information as they may think important for the purpose of promoting forestry and the teaching of forestry, and publish or otherwise take steps to make known the results of the inquiries, experiments or research and disseminate the information;
- (c) make, or aid in making, such inquiries as they think necessary for the purpose of securing an adequate supply of timber and other forest products [<sup>F22</sup>in Scotland, and in England and Wales].

[<sup>F23</sup>(2) The Commissioners may exploit any intellectual property or intangible assets arising from the carrying out of any activity referred to in subsection (1)(b).

- (3) ”Intellectual property” for the purpose of subsection (2) includes any patent, trademark, copyright, design right, registered design or plant breeder’s right.]

#### Textual Amendments

**F21** S. 8 renumbered as s. 8(1) (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), **arts. 1(1), 3(2)**

**F22** Words in s. 8(c) substituted (1.7.1999) by [S.I. 1999/1747](#), **art. 3**, **Sch. 12 Pt. II para. 4(8)**

**F23** S. 8(2)(3) inserted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), **arts. 1(1), 3(3)**

## [<sup>F24</sup>8A General duty of Ministers.

In performing their functions under this Act the Ministers shall have regard to the national interest in maintaining and expanding the forestry resources [<sup>F25</sup>of England and Wales and the Scottish Ministers shall have regard to the national interest in maintaining and expanding the forestry resources of Scotland].]

#### Textual Amendments

**F24** S. 8A inserted by [Forestry Act 1981 \(c. 39, SIF 54\)](#), **s. 4**

**F25** Words in s. 8A substituted (30.6.1999) by [S.I. 1999/1756](#), **art. 2**, **Sch. para.3**

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## PART II

### COMMISSIONERS' POWER TO CONTROL FELLING OF TREES

#### *Restriction of felling*

#### **9 Requirement of licence for felling.**

- (1) A felling licence granted by the Commissioners shall be required for the felling of growing trees, except in a case where by or under the following provisions of this Part of this Act this subsection is expressed not to apply.
- (2) Subsection (1) above does not apply—
  - (a) to the felling of trees with a diameter not exceeding [<sup>F26</sup>8 centimetres] or, in the case of coppice or underwood, with a diameter not exceeding [<sup>F26</sup>15 centimetres]; or
  - (b) to the felling of fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space; or
  - (c) to the topping or lopping of trees or the trimming or laying of hedges.
- (3) Subsection (1) above does not apply to the felling by any person of trees on land in his occupation or occupied by a tenant of his—
  - (a) where the trees have a diameter not exceeding [<sup>F26</sup>10 centimetres] and the felling is carried out in order to improve the growth of other trees; or
  - (b) where the following conditions are satisfied, that is to say—
    - (i) the aggregate cubic content of the trees which are felled by that person without a licence (exclusive of trees to whose felling subsection (1) above does not apply) does not exceed [<sup>F27</sup>5 cubic metres] in any quarter; and
    - (ii) the aggregate cubic content of the trees so felled which are sold by that person whether before or after the felling (exclusive as aforesaid) does not exceed [<sup>F27</sup>2 cubic metres] in any quarter, or such larger quantity as the Commissioners may in a particular case allow.
- (4) Subsection (1) above does not apply to any felling which—
  - (a) is for the prevention of danger or the prevention or abatement of a nuisance;
  - (b) is in compliance with any obligation imposed by or under an Act of Parliament, including this Act;
  - (c) is carried out by, or at the request of, [<sup>F28</sup>an electricity operator, 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 operator as to have the effect mentioned in paragraph 9(1)(a) or (b) of Schedule 4 to the Electricity Act 1989;]
  - (d) is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under [<sup>F29</sup>the Town and Country Planning Act 1990] or the enactments replaced by that Act, or under [<sup>F30</sup>the Town and Country Planning (Scotland) Act 1997].
- (5) Regulations made by the Commissioners under this Part of this Act may modify subsections (2) to (4) above as follows, that is to say—

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- (a) they may provide for additional exceptions from the application of subsection (1) above and may in particular substitute—
- (i) in subsection (2)(a), for the reference to [<sup>F26</sup>8 centimetres] a reference to a larger diameter;
  - (ii) in subsection (3)(a), for the reference to [<sup>F26</sup>10 centimetres] a reference to a larger diameter;
  - (iii) in subsection (3)(b) for the reference to [<sup>F26</sup>30 cubic metres] or the reference to [<sup>F26</sup>5.5 cubic metres] in either case a reference to a larger quantity;
- (b) they may substitute in subsection (2)(a) for the reference to [<sup>F26</sup>15 centimetres] a reference to a smaller diameter; and
- (c) they may restrict or suspend the exception in subsection (3)(b) and may in particular substitute, for the reference in sub-paragraph (i) to [<sup>F26</sup>30 cubic metres], or for the reference in sub-paragraph (ii) to [<sup>F26</sup>5.5 cubic metres], in either case a reference to a smaller quantity;

and the said subsections shall have effect with any modification made by regulations under this subsection.

- (6) In this section—

[<sup>F31</sup> “ electricity operator ” means a licence holder within the meaning of Part I of the Electricity Act 1989 by whom the powers conferred by paragraph 9 (tree lopping) of Schedule 4 to that Act are exercisable; ]

[<sup>F31</sup> “ electric line ” and “ electric plant ” have the same meanings as in Part I of the Electricity Act 1989; ]

“public open space” means land laid out as a public garden or used (otherwise than in pursuance of section 193 of the <sup>M4</sup>Law of Property Act 1925 or of Part V of the National Parks and Access to the <sup>M5</sup>Countryside Act 1949 [<sup>F32</sup> or Part I of the Countryside and Rights of Way Act 2000][<sup>F33</sup> or of Part II or section 48 of the <sup>M6</sup>Countryside (Scotland) Act 1967]) for the purpose of public recreation, or land being a disused burial ground;

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

and references to the diameter of trees shall be construed as references to the diameter, measured over the bark, at a point [<sup>F26</sup>1.3 metres] above the ground level; . . . <sup>F34</sup>

#### Textual Amendments

- F26** Words substituted by Forestry Act 1979 (c. 21, SIF 54), s. 2(1), **Sch. 1**
- F27** Words substituted by virtue of S.I. 1985/1958, **reg. 2**
- F28** Words substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 13(2), Sch. 17 paras. 33, **35(1)**
- F29** Words substituted by Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 4, **Sch. 2**, para. 14(1)
- F30** Words in s. 9(4)(d) substituted (27.5.1997) by virtue of 1997 c. 11, ss. 4, 6(2), **Sch. 2 para. 13(1)**
- F31** Definition substituted by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 13(3), Sch. 17 paras. 33, **35(1)**
- F32** Words in s. 9(6) inserted (19.9.2004 for E., 28.5.2005 for W.) by Countryside and Rights of Way Act 2000 (c. 37), s. 103(3), **Sch. 4 para. 2**; S.I. 2004/2173, art. 2(1)(i); S.I. 2005/423, art. 2(h)
- F33** Words inserted by Countryside (Scotland) Act 1967 (c. 86, SIF 46:1), s. **58(5)**
- F34** Words repealed by Forestry Act 1979 (c. 21, SIF 54), s. 3(2), **Sch. 2**

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#### Modifications etc. (not altering text)

C3 S. 9 excluded by S.I. 1979/792, reg. 4

C4 Definition of “public open space” restricted by Countryside Act 1968 (c. 41, SIF 46:1), s. 24(4)

#### Marginal Citations

M4 1925 c. 20(98:1)

M5 1949 c. 97(46:1)

M6 1967 c. 86(46:1)

## 10 Application for felling licence and decision of Commissioners thereon.

- (1) An application for a felling licence may be made to the Commissioners in the prescribed manner by a person having such an estate or interest in the land on which the trees are growing as enables him, with or without the consent of any other person, to fell the trees.
- (2) Subject to the provisions of this Act (and, in particular, to their duty to take advice under section 37(3), the Commissioners may on any such application grant the licence, or grant it subject to conditions, or refuse it, but shall grant it unconditionally except in a case where it appears to them to be expedient to do otherwise—
  - (a) in the interests of good forestry or agriculture or of the amenities of the district; [<sup>F35</sup>or]
  - (b) for the purpose of complying with their duty of promoting the establishment and maintenance <sup>F36</sup> . . . of adequate reserves of growing trees. [<sup>F37</sup>; or ]
  - [<sup>F37</sup>(c) for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land.]
- (3) A felling licence shall continue in force for such period (not being less than one year from the date on which it is granted) as may be specified therein.
- (4) If in the case of any trees the Commissioners refuse an application for a felling licence, the consequences shall be as follows:—
  - (a) except in a case to which section 14(4) below applies, any person who is for the time being the owner of the trees shall be entitled to compensation under and in accordance with the next following section; and
  - (b) if the land on which the trees are growing is, or in the opinion of the Commissioners will be, managed in a manner approved by them, the Commissioners may (subject to section 14(5) below), if they think fit and subject to the approval of the treasury [<sup>F38</sup>as regards land in England and Wales, and the Scottish Ministers as regards land in Scotland], make to persons interested in the land advances by way of loan of such amounts, upon such terms and subject to such conditions, as they may determine.
- (5) At any time after a felling licence has been refused by them in the case of any trees, the Commissioners may, if they think fit, give notice to the owner of the trees that they are prepared to grant a felling licence for the trees either unconditionally or subject to conditions described in the notice; and if the Commissioners give such a notice and an application is duly made to them for a felling licence, they shall grant a licence in accordance with the notice, subject to sections 13(2) and 15 below.
- (6) When the Commissioners refuse to grant a felling licence, they shall give notice in writing to the applicant of the grounds for the refusal.

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- (7) Where application is made for a felling licence for trees on land which is subject to a forestry dedication covenant or agreement, and the licence is refused, no breach of the covenant or agreement shall be deemed to have occurred by reason of anything done or omitted in consequence of the refusal.

#### Textual Amendments

- F35** Word in s. 10(2)(a) repealed (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) , s. 59(2) , [Sch. 7 para. 2\(2\)\(a\)](#) (with s. 55(2) ); S.S.I. 2004/495 , art. 2
- F36** Words in s. 10(2)(b) omitted (1.7.1999) by virtue of S.I. 1999/1747 , art. 3 , [Sch. 12 Pt. II para. 4\(9\)](#)
- F37** S. 10(2)(c) and word inserted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004 \(asp 6\)](#) , s. 59(2) , [Sch. 7 para. 2\(2\)\(b\)](#) (with s. 55(2) ); S.S.I. 2004/495 , art. 2
- F38** Words in s. 10(4)(b) inserted (1.7.1999) by S.I. 1999/1747 , art. 3 , [Sch. 12 Pt. II para. 4\(10\)](#)

## 11 Terms of compensation on refusal of licence.

- (1) The compensation to which a person may become entitled under section 10(4)(a) above is 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 Commissioners on a claim made in the prescribed manner.
- (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—
- (a) no such claim shall be made in respect of deterioration taking place more than ten 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) If after refusing a felling licence the Commissioners under section 10(5) above subsequently give notice to the owner of the trees that they are prepared to grant a licence, then in calculating compensation payable in consequence of the previous refusal no account shall be taken of deterioration occurring after the giving of the notice.
- (6) Any question of disputed compensation shall be determined in accordance with section 31 of this Act.

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#### Modifications etc. (not altering text)

- C5** S. 11(3)-(5) applied (with modifications) (E.) (6.4.2012) by [The Town and Country Planning \(Tree Preservation\)\(England\) Regulations 2012](#) (S.I. 2012/605), regs. 1(1), **24(5)**

## 12 Conditional licences.

- (1) The conditions which may under section <sup>[F39]</sup>10(2)<sup>[F39]</sup>10(2)(a) or (b) above be attached to a felling licence are such as the Commissioners, after consultation with the applicant for the licence, determine to be expedient for securing—
- (a) the restocking or stocking with trees of the land on which the felling is to take place, or of such other land as may be agreed between the Commissioners and the applicant; and
  - (b) the maintenance of those trees in accordance with the rules and practice of good forestry for a period not exceeding ten years.
- (2) No conditions shall be imposed <sup>[F40]</sup>under section 10(2)(a) or (b) above <sup>[F41]</sup>on the grant of a felling licence where it is for trees on land subject to a forestry dedication covenant or agreement <sup>[F41]</sup>and the felling is in accordance with a plan of operations or other working plan approved by the Commissioners and in force under the covenant or agreement].

#### Textual Amendments

- F39** Words in s. 12(1) substituted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004](#) (asp 6), s. 59(2), [Sch. 7 para. 2\(3\)\(a\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F40** Words in s. 12(2) inserted (S.) (29.11.2004) by [Nature Conservation \(Scotland\) Act 2004](#) (asp 6), s. 59(2), [Sch. 7 para. 2\(3\)\(b\)](#) (with s. 55(2)); S.S.I. 2004/495, art. 2
- F41** Words added by [Trees Act 1970](#) (c. 43, SIF 54), s. 2

## 13 Deferred decision on application.

- (1) Where a person applies for a felling licence and the Commissioners do not within three months after receiving the application, or within such further time as may be agreed with the applicant, give notice to him of their decision on the application (including any reference of the application under section 15 of this Act) the provisions of this Part of this Act shall apply in relation to the application as if it had been refused.
- (2) If on an application for a felling licence—
- (a) the Commissioners determine to grant the licence subject to conditions; and
  - (b) it appears to them that the applicant is not entitled to an interest in land which would enable him to comply with those conditions;

they may give notice in writing to that effect to the applicant and postpone consideration of the application until the person entitled to such an interest is joined as a party thereto.

Where a notice under this subsection is given, subsection (1) above shall apply as if, instead of referring to a period of three months after the Commissioners receive the application, it referred to a period of three months after the date on which the person entitled to such interest in the land as is mentioned in the notice is joined as a party to the application.

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## 14 Tree-felling in accordance with approved working plan etc.

- (1) The following provisions shall apply where application is made to the Commissioners for a felling licence and relates to the felling of trees in accordance with a plan of operations or other working plan approved by the Commissioners under a forestry dedication covenant or agreement, or otherwise approved by them in writing for the purposes of this section.
- (2) The Commissioners shall not refuse the licence unless the Minister [<sup>F42</sup>as regards the felling of trees in England and Wales certifies, and the Scottish Ministers as regards the felling of trees in Scotland certify] that, by reason of an act of God or other emergency which has taken place or arisen since the approval of the plan, the granting of a felling licence in respect of those trees, or in respect of trees of any class which comprises those trees, would be detrimental to the national interest.
- (3) If the Commissioners refuse the licence, the applicant may by notice given to the Commissioners in the prescribed manner and within the prescribed time require them to buy the trees or such of them as may be specified in the notice.
- (4) If a notice is served under the foregoing subsection,—
  - (a) no compensation shall be payable under section 11 in respect of any trees to which the notice relates; and
  - (b) the Commissioners shall be deemed to have contracted with the applicant to buy the trees on the date of the service of the notice at such prices as may in default of agreement be determined in accordance with section 31 of this Act, and shall fell and remove the trees at such time or times as they may determine.
- (5) Where such a notice is served, and the land on which the trees are growing is subject to a forestry dedication covenant or agreement, the power of the Commissioners under section 10(4)(b) above to make an advance by way of loan shall not be exercisable in respect of the trees, but this subsection shall not prejudice their power to make an advance in respect of any other trees on the land.

### Textual Amendments

**F42** Words in s. 14(2) substituted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(11\)](#)

## 15 Trees subject to preservation order under Planning Acts.

- (1) If an application is made to the Commissioners for a felling licence in respect of trees to which a tree preservation order relates, and [<sup>F43</sup>relevant consent] is required for the felling of those trees, then—
    - (a) the Commissioners, if they propose to grant the licence, shall give notice in writing to the authority by whom the order was made; and
    - (b) the Commissioners may in any case refer the application to the said authority.
- [<sup>F44</sup>(1A) In subsection (1) “relevant consent” means—
- (a) in the case of trees in England and Wales, consent under tree preservation regulations;
  - (b) in the case of trees in Scotland, consent under the tree preservation order.]
- (2) Where the Commissioners give the notice required by subsection (1)(a) above and the authority within the prescribed period after receipt of the notice object to

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the Commissioners’ proposal to grant a felling licence and do not withdraw their objection, then—

- (a) the Commissioners shall not deal with the application, but shall refer it to the Minister, and the application shall then be dealt with under the Town and Country Planning Acts; and
  - (b) if in pursuance of the application the Minister consents to the felling, section 9(1) of this Act shall not apply so as to require a felling licence for the felling of any trees in accordance with the consent.
- (3) Where the Commissioners refer an application under subsection (1)(b) above,—
- (a) the application shall be dealt with under the Town and Country Planning Acts; and
  - (b) so long as the tree preservation order applying to the trees remains in force, section 9(1) shall not apply so as to require a felling licence for the felling of any trees to which the application relates.
- (4) Where in the case of any trees—
- (a) the Commissioners under this section refer an application for a felling licence to the Minister or an authority who have made a tree preservation order relating to the trees; and
  - (b) a felling licence in respect of the trees has been previously refused by the Commissioners,

no account shall be taken, in calculating any compensation payable under section 11 of this Act in consequence of the previous refusal, of deterioration occurring after the date of the reference.

This subsection shall be without prejudice to section 11(5) of this Act, in a case to which that subsection applies.

- (5) Except as provided by the foregoing provisions of this section, no <sup>F45</sup>[relevant application shall be entertained] in respect of the felling of trees in the case of which section 9(1) of this Act applies so as to require a felling licence.

<sup>F46</sup>(5A) In subsection (5) “relevant application” means—

- (a) in the case of trees in England and Wales, an application under tree preservation regulations for consent under the regulations;
  - (b) in the case of trees in Scotland, an application under a tree preservation order for consent under the order.]
- (6) Where, in the case of trees to which a tree preservation order relates, a felling licence is granted by the Commissioners after the date on which the order comes into force, the licence shall, notwithstanding anything in that order, be sufficient authority for the felling of any trees to which the order relates.
- (7) Schedule 3 to this Act shall have effect for explaining the procedure applicable where this section requires an application to be dealt with under the Town and Country Planning Acts.
- (8) <sup>F47</sup>.....

#### Textual Amendments

**F43** Words in s. 15(1) substituted (6.4.2012 for E.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 8 para. 2\(2\)](#) (with s. 226); [S.I. 2012/601](#), art. 2(a)



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- F44** S. 15(1A) inserted (6.4.2012 for E.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 8 para. 2\(3\)](#) (with s. 226); S.I. 2012/601, art. 2(a)
- F45** Words in s. 15(5) substituted (6.4.2012 for E.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 8 para. 2\(4\)](#) (with s. 226); S.I. 2012/601, art. 2(a)
- F46** S. 15(5A) inserted (6.4.2012 for E.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 8 para. 2\(5\)](#) (with s. 226); S.I. 2012/601, art. 2(a)
- F47** S. 15(8) repealed (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(2), [Sch. 2](#) (with art. 6)

## 16 Review of refusal or conditions of licence.

- (1) The following provisions shall have effect for enabling the decision of the Commissioners on an application for a felling licence to be reviewed where they refuse to grant a felling licence or grant it subject to conditions.
- (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 Minister [<sup>F48</sup>where the application was to fell trees in England and Wales, and the Scottish Ministers where the application was to fell trees in Scotland] to refer the matter to a committee appointed in accordance with section 27 below and—
  - (a) the Minister [<sup>F49</sup>or, as the case may be, the Scottish Ministers] shall, unless he is [<sup>F50</sup>or they are] of opinion that the grounds for the request are frivolous, refer the matter accordingly;
  - (b) the committee, after compliance with section 27(3), shall thereupon make a report on the reference to the Minister [<sup>F49</sup>or, as the case may be, the Scottish Ministers].
- (3) The Minister [<sup>F49</sup>or, as the case may be, the Scottish Ministers] shall, after considering the committee's report, confirm the decision of the Commissioners on the application, or reverse or modify that decision and direct the Commissioners to give effect to the reversal or modification.
- (4) No request may be made under this section in respect of a refusal to grant a felling licence unless a previous application for a licence in respect of the trees has been refused and the application to which the request relates is made after the following date, that is to say—
  - (a) where a reference under this section has been made in respect of a previous application, the third anniversary of the last such application in respect of which such a reference has been made; and
  - (b) in any other case, the third anniversary of the first previous application.

### Textual Amendments

- F48** Words in s. 16(2) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(12\)\(a\)](#)
- F49** Words in s. 2(2)(a)(b)(3) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(12\)\(b\)](#)
- F50** Words in s. 2(2)(a) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(12\)\(c\)](#)

## 17 Penalty for felling without licence.

- (1) Anyone who fells a tree without the authority of a felling licence, the case being one in which section 9(1) of this Act applies so as to require such a licence, shall be guilty

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of an offence and liable on summary conviction to a fine not exceeding [<sup>F51</sup>level 4 on the standard scale] or twice the sum which appears to the court to be the value of the tree, whichever is the higher.

- (2) Proceedings for an offence under this section may be instituted within six months from the first discovery of the offence by the person taking the proceedings, provided that no proceedings shall be instituted more than two years after the date of the offence.

#### Textual Amendments

**F51** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**; and (S.) by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#); **ss. 289F, 289G**

#### [<sup>F52</sup>17A Power of Commissioners to require restocking notice after unauthorised felling.

[<sup>F53</sup>(1) The Commissioners may serve a notice under this section (a “restocking notice”) on a person where—

- (a) it appears to the Commissioners that he has committed an offence in England and Wales under section 17 of this Act, or
- (b) he is convicted in Scotland of an offence under that section,

and (in either case) he has such an estate or interest in the land in question as is mentioned in section 10(1) of this Act.]

[ A restocking notice is a notice requiring the person on whom it is served—

- <sup>F54</sup>(1A) (a) to restock or stock with trees the land or such other land as may be agreed between the Commissioners and him; and
- (b) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding ten years, specified in the notice.]

(2) A restocking notice [<sup>F55</sup> which relates to land in Scotland] shall be served within three months after the date of the conviction or of the dismissal or withdrawal of any appeal against the conviction.

(3) Subject to the provisions of this Act, in considering whether to issue a restocking notice the Commissioners shall—

- (a) have regard to the interests of good forestry and agriculture and of the amenities of the district;
- (b) have regard to their duty of promoting the establishment and maintenance <sup>F56</sup> . . . of adequate reserves of growing trees; and
- (c) take into account any advice tendered by the regional advisory committee for the conservancy comprising the land to which the restocking notice would relate.

(4) This section shall not apply in relation to trees to which a tree preservation order relates or in relation to trees the felling of which took place before the date of coming into force of the Forestry Act 1986.

#### Textual Amendments

**F52** Ss. 17A–17C inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), **s. 1(a)**

**F53** S. 17A(1) substituted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), 4(2)

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- F54** S. 17A(1A) inserted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), 4(3)
- F55** Words in s. 17A(2) inserted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), 4(4)
- F56** Words in s. 17A(3)(b) omitted (1.7.1999) by virtue of [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(9\)](#)

## 17B Appeal against restocking notice.

- (1) A person on whom a restocking notice has been served who objects to the notice or to any condition contained therein may by notice served within the prescribed time and in the prescribed manner request the Minister [<sup>F57</sup>where the restocking notice relates to land in England and Wales, and the Scottish Ministers where the restocking notice relates to land in Scotland] to refer the matter to a committee appointed in accordance with section 27 of this Act; and—
- (a) the Minister [<sup>F58</sup>or, as the case may be, the Scottish Ministers] shall, unless he is [<sup>F59</sup>or they are] of the opinion that the grounds of the request are frivolous, refer the matter accordingly; and
- (b) the committee, after compliance with subsection (3) of that section, shall thereupon make a report to the Minister [<sup>F58</sup>or, as the case may be, the Scottish Ministers].
- (2) The Minister [<sup>F58</sup>or, as the case may be, the Scottish Ministers] may, after considering the committee's report, direct the Commissioners to withdraw the notice or to notify the objector that it shall have effect subject to such modification as the Minister [<sup>F58</sup>or, as the case may be, the Scottish Ministers] shall direct.

### Textual Amendments

- F52** Ss. 17A–17C inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), s. 1(a)
- F57** Words in s. 17B(1) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(13\)\(a\)](#)
- F58** Words in s. 17B(1)(a)(b)(2) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(13\)\(b\)](#)
- F59** Words in s. 17B(1)(a) inserted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(13\)\(c\)](#)

## 17C Enforcement of restocking notice.

The provisions of sections 24 (notice to require compliance with conditions or directions), 25 (appeal against notice under section 24) and 26(1), (3) and (4) (expenses) of this Act shall apply in relation to a restocking notice as they apply in relation to a felling licence; and for the purposes of such application—

- (a) references in those sections to a felling licence shall be construed as references to a restocking notice; and
- (b) [<sup>F60</sup>the references in section 24(2A)(a)(i) and 26(3)] to the applicant for the licence shall be construed as a reference to the person on whom the restocking notice has been served.]

### Textual Amendments

- F52** Ss. 17A–17C inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), s. 1(a)
- F60** Words in s. 17C substituted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), 5(4)

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### *Power of Commissioners to direct felling*

#### **18 Felling directions.**

- (1) Subject to the provisions of this Act (and, in particular, to the duty of the Commissioners to take advice under section 37(3), if it appears to the Commissioners that it is expedient in the interests of good forestry, or for purposes connected with their duty of promoting the establishment and maintenance<sup>F61</sup> . . . of adequate reserves of growing trees, that any growing trees should be felled—
  - (a) in order to prevent deterioration or further deterioration in the quality of the timber comprised therein; or
  - (b) in order to improve the growth of other trees,
 they may give directions (in this Act referred to as “felling directions”) to the owner of the trees requiring him to fell them within such period, being not less than two years after the directions have become operative, as may be specified in the directions.
- (2) In considering whether to give felling directions, the Commissioners shall have regard to the interests of agriculture and the amenity or convenience of any farm or dwelling-house or park usually occupied with a dwelling-house, or of any land held inalienably by the National Trust or the National Trust for Scotland.
- (3) Felling directions given by the Commissioners shall contain a statement of the grounds upon which they are given.
- (4) A person who is given felling directions by the Commissioners may comply with the directions notwithstanding any lease, covenant or contract relating to the trees or land affected by the directions.
- (5) In the case of trees to which a tree preservation order relates, felling directions given by the Commissioners after the date on which the order comes into force<sup>F62</sup> shall be sufficient authority for the felling, notwithstanding anything in—
  - (a) tree preservation regulations, in the case of trees in England or Wales;
  - (b) the tree preservation order, in the case of trees in Scotland.]

#### **Textual Amendments**

**F61** Words in s. 18(1) omitted (1.7.1999) by *S.I. 1999/1747*, art. 3, **Sch. 12 Pt. II para. 4(9)**

**F62** Words in s. 18(5) substituted (6.4.2012 for E.) by *Planning Act 2008* (c. 29), s. 241(3)(4), **Sch. 8 para. 3** (with s. 226); *S.I. 2012/601*, art. 2(a)

#### **19 Restrictions on Commissioners' power under s. 18.**

- (1) Felling directions shall not be given in the case of—
  - (a) fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space (as defined in section 9(6) above);
  - (b) trees on land which is subject to a forestry dedication covenant or agreement; or
  - (c) trees which are being managed to the satisfaction of the Commissioners in accordance with a plan of operations or other working plan approved by them as mentioned in section 14(1) above, but otherwise than under a forestry dedication covenant or agreement.

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- (2) If an application for a felling licence is made to the Commissioners in the case of trees to which a tree preservation order relates and the Commissioners refer the application under section 15 above to the authority who made the order, then so long as the order remains in force no felling directions shall be given in respect of the trees.
- (3) If the Commissioners propose to give felling directions in respect of trees to which a tree preservation order relates, they shall give notice in writing of the proposal to the authority by whom the order was made; and if within the prescribed period after the receipt of the notice the authority object to the proposal and do not withdraw the objection, the Commissioners shall not give the directions except with the consent of the Minister [<sup>F63</sup>where the felling direction was given in respect of trees in England and Wales, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland], who shall consult with the said authority before deciding whether to grant or refuse his consent.
- (4) <sup>F64</sup> .....

**Textual Amendments**

- F63** Words in s. 19(3) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(14)
- F64** S. 19(4) repealed (27.3.2002) by The Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), art. 5(2), Sch. 2 (with art. 6)

**20 Review of felling directions.**

- (1) If a person to whom felling directions are given in respect of any trees is aggrieved by the directions on the ground that the felling is not expedient as mentioned in section 18(1), he may by notice served within the prescribed time and in the prescribed manner request the Minister [<sup>F65</sup>where the felling direction was given in respect of trees in England and Wales, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland] to refer the matter to a committee appointed in accordance with section 27 below and the Minister [<sup>F66</sup>or, as the case may be, the Scottish Ministers shall, unless he is or they are] of opinion that the grounds for the request are frivolous, refer the matter accordingly.
- (2) The committee to whom a matter is referred under this section, after complying with section 27(3), shall thereupon make a report on the reference to the person by whom the notice was served and to the Commissioners, and the Commissioners shall confirm, withdraw or modify the directions in accordance with the report.

**Textual Amendments**

- F65** Words in s. 20(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(15)(a)
- F66** Words in s. 20(1) substituted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(15)(b)

**21 Courses open to person adversely affected by felling directions.**

- (1) The provisions of this section shall have effect where a person to whom felling directions are given claims that compliance with the directions would involve him in a net loss after taking into account any benefit arising therefrom in respect of other trees of which he is the owner.

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- (2) The person may by notice given to the Minister [<sup>F67</sup>where the felling direction was given in respect of trees in England and Wales, and the Scottish Ministers where the felling direction was given in respect of trees in Scotland] in the prescribed manner and within the prescribed period—
- (a) if he has the right to sell the trees for immediate felling, require the Commissioners to buy the trees to which the directions relate; or
  - (b) in any case, require the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] to acquire his interest in the land affected by the directions.

A notice under this section requiring the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] to acquire an interest in land shall be deemed to include an offer by the person entitled to that interest to convey to the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] such easement or servitude or other right for the benefit of the land over adjoining land in which that person has an interest as may be agreed between that person and the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] or as may, in default of agreement, be determined in accordance with section 31 of this Act.

- (3) The Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] may within the prescribed period after receiving the notice either—
- (a) accept the notice; or
  - (b) refer it to a committee appointed in accordance with section 27 below; or
  - (c) revoke the directions to which it relates.
- (4) The committee to whom a matter is referred under this section, after complying with section 27(3), shall thereupon make a report to the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] and to the person by whom the notice under this section was given and shall state—
- (a) whether in the opinion of the committee compliance with the felling directions would involve that person in such a loss as aforesaid; and
  - (b) if so, what modifications (if any) of the directions would be sufficient to avoid that loss.
- (5) Where the committee report that compliance with the directions would not involve the person in such loss as aforesaid, the notice shall be of no effect; but in any other case the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] may, within the prescribed period after receiving the report, either—
- (a) accept the notice; or
  - (b) revoke the directions; or
  - (c) modify the directions in accordance with the report, according as he thinks [<sup>F69</sup>or they think] fit.
- (6) If within the prescribed period after receiving a notice or the report of a committee under this section the Minister [<sup>F68</sup>or, as the case may be, the Scottish Ministers] has not taken any such action as is authorised by subsection (3) or subsection (5) above, as the case may be, the directions to which the notice relates shall cease to have effect at the expiration of that period.
- (7) In determining for the purposes of this section whether compliance with felling directions would involve a person in a net loss, regard shall be had to any compensation received by that person under a tree preservation order [<sup>F70</sup>], or under tree preservation regulations, [in respect of a refusal of consent for the felling of the tree.

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#### Textual Amendments

- F67** Words in s. 21(2) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(16)(a)  
**F68** Words in s. 21(2)-(6) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(16)(b)  
**F69** Words in s. 21(5) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(16)(c)  
**F70** Words in s. 21(7) inserted (6.4.2012 for E.) by Planning Act 2008 (c. 29), s. 241(3)(4), Sch. 8 para. 4 (with s. 226); S.I. 2012/601, art. 2(a)

## 22 Consequences of acceptance by Minister of notice under s. 21

- (1) The following shall be the consequences where a notice given by a person under section 21 is accepted by the Minister [<sup>F71</sup>or, as the case may be, the Scottish Ministers].
- (2) The felling directions in respect of which the notice was given shall cease to have effect.
- (3) If the notice requires the Commissioners to buy the trees to which the directions relate, the Commissioners shall be deemed to have contracted with that person to buy the trees on the date of acceptance of the notice at such price and on such terms (including terms as to the time within which the Commissioners may fell and remove the trees) as may in default of agreement be determined in accordance with section 31 of this Act.
- (4) If the notice requires the Minister [<sup>F71</sup>or, as the case may be, the Scottish Ministers] to acquire the person's interest in the land affected by the directions,—
  - (a) the Minister [<sup>F71</sup>or, as the case may be, the Scottish Ministers] shall be deemed to be authorised to acquire that interest compulsorily under section 39 of this Act and to have served a notice to treat in respect thereof on the date of the acceptance of the notice;
  - (b) the interest shall for that purpose include any such easement or servitude or other right as, by virtue of section 21(2), the person is deemed to have offered in his notice to convey.
- (5) The power conferred by section 31(1) of the <sup>M7</sup>Land Compensation Act 1961 or section 39(1) of the <sup>M8</sup>Land Compensation (Scotland) Act 1963 to withdraw a notice to treat shall not be exercisable in the case of a notice to treat which is deemed to have been served by virtue of this section.

#### Textual Amendments

- F71** Words in s. 22 inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(17)

#### Marginal Citations

- M7** 1961 c. 33(28:1)  
**M8** 1963 c. 51(28:2)

## 23 Proceedings in respect of felling directions.

- (1) A request under section 20 of this Act, and a notice under section 21 of this Act, may be made and given in respect of the same directions; and regulations made by the Commissioners under this Part of this Act may make provision for securing—

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- (a) that in any such case proceedings under those sections respectively on the request and on the notice are taken concurrently;
  - (b) that proceedings on any such request or notice in respect of any felling directions may be postponed until the expiration of the period within which a notice or a request, as the case may be, might be given or made in respect of those directions.
- (2) Felling directions shall be inoperative until the expiration of the period during which such a request or notice as aforesaid may be made or given in respect of the directions and, where a request is made or a notice is given, until the conclusions of any proceedings under section 20 or 21 pursuant to the notice or request.

*Enforcement of licence conditions and felling directions*

**24 Notice to require compliance with conditions or directions.**

- (1) The provisions of this section shall apply if—
- (a) any works required to be carried out in accordance with conditions of a felling licence are not so carried out; or
  - (b) any felling directions given by the Commissioners are not complied with.
- (2) The Commissioners may give to the person responsible a notice requiring such steps as may be specified therein 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; and for purposes of this subsection, “the person responsible” is—
- (a) in the case of non-compliance with conditions of a felling licence, [<sup>F72</sup>the person specified in subsection (2A)]; and
  - (b) in the case of non-compliance with felling directions, the owner of the trees.

[<sup>F73</sup>(2A) The person referred to in subsection (2)(a) is—

- (a) where the licence relates to land in England and Wales—
    - (i) the applicant for the licence, if on the date the notice is served he has such estate or interest in the land as is referred to in section 10(1) of this Act; or
    - (ii) in any other case, the owner of the land;
  - (b) where the licence relates to land in Scotland, the owner of the land.]
- (3) If after the expiration of the time specified in the notice any steps required by the notice have not been taken, the Commissioners may, subject to the following section, enter on the land and take those steps.
- (4) Without prejudice to the powers of the Commissioners under the foregoing subsection, a person who without reasonable excuse fails to take any steps required by a notice given to him under this section shall be guilty of an offence and be liable on summary conviction to a fine not exceeding [<sup>F74</sup>level 5 on the standard scale]; and proceedings in respect of such an offence may be instituted within six months of the first discovery of the offence by the person taking the proceedings, provided that no proceedings shall be instituted more than two years after the date of the offence.



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- (5) A person who is required by a notice under this section to carry out works or take any steps may carry out those works or take the steps notwithstanding any lease, covenant or contract relating to the trees or land affected by the notice.

#### Textual Amendments

- F72** Words in s. 24(2)(a) substituted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), **5(2)**
- F73** S. 24(2A) inserted (16.3.2006) by [Regulatory Reform \(Forestry\) Order 2006 \(S.I. 2006/780\)](#), arts. 1(1), **5(3)**
- F74** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#); ss. 39, 46, **Sch. 3** and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), **Sch. 7D** and expressed to be substituted (S.) (1.4.1996) by [1995 c. 40, ss. 3, 7\(2\), Sch. 1 para. 10, Sch. 2 Pt.III](#)

## 25 Appeal against notice under s. 24.

- (1) If a person to whom a notice under section 24 is given claims—
- that the works in question have been carried out in accordance with the conditions of the felling licence or, in the case of felling directions, that they have been complied with; or
  - that the steps required by the notice to be taken are not required by the conditions or directions,
- he may by a notice served on the Minister [<sup>F75</sup>where the notice is given in respect of land or trees in England and Wales, and the Scottish Ministers where the notice is given in respect of land or trees in Scotland] in the prescribed manner and within the prescribed period after the receipt of the notice under section 24, request the Minister [<sup>F76</sup>or, as the case may be, the Scottish Ministers] to refer the matter to a committee appointed in accordance with section 27 below.
- (2) A notice under section 24 shall be inoperative until the expiration of the prescribed period for the purposes of subsection (1) above and, where a request to the Minister [<sup>F77</sup>or the Scottish Ministers] under that subsection is made, until the conclusion of any proceedings under this section in pursuance of the request.
- (3) Where such a request is made by a person receiving a notice under section 24, the Minister [<sup>F78</sup>or, as the case may be, the Scottish Ministers] shall, unless he is of opinion that the grounds for the request are frivolous, refer the matter accordingly to a committee so appointed.
- (4) The committee to whom a matter is referred under this section, after complying with section 27(3), shall make a report on the reference to the Minister [<sup>F79</sup>or, as the case may be, the Scottish Ministers and he or they] shall, after considering the report, confirm or cancel the notice to which the reference relates.

#### Textual Amendments

- F75** Words in s. 25(1) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para 4\(18\)\(a\)](#)
- F76** Words in s. 25(1) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(18\)\(b\)](#)
- F77** Words in s. 25(2) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(19\)](#)
- F78** Words in s. 25(3) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(20\)](#)
- F79** Words in s. 25(4) substituted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(21\)](#)

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## 26 Expenses etc. in connection with notices under s. 24.

- (1) If the Commissioners, in the exercise of their powers under section 24, enter on land and take any steps required by a notice under that section, they may recover from the person to whom the notice was given any expenses reasonably incurred in connection therewith.
- (2) The Commissioners may remove and either retain or dispose of trees felled by them in the exercise of their said powers, and shall, on a claim made in the prescribed manner by the owner of any trees so removed, pay to him a sum equal to the value of those trees after deducting any expenses reasonably incurred by them in connection with the removal or disposal.
- (3) Subject to any express agreement to the contrary, any expenses incurred by a person for the purpose of complying with a notice under section 24, and any sums paid by a person in respect of expenses of the Commissioners under that section, shall be deemed to be incurred or paid by that person—
  - (a) where the notice relates to works required to be carried out in pursuance of conditions of a felling licence, for the use and at the request of the applicant for the licence;
  - (b) where the notice requires compliance with felling directions, for the use and at the request of the person to whom the directions were given.
- (4) Any sums recoverable by or from the Commissioners under this section may be recovered as a simple contract debt.

### *Supplementary*

## 27 <sup>XI</sup>Committees of reference for purposes of ss. 16, 20, 21 and 25.

- (1) References in sections 16, [F80 17B,] 20, 21 and 25 of this Act to a committee appointed in accordance with this section are to a committee consisting of—
  - (a) a chairman appointed by the Minister [F81 in relation to cases where the trees are, or the land is, in England and Wales, and the Scottish Ministers in relation to cases where the trees are, or the land is, in Scotland]; and
  - (b) two other members selected by the Minister [F82 or, as the case may be, the Scottish Ministers] from a panel of persons appointed by him, after such consultation as is provided for below, for the conservancy in which the trees are growing:
 

Provided that no Forestry Commissioner or person employed by the Commissioners shall be a member of any such committee.
- (2) The consultation required by subsection (1)(b) above is to be with—
  - (a) the regional advisory committee for the said conservancy; and
  - (b) organisations appearing to the Minister [F82 or, as the case may be, the Scottish Ministers] to represent the interests of owners of woodlands and timber merchants respectively; and
  - (c) organisations concerned with the study and promotion of forestry.
- (3) On any reference being made to them under this Part of this Act a committee appointed in accordance with this section shall—

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- (a) afford to the person concerned with the subject-matter of the reference an opportunity of appearing before them and of making representations to them on the matter in question;
- (b) if they think fit, or are so required by the said person, inspect the trees or land to which the reference relates; and
- (c) take into consideration any information furnished to them by the Commissioners as to the performance within the conservancy in which the trees are growing of their duty of promoting the establishment and maintenance<sup>F83</sup> . . . of adequate reserves of growing trees.

For purposes of this subsection “the person concerned with the subject-matter of the reference” is the person at whose request the reference was made, except that in the case of a reference by the Minister [<sup>F82</sup>or, as the case may be, the Scottish Ministers] of a notice under section 21 it is the person by whom the notice was given.

- (4) The Minister may pay to the members of a committee appointed by him under this section such remuneration as he may, with the consent of the Treasury [<sup>F84</sup>as regards England and Wales], determine.

[<sup>F85</sup>(4A) The Scottish Ministers may pay to the members of a committee appointed by them under this section such remuneration as they may determine.]

#### Editorial Information

X1 S. 27: Unreliable margin note

#### Textual Amendments

F80 Words inserted by [Forestry Act 1986 \(c. 30, SIF 54\), s. 1\(b\)](#)

F81 Words in s. 27(1)(a) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(22\)\(a\)](#)

F82 Words in s. 27(1)(b)(2)(3) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(22\)\(b\)](#)

F83 Words in s. 27(3)(c) omitted (1.7.1999) by virtue of [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(9\)](#)

F84 Words in s. 27(4) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(22\)\(c\)](#)

F85 [S. 27\(4A\)](#) inserted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(22\)\(d\)](#)

## 28 Identification of trees.

A person authorised by the Commissioners may take such steps, whether by marking or otherwise, as the Commissioners consider necessary for identifying trees which are the subject of a felling licence or felling directions, or in respect of which a felling licence has been refused.

## 29 Provisions relating to mortgages, heritable securities and settled land.

- (1) Where the interest of the owner of trees in England or Wales is for the time being subject to a mortgage—
  - (a) a claim for any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees may be made either by the mortgagor or by the mortgagee;
  - (b) in either case the compensation or sum shall be paid to the mortgagee or, if more than one, to the first mortgagee, and shall be applied by him as if it were proceeds of the sale of the trees.

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- (2) Where the interest of the owner of trees in Scotland is for the time being subject to a heritable security,—
- (a) a claim for any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees may be made either by the debtor in the heritable security or by the creditor in the heritable security;
  - (b) in either case the compensation or sum shall be paid to the creditor in the heritable security or, if more than one, to the creditor whose heritable security has priority over any other heritable security secured on the land, and shall be applied by him as if it were proceeds of the sale of the trees.
- (3) Subject to the foregoing provisions of this section, where the owner of trees comprised in a settlement within the meaning of the <sup>M9</sup>Settled Land Act 1925 is a tenant for life who is impeachable for waste in respect of the trees, any compensation or sum payable under section 11 or section 26 of this Act in respect of the trees shall be paid to the trustees of the settlement, and shall be applied by them in accordance with section 66(2) of the Settled Land Act 1925 as if it were proceeds of sale of timber cut and sold with the consent of the trustees under that section.

#### Marginal Citations

M9 1925 c. 18(98:3)

### 30 Service of documents.

- (1) Any document required or authorised to be served under this Part of this Act may be served on a person either by delivering it to him, or by leaving it at his proper address, or by sending it through the post in a registered letter addressed to him at that address or in a letter sent by the recorded delivery service and so addressed.
- (2) Any such document required or authorised to be served upon an incorporated company or body shall be duly served if it is served upon the secretary or clerk of the company or body.
- (3) For the purposes of this section and of [<sup>F86</sup>section 7 of the <sup>M10</sup>Interpretation Act 1978], the proper address of any person upon whom any such document as aforesaid is to be served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person to be served:  
Provided that, where the person to be served has furnished an address for service, his proper address for the said purposes shall be the address furnished.
- (4) If it is not practicable to ascertain the name or address of an owner, lessee or occupier of land on whom any such document as aforesaid is to be served, the document may be served by addressing it to him by the description of “owner”, “lessee” or “occupier” of the land (describing it) to which it relates, and by delivering it to some responsible person on the land or, if there is no such person on the land to whom it may be delivered, by affixing it or a copy of it to some conspicuous part of the land.
- (5) The Commissioners may, for the purpose of enabling them to serve or give any document or direction under this Part of this Act, require the occupier of any land and any person who, either directly or indirectly, receives rent in respect of any land, to state in writing the nature of his interest therein and the name and address of any other

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person known to him as having an interest therein, whether as a freeholder or owner, mortgagee or creditor in a heritable security, lessee or otherwise; and anyone who, having been required in pursuance of this subsection to give any information, fails to give it, or knowingly makes any mis-statement in respect thereof, shall be liable on summary conviction to a fine not exceeding [<sup>F87</sup>level 1 on the standard scale].

#### Textual Amendments

- F86** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), **s. 17(2)(a)**  
**F87** Words substituted (E.W.) by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**; and (S.) by virtue of [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#); **ss. 289F, 289G**

#### Marginal Citations

- M10** [1978 c. 30\(115:1\)](#)

### 31 Determination of matters arising under ss. 11, 14, 21 and 22.

- (1) Where a provision of this Part of this Act requires a thing to be determined in accordance with this section, that provision shall—
- in its application to England and Wales, be taken as requiring it to be determined by the [<sup>F88</sup>Upper Tribunal]; and
  - in its application to Scotland, be taken as requiring it to be determined by the Lands Tribunal for Scotland, subject however to the following subsection.
- (2) Until sections 1 to 3 of the <sup>M11</sup>Lands Tribunal Act 1949 come into force as regards Scotland, the said provision shall be taken as requiring the thing in question to be determined by reference to an official arbiter appointed under Part I of the <sup>M12</sup>Land Compensation (Scotland) Act 1963; and sections 3 and 5 of that Act shall apply, subject to any necessary modifications, in relation to the determination of any question under this Act by an arbiter so appointed.

#### Textual Amendments

- F88** Words in s. 31(1)(a) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 77** (with Sch. 5)

#### Marginal Citations

- M11** [1949 c. 42\(127\)](#)  
**M12** [1963 c. 51\(28:2\)](#)

### 32 Regulations.

- (1) The Commissioners may, subject to their duty of consultation under section 37(2) below, by statutory instrument make regulations for prescribing anything which by this Part of this Act is authorised to be prescribed.
- (2) A power conferred by this Part of this Act to prescribe the manner in which a claim or notice may be made or given thereunder shall include power to require that any particulars specified in the claim or notice shall be verified by statutory declaration.

*Status: Point in time view as at 08/11/2012.*

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- [<sup>F89</sup>(3) Regulations made under this Part of this Act may make provision as regards England and Wales, or as regards Scotland.
- (4) A statutory instrument containing regulations made under this Part of this Act making provision only as regards England and Wales—
- (a) if the regulations are made under section 9(5)(b) or (c), shall be of no effect unless approved by a resolution of each House of Parliament; and
  - (b) in a case not falling within the foregoing paragraph, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A statutory instrument containing regulations made under this Part of this Act making provision only as regards Scotland—
- (a) if the regulations are made under section 9(5)(b) or (c), shall be of no effect unless approved by a resolution of the Scottish Parliament; and
  - (b) in a case not falling within the foregoing paragraph, shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (6) The Statutory Instruments Act 1946 <sup>M13</sup> shall apply to any statutory instrument containing regulations made under this Part of this Act applying to Scotland as it applies to any statutory instrument made by the Scottish Ministers.]

#### Textual Amendments

**F89** S. 32(3)-(6) substituted (1.7.1999) for s. 32(3) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(23)

#### Marginal Citations

**M13** 1946 c.36.

### 33 Application of Part II to Crown land.

- (1) In this section “Crown land” means land an interest in which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, and 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 the following provisions of this section, the provisions of this Part of this Act shall apply in relation to Crown land and trees growing thereon to the extent only of any estate or interest therein which is for the time being held otherwise than on behalf of the Crown.
- (3) Except with the consent of the appropriate authority as defined in this section,—
  - (a) no conditions relating to the restocking or stocking of Crown land shall be imposed on the grant of a felling licence;
  - (b) no felling directions shall be given in respect of trees growing on Crown land.
- (4) The Minister [<sup>F90</sup>and the Scottish Ministers] shall not be authorised to acquire the interest of any person in Crown land by virtue of a notice under section 21 unless an offer has previously been made by that person to dispose of that interest to the appropriate authority on terms that the price payable therefor shall be equal to (and shall be determined in default of agreement in like manner as) the compensation which would be payable in respect of that interest if it were acquired in pursuance of such a notice, and that offer has been refused by that authority.

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- (5) 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 Her Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;
  - (c) in the case of land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and
  - (d) 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;
- and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

#### Textual Amendments

**F90** Words in s. 33(4) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(24)

### 34 Meaning of “owner” in Part II.

- (1) In this Part of this Act the expression “owner” has the meaning ascribed to it by this section.
- (2) In relation to land in England or Wales, “owner” means the person in whom for the time being is vested the legal estate in fee simple, except that where in relation to all or any of the provisions of this Part of this Act,—
- (a) all persons appearing to the Minister to be concerned agree, with the approval of the Minister, that some person shall be treated as the owner of land other than the person who would be so treated apart from the agreement; or
  - (b) on an application in that behalf to the Agricultural Land Tribunal established under Part V of the <sup>M14</sup>Agriculture Act 1947 the Tribunal determine, having regard to the respective interests of the persons interested in the land, that some person shall be treated as the owner of the land other than the person who would be so treated apart from the determination,
- that person shall be so treated, but without prejudice to a subsequent agreement or determination, or to his ceasing to be so treated, if the Minister withdraws his approval under paragraph (a) of this subsection.
- (3) In relation to land in Scotland, “owner” means the person who for the time being is <sup>F91</sup>... the owner thereof, except that where, in relation to all or any of the provisions of this Part of this Act,—
- (a) all persons appearing to the [<sup>F92</sup>Scottish Ministers] to be concerned agree, with the approval of the [<sup>F92</sup>Scottish Ministers], that some person shall be treated as the owner of land other than the person who would be so treated apart from the agreement; or
  - (b) on an application in that behalf to the Scottish Land Court the Court determines, having regard to the respective interests of the persons interested in the land, that some person shall be treated as the owner of the land other than the person who would be so treated apart from the determination,

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that person shall be so treated, but without prejudice to a subsequent agreement or determination, or to his ceasing to be so treated, if [<sup>F93</sup>the Scottish Ministers withdraw their] approval under paragraph (a) of this subsection.

- (4) In relation to trees, “owner” means the owner of the land on which the trees are growing and, in the case of trees which have been felled, means the person who was the owner immediately before the felling.

#### Textual Amendments

- F91** Words in s. 34(3) repealed (S.) (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), Sch. 12 para. 27(3), **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2
- F92** Words in s. 34(3)(a) substituted (1.7.1999) by [S.I. 1999/1747](#), art. 3, **Sch. 12 Pt. II para. 4(26)(a)**
- F93** Words in s. 34(3) substituted (1.7.1999) by [S.I. 1999/1747](#), art. 3, **Sch. 12 Pt. II para. 4(26)(b)**

#### Marginal Citations

- M14** [1947 c. 48\(2:1\)](#)

## 35 Interpretation of other expressions in Part II.

In this Part of this Act—

“conservancy” means any area in Great Britain which may for the time being be designated by the Commissioners as a conservancy for the purpose of the performance of their functions;

“felling” includes wilfully destroying by any means;

“felling directions” means directions given by the Commissioners under section 18 of this Act for the felling of trees;

“felling licence” means a licence under this Part of this Act authorising the felling of trees;

“mortgage” and “heritable security” include any charge for securing money or money’s worth, and references to a mortgagee, or to a creditor or a debtor in a heritable security, shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Commissioners under this Part of this Act; and

[<sup>F94</sup> “restocking notice” shall be construed in accordance with section 17A(1) of this Act; ]

“tree preservation order” means an order made or having effect as if made under [<sup>F95</sup>section 198 of the Town and Country Planning Act 1990] or [<sup>F96</sup>section 160 of the Town and Country Planning (Scotland) Act 1997].

[<sup>F97</sup>“tree preservation regulations” means regulations made under section 202A(1) of the Town and Country Planning Act 1990;]

#### Textual Amendments

- F94** Definition inserted by [Forestry Act 1986 \(c. 30, SIF 54\)](#), s. 1(c)
- F95** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, **Sch. 2, para. 14(2)**
- F96** Words in s. 35 in the definition of “tree preservation order” substituted (27.5.1997) by virtue of [1997 c. 11, ss. 4, 6\(2\)](#), **Sch. 2 para. 13(2)**



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**F97** Words in s. 35 inserted (6.4.2012 for E.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 8 para. 5](#) (with s. 226); [S.I. 2012/601](#), art. 2(a)

### 36 Application of Part II to London.

This Part of this Act shall not apply to trees standing or growing on land within the area of Greater London other than the outer London Boroughs within the meaning of the <sup>M15</sup>London Government Act 1963.

#### Marginal Citations

**M15** 1963 c. 33(81:1)

## PART III

### ADMINISTRATION AND FINANCE

#### *Advisory bodies*

### 37 Committees to advise Commissioners.

- (1) For the purpose of advising the Commissioners as to the performance of their functions under section 1(3) and Part II of this Act, and such other functions as the Commissioners may from time to time determine, the Commissioners shall continue to maintain—
  - (a) the central advisory committee for Great Britain known as the Home Grown Timber Advisory Committee; and
  - (b) a regional advisory committee for each conservancy (within the meaning of Part II of this Act) in Great Britain.
- [<sup>F98</sup>(2) The power of the Commissioners under section 32 of this Act to make regulations shall not be exercisable except after consultation with the Home Grown Timber Advisory Committee.]
- (3) The Commissioners shall—
  - (a) in considering whether to refuse a felling licence under Part II of this Act, or to grant it unconditionally or subject to any conditions; and
  - (b) in considering whether to give felling directions under the said Part II, take into account any advice tendered by the regional advisory committee for the conservancy in which are growing the trees to which the felling licence applied for, or the directions proposed to be given, relate.

#### Textual Amendments

**F98** S. 37(2) substituted (1.7.1999) by [S.I. 1999/1747](#), art. 3, [Sch. 12 Pt. II para. 4\(25\)](#)

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### 38 Composition etc. of advisory committees.

- (1) The chairman and other members of the Home Grown Timber Advisory Committee and of each regional advisory committee shall be appointed by the Commissioners, and shall hold and vacate office in accordance with the terms of the instrument by which they are appointed.
- (2) The Home Grown Timber Advisory Committee shall consist of not more than twenty-five members, and of those members (other than chairman)—
  - (a) not less than six nor more than eight shall be persons appointed by the Commissioners after consultation with organisations appearing to them to represent the interests of owners of woodlands; and
  - (b) not less than six nor more than eight shall be persons appointed by the Commissioners after consultation with organisations appearing to them to represent the interests of timber merchants.
- (3) Each regional advisory committee shall consist of not less than seven nor more than <sup>F99</sup>twelve] members, and of those members (other than the chairman) not less than four shall be persons appointed by the Commissioners after consultation with organisations appearing to them to represent the interests of owners of woodlands and timber merchants respectively and organisations concerned with the study and promotion of forestry.
- (4) The Commissioners may pay to the members of the Home Grown Timber Advisory Committee or of a regional advisory committee such allowances as they may with the consent of the Treasury determine.
- <sup>F100</sup>(5) Subsection (4) above shall have effect in relation to a regional advisory committee for a conservancy wholly in Scotland as if the reference to the consent of the Treasury were a reference to the consent of the Scottish Ministers.]

#### Textual Amendments

**F99** Words in s. 38(3) substituted (25.9.1991) by [Forestry Act 1991 \(c. 43, SIF 54\)](#), **ss.1, 2(2)**.

**F100** S. 38(5) added (1.7.1999) by [S.I. 1999/1747](#), art. 3, **Sch. 12 Pt. II para. 4(27)**

### *Acquisition and disposal of land*

### 39 Power of Minister to acquire and dispose of land.

- (1) Subject to the provisions of this Act, the Minister <sup>F101</sup>as regards England and Wales, and the Scottish Ministers as regards Scotland] may acquire (by purchase, lease or exchange) land which in his <sup>F102</sup>or their] opinion is suitable for afforestation or for purposes connected with forestry, together with any other land which must necessarily be acquired therewith, and may place any land acquired by him <sup>F103</sup>or them] under this section at the disposal of the Commissioners.
- <sup>F104</sup>(2) Subject to subsection (2A) below, the Minister <sup>F105</sup>and the Scottish Ministers] may dispose for any purpose of land acquired by him <sup>F106</sup>or them] under this section.
- (2A) Subsection (2) above shall not apply in relation to land acquired under this section which is in the Forest of Dean; but the Minister may sell any such land if in his opinion it is not needed, or ought not to be used, for the purpose of afforestation or any purpose

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connected with forestry, and may exchange any such land for other land more suitable for either of the said purposes and may pay or receive money for equality of exchange.]

(3) The Minister [<sup>F107</sup>and the Scottish Ministers] shall have power, in the case of land acquired by him [<sup>F108</sup>or them] under this section,—

(a) to manage and use the land for such purposes as he thinks [<sup>F109</sup>or they think] fit (this power to include that of erecting buildings and other works on the land) where it is not for the time being placed at the disposal of the Commissioners under subsection (1) above; and

(b) to let the land, or grant any interest or right in or over it.

(4) ..... <sup>F110</sup>

[<sup>F111</sup>(5) Any instrument in connection with the management or disposal of land in Scotland acquired by the Minister under this section and for the time being placed at the disposal of the Commissioners shall, without prejudice to any other method of execution, be deemed to be validly executed by him if it is executed on his behalf by an officer of the Commissioners authorised by him for the purpose; and any instrument so executed shall, for the purposes of section 1(8) and (9) of the <sup>M16</sup>Reorganisation of Offices (Scotland) Act 1939, be deemed to have been executed by an officer of the Secretary of State duly authorised by him.]

(6) Schedule 4 to this Act shall have effect as respects the procedure applicable where the Minister acquires [<sup>F112</sup>or the Scottish Ministers acquire] land under this section, except in a case of compulsory purchase in accordance with the following section.

#### Textual Amendments

**F101** Words in s. 39(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(28)(a)

**F102** Words in s. 39(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(28)(b)

**F103** Words in s. 39(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(28)(c)

**F104** S. 39(2)(2A) substituted for s. 39(2) by Forestry Act 1981 (c. 39, SIF 54), s. 1

**F105** Words in s. 39(2) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(29)(a)

**F106** Words in s. 39(2) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(29)(b)

**F107** Words in s. 39(3) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(30)(a)

**F108** Words in s. 39(3) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(30)(b)

**F109** Words in s. 39(3)(a) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(30)(c)

**F110** Ss. 39(4), 41(7) repealed by Forestry Act 1981 (c. 39, SIF 54), s. 4(2), Sch.

**F111** S. 39(5) repealed (S.) (1.8.1995) by 1995 c. 7, ss. 14(2), 15(2), Sch. 5 (with ss. 9(3)(5)(7), 13, 14(3))

**F112** Words in s. 39(6) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(31)

#### Modifications etc. (not altering text)

**C6** S. 39 extended by (S.) Countryside (Scotland) Act 1967 (c. 86, SIF 46:1), s. 59 and Countryside Act 1968 (c. 41, SIF 46:1), (E.W.) s. 23(3) and (E.W.)(S.) s. 24(5)

#### Marginal Citations

**M16** 1939 c. 20(57)

## 40 Compulsory purchase of land.

(1) Subject to the provisions of this section, the power of the Minister [<sup>F113</sup>and the Scottish Ministers] to acquire land by purchase under section 39 above includes a power of compulsory purchase.

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- (2) The following descriptions of land shall not be subject to compulsory purchase under this Act:—
- (a) land which is the site of an ancient monument or other object of archaeological interest;
  - (b) land which forms part of a park, garden or pleasure ground or which forms part of the home farm attached to, and usually occupied with, a mansion house or is otherwise required for the amenity or convenience of a dwelling-house;
  - (c) land which is the property of a local authority, that is to say,—
    - (i) in England or Wales, the council of a county, . . . <sup>F114</sup>, county district or rural parish, [<sup>F115</sup>the Greater London Council] the Common Council of the City of London or the council of a London borough; and
    - (ii) in Scotland, a [<sup>F116</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994];
  - (d) land which has been acquired for the purpose of their undertaking by statutory undertakers, that is to say persons authorised by an enactment, or by an order or scheme made under an enactment, to construct, work or carry on a railway, canal, inland navigation, dock, harbour, tramway, . . . <sup>F117</sup>, . . . <sup>F118</sup>, [<sup>F119</sup>water] or other public undertaking.
  - [<sup>F120</sup>(e) land held or used by a universal service provider (within the meaning of [<sup>F121</sup>Part 3 of the Postal Services Act 2011]) for any purpose in connection with the provision of a universal postal service (within the meaning of [<sup>F122</sup>that Part].)]
- (3) Land shall not be subject to compulsory purchase under this Act if a forestry dedication covenant or agreement is in force with respect to it and it is being used and managed in accordance with the provisions and conditions of a plan of operations approved by the Commissioners; and—
- (a) any question arising under this subsection whether there has been a breach of any of the provisions and conditions of a plan of operations shall be referred for determination as follows, that is to say—
    - (i) in a case relating to England and Wales, by an arbitrator appointed by the President of the Royal Institution of Chartered Surveyors; and
    - (ii) in a case relating to Scotland, by an arbiter appointed by the Chairman of the Scottish Committee of the said Institution; and
  - (b) such a breach shall not be treated as having occurred by virtue of any act or omission capable of remedy unless there has been default in remedying it within a reasonable time after notice given by the Commissioners requiring it to be remedied.
- [<sup>F123</sup>(4) The power of compulsory purchase under this Act shall not be exercisable in relation to land held inalienably by the National Trust or by the National Trust for Scotland.]
- (5) The Minister's [<sup>F124</sup>and the Scottish Ministers'] power of compulsory purchase under this Act shall be exercisable by means of a compulsory purchase order, and—
- (a) the order shall be made in accordance with Part I of Schedule 5 to this Act;
  - (b) Part II of that Schedule shall apply with respect to the validity and date of operation of the order; and
  - (c) Part III of that Schedule shall apply with respect to the procedure for acquiring land by compulsory purchase.

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- (6) If the said power of compulsory purchase is exercised in relation to land in respect of which an advance by way of grant has been made by the Commissioners—
- (a) under section 4 of this Act; or
  - (b) under section 3(3) of the<sup>M17</sup> Forestry Act 1919 at any time after the 26th March 1945,

not being in either case an advance made more than thirty years before the date of the service of the notice to treat in the exercise of that power, the amount of the compensation for the compulsory purchase shall be reduced by the amount of the advance with compound interest thereon (calculated from the date of the advance to the date on which the compensation is paid) at the rate of £3 per cent. per annum with yearly rests:

Provided that, in the case of compensation for the compulsory purchase of one of several interests in such land, the amount of the reduction in the case of each interest purchased shall be equal to a part of the advance and interest proportionate to the value of that interest as compared with the value of the land.

#### Textual Amendments

- F113** Words in s. 40(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(32)(a)**
- F114** Words repealed by S.I. 1974/595, **Sch. 1 Pt. I**
- F115** Words inserted by S.I. 1970/211, **art. 3(7)**
- F116** Words in s. 40(2)(c)(ii) substituted (S.) (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 69**; S.I. 1996/323, **art. 4(1)(c)**
- F117** Word repealed by Gas Act 1986 (c. 44, SIF 44), s. 67(4), **Sch. 9 Pt. 1**
- F118** Word repealed by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(3)(4), Sch. 17 para. 35(1), **Sch. 18**
- F119** Word repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**
- F120** S. 40(2)(e) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 23** (subject to art. 1(3))
- F121** Words in s. 40(2)(e) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 86(a)**; S.I. 2011/2329, art. 3
- F122** Words in s. 40(2)(e) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 86(b)**; S.I. 2011/2329, art. 3
- F123** S. 40(4) substituted by Forestry Act 1981 (c. 39, SIF 54), s. 2
- F124** Words in s. 40(5) inserted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(32)(b)**

#### Modifications etc. (not altering text)

- C7** S. 40 extended with modifications by Gas Act 1986 (c. 44, SIF 44:2), s. 67(1)(3), **Sch. 7**, para. 2(1), (xviii), Sch. 8 para. 33
- C8** S. 40 extended by Electricity Act 1989 (c. 29, SIF 44:1), s. 112(1)(3), Sch. 16 para. 1(1)(xvii), Sch. 17 paras. 33, **35(1)**
- C9** S. 40 extended (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), **Sch. 25 para. 1(1)(2)** (xiii), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58
- C10** S. 40 extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(1)(xiii)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

- M17** 1919 c. 58

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*Finance, accounts and annual report*

**41 Forestry Fund.**

<sup>F125</sup>(1) The Forestry Fund constituted under section 8 of the Forestry Act 1919 shall be wound up and any balance in the Forestry Fund shall be paid to the Forestry Commissioners.

[ This subsection applies to the following expenses–

- <sup>F126</sup>(2) (a) the salaries of the Forestry Commissioners and the salaries or remuneration of the officers and servants of the Commissioners;
- (b) all expenses incurred by the Commissioners (including the cost of any grant or loan made by them) in the exercise of their functions under or by virtue of–
- (i) this Act (including the payment of allowances to the members of any committee maintained by them under this Act), or
- (ii) any other enactment;
- (c) any superannuation benefits paid under paragraph 9 of Schedule 1 to this Act or under a scheme made by virtue of paragraph 10 of that Schedule;
- (d) any administrative expenses of the Minister under Part II of this Act (including sums required for the payment of remuneration to the members of any committee appointed by him under section 27);
- (e) all capital payments made by the Minister in acquiring land under section 39 above and any expenses incurred by him in managing such land and any rent or other outgoings payable in respect of such land,

but this subsection does not apply to any expenses to which subsection (4) below applies.

(3) The expenses to which subsection (2) above applies shall be payable out of money provided by Parliament, except in so far as they are met out of money held by the Commissioners in accordance with subsection (6) or (7) below.

(3A) Where, by virtue of subsection (3) above, any expenses incurred by the Minister falling within subsection (2) above are to be met out of money held by the Commissioners, they shall make payments to him for that purpose.]

(4) There shall be payable out of the Scottish Consolidated Fund–

- (a) all expenditure of a description specified in paragraph (a) or (b)(i) of subsection (2) above incurred by the Commissioners as regards Scotland;  
<sup>F127</sup> . . .
- (b) all expenditure incurred by the Commissioners in the exercise of their functions under the Countryside (Scotland) Act 1967 <sup>F128</sup>.

<sup>F129</sup>(c) [ all grants and loans made by the Commissioners under section 1 of the Forestry Act 1979 <sup>F130</sup> in relation to land in Scotland; and

- (d) all expenditure incurred by the Commissioners in the exercise of their functions under the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999.]

<sup>F131</sup>(4A) . . . . .]

(5) The Commissioners may accept any gift made to them for all or any purposes of this Act and, subject to the terms thereof, may apply it for those purposes in accordance with regulations made by them.

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- [<sup>F132</sup>(6) Subject to subsections (8) and (10) below, all sums received by the Commissioners in respect of—
- (a) the sale of timber or any other transactions carried out by them in the exercise of their functions under this Act, or
  - (b) any other exercise of their functions under or by virtue of this Act or any other enactment,
- shall be held by the Commissioners for the purpose of meeting the expenses to which subsection (2) above applies.
- (7) Subject to subsection (8) below, the following sums received by the Minister shall be paid by him to the Commissioners and held by them for the purpose of meeting the expenses to which subsection (2) above applies—
- (a) any capital sum received from the sale, lease or exchange of land acquired by him under section 39 above and all sums received by him from the letting or use of such land, and
  - (b) all sums received under sections 16 to 18 of the New Forest Act 1949.
- (8) The Minister may, with the approval of the Treasury, direct—
- (a) that sums received by the Commissioners falling within subsection (6) above, or by the Minister falling within subsection (7) above, or both, which are specified or of a description specified in the direction, or
  - (b) that all sums received by the Commissioners falling within subsection (6) above, or by the Minister falling within subsection (7) above, or both, as specified in the direction,
- shall not be subject to subsection (6) or, as the case may be, (7) but shall instead be paid into the Consolidated Fund.
- (9) The power to give a direction under subsection (8) above includes power to vary or revoke a previous direction under that power.
- (10) Subject to any provision made by or under an Act of the Scottish Parliament for the disposal of or accounting for sums received, there shall be paid into the Scottish Consolidated Fund—
- (a) all sums received by the Commissioners of a description specified in subsection (6)(a) above as regards Scotland;
  - (b) all sums received by the Commissioners in the exercise of their functions under the Countryside (Scotland) Act 1967 <sup>F133</sup>.
- (11) Any question as to whether, for the purposes of this section—
- (a) any expenditure incurred by the Commissioners is incurred, or to be treated as incurred, as regards Scotland, or
  - (b) any sum received by them is received, or to be treated as received, in respect of the exercise of their functions as regards Scotland,
- may be determined by agreement between the Minister (acting with the agreement of the Treasury) and the Scottish Ministers.]

<sup>F134</sup>(6) .....

(7) ..... <sup>F135</sup>

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**Textual Amendments**

- F125** S. 41(1)-(4A) substituted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(33)(a)**
- F126** S. 41(2)(3)(3A) substituted (16.3.2000) for s. 41(2)(3) by S.I. 2000/746, art. 2, **Sch. para. 5(2)**
- F127** Word in s. 41(4)(a) omitted (16.3.2000) by virtue of S.I. 2000/746, art. 2, **Sch. para. 5(3)**
- F128** 1967 c.86.
- F129** S. 41(4)(c)(d) inserted (16.3.2000) by S.I. 2000/746, art. 2, **Sch. para. 5(3)**
- F130** 1979 c. 21; see also paragraph 8 of the present Schedule.
- F131** S. 41A repealed (16.3.2000) by S.I. 2000/746, art. 2, **Sch. para. 5(4)**
- F132** S. 41(6)-(11) inserted (16.3.2000) by S.I. 2000/746, art. 2, **Sch. para. 5(5)**
- F133** 1967 c. 86.
- F134** S. 41(6) repealed (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(33)(b)**
- F135** Ss. 39(4), 41(7) repealed by **Forestry Act 1981** (c. 39, SIF 54), s. 4(2), **Sch.**

**Modifications etc. (not altering text)**

- C11** S. 41(10): To be read (*temp.* from 16.3.2000 to 31.3.2000) as if the reference therein to “an Act of the Scottish Parliament” were a reference to the Scotland Act 1998 (Transitory and Transitional Provisions) (Finance) Order 1999 by S.I. 2000/746, **art. 3**

<sup>F136</sup>**42** .....

**Textual Amendments**

- F136** S. 42 repealed (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(34)**

**43 Satisfaction of certain contingent liability to Crown Estate.**

- (1) If the Minister sells land which was transferred to him, or to any predecessor of his, or to the Commissioners, under section 1(1)(a) of the <sup>M18</sup>Forestry (Transfer of Woods) Act 1923 to an amount exceeding [<sup>F137</sup>2 hectares] at any one time, then if the sum determined under section 3 of the said Act of 1923 as the amount contingently payable by way of compensation for the transfer of rights and interests of the Crown has not been fully paid or satisfied,—
  - (a) the net proceeds of sale, or the portion necessary to satisfy the said sum, shall be paid by the Minister to the Crown Estate Commissioners and shall form part of the Crown Estate; and
  - (b) the payment shall be treated as satisfying a part of that sum equal to the gross proceeds of sale or the corresponding portion of them.
- (2) [<sup>F138</sup>If section 1 of the Sovereign Grant Act 2011 ceases to have effect ], there shall be paid out of [<sup>F139</sup>the Consolidated Fund] to the Crown Estate Commissioners all such amounts as immediately before the commencement of this Act remained outstanding as compensation due to the Crown under section 3 of the said Act of 1923, reduced by the amount of any payments made since that commencement to the Crown Estate Commissioners pursuant to subsection (1) above or to the corresponding provision in section 8(1) of the <sup>M19</sup>Crown Estate Act 1961.



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**Textual Amendments**

- F137** Words substituted by [Forestry Act 1979 \(c. 21, SIF 54\), s. 2\(1\), Sch. 1](#)
- F138** Words in s. 43(2) substituted (1.4.2012) by [Sovereign Grant Act 2011 \(c. 15\), s. 15\(1\), Sch. 1 para. 18\(a\)](#)
- F139** Words in s. 43(2) substituted (1.4.2012) by [Sovereign Grant Act 2011 \(c. 15\), s. 15\(1\), Sch. 1 para. 18\(b\)](#)

**Marginal Citations**

- M18** [1923 c. 21](#)
- M19** [1961 c. 55\(29:7\)](#)

<sup>F140</sup>**44** .....

**Textual Amendments**

- F140** [S. 44](#) repealed (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(35\)](#)

[<sup>F141</sup>**45** (1) The Commissioners shall, on such day and in such form as the Scottish Ministers may direct, submit to the Scottish Ministers an annual report and accounts as to their proceedings under this Act as regards Scotland and the Scottish Ministers shall lay the report and accounts before the Scottish Parliament.

(2) The annual report and accounts referred to in subsection (1) above shall be audited by the Auditor General for Scotland or by persons appointed by him.

(3) The Commissioners shall, on such day and in such form as the Ministers may direct, submit to the Ministers an annual report<sup>F142</sup> . . . as to their proceedings under this Act other than such proceedings as regards Scotland and the Ministers shall lay the report<sup>F142</sup> . . . before Parliament.

(4) Section 88(3) of the Scotland Act 1998 shall not apply in relation to the Commissioners.]

**Textual Amendments**

- F141** [S. 45](#) substituted (1.7.1999) by [S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4\(36\)](#)
- F142** Words in s. 45(3) omitted (16.3.2000) by virtue of [S.I. 2000/746, art. 2, Sch. para. 5\(6\)](#)

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## PART IV

### GENERAL

#### 46 Commissioners' power to make byelaws.

- (1) Subject to the provisions of this and the next following sections, the Commissioners may make byelaws with respect to any land which is under their management or control and to which the public have, or may be permitted to have, access.
- (2) The Commissioners' byelaws may be such as appear to them to be necessary—
  - (a) for the preservation of any trees or timber on the land, or of any property of the Commissioners; and
  - (b) for prohibiting or regulating any act or thing tending to injury or disfigurement of the land or its amenities; and
  - (c) without prejudice to the generality of the foregoing, for regulating the reasonable use of the land by the public for the purposes of exercise and recreation.
- (3) Byelaws under this section—
  - (a) shall not take away or injuriously affect any estate, interest, right of common or other right of a profitable or beneficial nature in, over or affecting any land, except with the consent of the person entitled thereto;
  - (b) shall not apply to a common which is subject to a scheme or regulation made in pursuance of the Metropolitan Commons Acts 1866 to 1898, or the Inclosure Acts 1845 to 1882, or the <sup>M20</sup>Commons Act 1899.
- (4) Byelaws under this section shall be made by statutory instrument and a draft of a statutory instrument containing any such byelaws [<sup>F143</sup>with respect to land in England and Wales] shall be laid before Parliament.
- [<sup>F144</sup>(4A) A draft of any statutory instrument containing byelaws made under this section with respect to land in Scotland shall be laid before the Scottish Parliament.
- (4B) The Statutory Instruments Act 1946 shall apply to any statutory instrument containing byelaws made under this section with respect to land in Scotland as it applies to any statutory instrument made by the Scottish Ministers.]
- (5) If anyone fails to comply with, or acts in contravention of, any byelaw made under this section he shall be guilty of an offence and be liable on summary conviction as follows:—
  - (a) in the case of an offence against byelaws made by the Commissioners with respect to the New Forest, he shall be liable to a fine not exceeding [<sup>F145</sup>level 2 on the standard scale],
  - (b) in a case not falling within the foregoing paragraph, he shall be liable to a fine not exceeding [<sup>F145</sup>level 2 on the standard scale]; and
  - (c) in [<sup>F146</sup>the case of a continuing offence falling within either of the foregoing paragraphs] he shall be liable to a further fine not exceeding [<sup>F147</sup>50p] for each day upon which the offence continues.
- (6) ..... <sup>F148</sup>

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#### Textual Amendments

- F143** Words in s. 46(4) inserted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(37)(a)**
- F144** S. 46(4A)(4B) inserted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(37)(b)**
- F145** Words substituted by virtue of (E.W.) **Criminal Justice Act 1982** (c. 48, SIF 39:1); ss. 39, 46, **Sch. 3** and (S.) **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **Sch. 7D** and expressed to be substituted (S.) (1.4.1996) by 1995 c. 40, ss. 3, 7(2), Sch. 1 para. 10, **Sch. 2 Pt. III**
- F146** Words substituted by **Criminal Justice Act 1967** (c. 80, SIF 39:1), **Sch. 6 para 28**
- F147** Words substituted by **Decimal Currency Act 1969** (c. 19, SIF 10), **s. 10(1)**
- F148** S. 46(6) repealed by **Criminal Justice Act 1972** (c. 71, SIF 39:1), **Sch. 6 Pt. II**

#### Modifications etc. (not altering text)

- C12** S. 46 amended by (S.) **Countryside (Scotland) Act 1967** (c. 86, SIF 46:1), **s. 58(3)** and (E.W.) **Countryside Act 1968** (c. 41, SIF 46:1), **s. 23(4)**

#### Marginal Citations

- M20** 1899 c. 30(25)

### 47 Provisions supplementary to s. 46 for New Forest and Forest of Dean.

- (1) Byelaws made by the Commissioners under section 46 with respect to the New Forest or the Forest of Dean shall be without prejudice to any byelaws made under any other Act by the verderers of either Forest, but before making any such byelaws the Commissioners shall consult with the verderers of the Forest concerned.
- <sup>M21</sup>(2) Section 1(3) of the <sup>M21</sup>New Forest Act 1964 (which applies byelaws made by the Commissioners to certain land added under that Act to the Forest) shall have effect with the substitution for the reference to section 2 of the <sup>M22</sup>Forestry Act 1927 of a reference to section 46 of this Act.
- (3) The verderers of either of the said Forests may in their courts inquire into any offence consisting in a failure to comply with, or a contravention of, byelaws made by the Commissioners under section 46, being an offence alleged to have been committed within the Forest, and may punish any such offence so committed.
- (4) As respects their jurisdiction under this section, the verderers' courts shall be deemed to be magistrates' courts, and the provisions of the <sup>M23M24</sup>Magistrates' Courts Act 1952 and 1957, including provisions as to the recovery of fines and as to appeals, and the provisions of any rules made under those Acts, shall apply accordingly.
- (5) The powers conferred by this section on the verderers of the New Forest and the Forest of Dean shall be in addition to, and not in derogation of, any other powers exercisable by them, and shall be without prejudice to the power of any other court in relation to offences under section 46.

#### Editorial Information

- X2** The text of s. 47(2) and Sch. 7 Pt. I is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

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#### Modifications etc. (not altering text)

**C13** S. 47(4) references to Magistrates' Courts Act 1952 and 1957 (which Acts were repealed by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154(a), [Sch. 9](#)) are to be construed as mentioned in Sch. 8 para. 5 of that 1980 Act

#### Marginal Citations

**M21** 1964 c. 83.

**M22** 1927 c. 6.

**M23** 1952 c. 55

**M24** 1957 c. 29

### 48 Powers of entry and enforcement.

- (1) An officer of the Commissioners or any other person authorised by them in that behalf may (on production, if so required, of his authority) enter on and survey any land for the purpose of ascertaining whether it is suitable for afforestation or for the purpose of inspecting any timber thereon, or for any other purpose in connection with the exercise of the powers and performance of the duties of the Commissioners under this Act or the <sup>M25</sup>Plant Health Act 1967.
- (2) The Commissioners may authorise an officer or servant appointed or employed by them to exercise and perform on their behalf such powers and duties as they may consider necessary for the enforcement of byelaws under section 46 of this Act, and in particular to remove or exclude, after due warning, from any land to which the byelaws relate a person who commits, or whom he reasonably suspects of committing an offence against the said section or against the <sup>M26</sup>Vagrancy Act 1824.
- (3) Anyone who obstructs an officer or servant appointed or employed by the Commissioners in the due exercise or performance of his powers or duties under the foregoing subsection shall be guilty of an offence and be liable on summary conviction to a fine not exceeding [<sup>F149</sup>level 3 on the standard scale].

#### Textual Amendments

**F149** Words substituted by virtue of (E.W.) [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 39, 46, [Sch. 3](#) and (S.) [Criminal Procedure \(Scotland\) Act 1975 \(c. 21, SIF 39:1\)](#), [Sch. 7D](#) and expressed to be substituted (S.) (1.4.1996) by [1995 c. 40](#), ss. 3, 7(2), Sch. 1 para. 10, [Sch. 2 Pt.III](#)

#### Marginal Citations

**M25** 1967 c. 8(2:11)

**M26** 1824 c. 83(39:2)

### 49 Interpretation.

- (1) In this Act—
  - “the Commissioners” means the body known as “The Forestry Commissioners”;
  - “forestry dedication covenant” and “forestry dedication agreement” have the meanings assigned to them by section 5;

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<sup>F150</sup> “ the Minister ” means, except as provided by <sup>F151</sup> ... <sup>F152</sup> Schedule 1 <sup>F152</sup>, the <sup>F153</sup> Secretary of State <sup>F153</sup> as respects England and the Secretary of State as respects Wales; ]

“National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the <sup>M27</sup>National Trust Act 1907, and “held inalienably”, in relation to land belonging to the National Trust, means that the land is inalienable under section 21 of the said Act of 1907 or section 8 of the <sup>M28</sup>National Trust Act 1939;

“National Trust for Scotland” means the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the <sup>M29</sup>National Trust for Scotland Order Confirmation Act 1935, and “held inalienably”, in relation to land belonging to that Trust, means that the land is inalienable under section 22 of that Order.

(2) For purposes of this Act, Monmouthshire shall be deemed to be part of Wales and not of England.

<sup>F154</sup>(3) .....

#### Textual Amendments

- F150** Definition in s. 49 substituted (1.7.1999) by S.I. 1999/1747, art. 3, **Sch. 12 Pt. II para. 4(38)**
- F151** Words in s. 49(1) in definition of "the Minister" repealed (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(2), **Sch. 2** (with art. 6)
- F152** Words in s. 49(1) in definition of "the Minister" substituted (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(1), **Sch. 1 para. 13(a)** (with arts. 5(3), 6)
- F153** Words in s. 49(1) in definition of "the Minister" substituted (27.3.2002) by [The Ministry of Agriculture, Fisheries and Food \(Dissolution\) Order 2002 \(S.I. 2002/794\)](#), art. 5(1), **Sch. 1 para. 13(b)** (with arts. 5(3), 6)
- F154** S. 49(3) repealed (28.11.2004) by [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), ss. 71, 77(2), **Sch. 12 para. 27(4)**, **13 Pt. 1** (with ss. 58, 62, 75); S.S.I. 2003/456, art. 2

#### Marginal Citations

- M27** 1907 c. cxxxvi.
- M28** 1939 c. lxxxvi.
- M29** 1935 c. ii.

## 50 Transitional provisions, repeals and savings.

- (1) The transitional provisions contained in Schedule 6 to this Act shall have effect.
- (2) The enactments specified in the second column of Part I of Schedule 7 to this Act are hereby repealed to the extent specified in the third column of that Part of the Schedule, subject to the savings in Part II of that Schedule.
- (3) Nothing in this section or in Schedule 6 or 7 to this Act shall be taken as affecting the general application of section 38 of the <sup>M30</sup>Interpretation Act 1889 with regard to the effect of repeals.

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**Marginal Citations**

**M30** [1889 c. 63](#)

**51 Short title and extent.**

- (1) This Act may be cited as the Forestry Act 1967.
- (2) This Act shall not extend to Northern Ireland.

**Status:**

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**Changes to legislation:**

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