



# Forestry Act 1967

## 1967 CHAPTER 10

### PART II

#### COMMISSIONERS' POWER TO CONTROL FELLING OF TREES

##### *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>F1</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.

*Status: Point in time view as at 06/04/2012.*

*Changes to legislation: There are currently no known outstanding effects for the Forestry Act 1967, Cross Heading: Power of Commissioners to direct felling. (See end of Document for details)*

- (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>F2</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**

**F1** Words in s. 18(1) omitted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(9)

**F2** 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.
- (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>F3</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>F4</sup> .....

**Textual Amendments**

**F3** Words in s. 19(3) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(14)

**F4** 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)

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## 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>F5</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>F6</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

- F5** Words in s. 20(1) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(15)(a)  
**F6** 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.
- (2) The person may by notice given to the Minister [<sup>F7</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>F8</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>F8</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>F8</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>F8</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>F8</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.

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- (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>F8</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>F8</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>F9</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>F8</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>F10</sup>, or under tree preservation regulations, ]in respect of a refusal of consent for the felling of the tree.

#### Textual Amendments

- F7** Words in s. 21(2) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(16)(a)
- F8** 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)
- F9** Words in s. 21(5) inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(16)(c)
- F10** 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>F11</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.

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- (4) If the notice requires the Minister [<sup>F11</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>F11</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>M1</sup>Land Compensation Act 1961 or section 39(1) of the <sup>M2</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

**F11** Words in s. 22 inserted (1.7.1999) by S.I. 1999/1747, art. 3, Sch. 12 Pt. II para. 4(17)

#### Marginal Citations

**M1** 1961 c. 33(28:1)

**M2** 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—
- (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.

**Status:**

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**Changes to legislation:**

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