

*These notes refer to the Forestry Act (Northern Ireland)
2010 (c.10) which received Royal Assent on 28 June 2010*

Forestry Act (Northern Ireland) 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3– Felling of Trees (Restriction of felling)

Intrinsic to the restriction of felling of trees is a felling and regeneration licensing system to promote the sustainability of woodlands.

Section 15 – Requirement of licence for felling

The felling restrictions have a threshold of 0.2 hectares because the Department’s Forest Service wishes to regulate forests and woodlands, rather than be a steward of individual trees, which are already covered by Tree Preservation Orders under Planning legislation. The threshold was also set because this area matches the minimum area for planting grants under existing Forest Service planting grant schemes.

There is a wide spectrum of exemptions from the requirement for a felling licence, ranging from trees in gardens, public parks, fruit trees, and small trees. An exemption at section 15(2)(e) (ii) is for “where the aggregate cubic content of the trees which are felled by that person without a licence does not exceed 5 cubic metres in any quarter”. To get a sense of what this means, 5 cubic metres equates to one large oak tree.

An offence is created for any person who fells trees where an exemption does not apply and where no licence has been obtained.

There is provision for the Department to serve a restocking notice where it appears that an offence has been committed (section 22 – Power of Department to require restocking after unauthorised felling).

Regulations under section 15 must be made by laying of a draft before and approval by resolution of the Assembly.

Section 16 – Application for felling licence

The application for felling licences will be prescribed in subordinate regulations. It is expected that the application will include: details of the location and area of trees to be felled, a map showing the woodland, special features or restrictions such as Tree Preservation Orders or ancient monuments, and the regeneration or

other plans for the felled area, and any other information required by the felling management plan. The management plan must be agreed by the Department and the process may involve an inspection by a forest officer of the area to be felled.

The Department has a power, prescribed by regulations, to charge a fee to cover its administration costs, and the cost of the inspection (section 21 – Fees in connection with felling licences). Regulations under section 16 must be made by laying of a draft before and approval by resolution of the Assembly.

Section 17 – Compensation on refusal of felling licence

Any compensation payable will be based on the depreciation of the value of trees attributable to deterioration in the quality of the timber as a result of the refusal of a felling licence. Disputed compensation will be dealt with by the Lands Tribunal.

Section 18 – Operation and conditions of felling licence

A licence of not less than 5 years will be granted subject to a felling management plan for the land in question, and may specify the timing of felling, the restocking of the land and other conditions, such as maintaining the character of ancient woodland. Regulations may provide for details on the form, content and amendment etc of management plans.

Section 19 – Deferred decision on an application for felling licence

There is provision for the Department to give notice to an applicant within 3 months, or within a further agreed time, or the application will be deemed to have been refused.

If it appears that the applicant does not have an estate in the land and could not therefore comply with conditions of a licence, the Department may postpone consideration of the application until the relevant person has become a party to the application.

Section 20 – Appeal against decision of Department on application for felling licence

Section 23 – Appeal against restocking notice

Section 25 – Appeal against enforcement notice

There is provision for appeal to a person appointed by the Department under Section 26 in respect of an applicant: (a) who has been refused a felling licence or who has been aggrieved by the conditions attached to a felling licence; (b) upon whom a restocking notice has been served who objects to the notice or to any of its requirements; or (c) to whom an enforcement notice is given in relation to a felling licence or restocking notice who considers that the conditions of either the licence or the restocking notice have been complied with (Section 24 – Notice to require compliance with felling licence conditions or restocking

notice) or that the steps required by the enforcement notice are not required for compliance with either the licence or the restocking notice.

On appeal the appointed person may confirm the decision of the Department regarding the application, the restocking notice or the enforcement notice, or direct the Department to issue the felling licence subject to certain conditions, or modify any existing conditions, or modify or withdraw a restocking notice or an enforcement notice.

An offence is created for failure to take the steps required by an enforcement notice.

Section 26 – Appeals under this Part

An appellant under Section 20, 23 or 25 is entitled to have an appeal determined by a person outside the Civil Service who has been appointed by the Department. The manner and timing of making an appeal and the procedures to be followed in connection with determining an appeal are to be prescribed by regulations.

Section 27 – Identification of trees

There is provision for the Department to mark trees or require identification of trees in certain circumstances, such as where they must be clearly identified by an applicant for a felling licence. For clear felling only the boundary trees need to be marked.

Section 29 – Application of this part to Crown land

Crown land is not excluded from Part 3. However, the grant of a felling licence will not extend to the imposition of conditions on any felling licence granted or to the issue of a restocking notice without the consent of the Crown Estate Commissioners, in the case of land belonging to Her Majesty or the consent of a government department in the case of land belonging to that department. The full requirements of Part 3 apply to any estate which is within Crown land and which is for the time being held otherwise than on behalf of the Crown.