

POLICY NOTE

THE FORESTRY (EXEMPTIONS) (SCOTLAND) REGULATIONS 2019

SSI 2019/126

The above instrument was made in exercise of the powers conferred by sections 24(1) and (2) and 76(3) of the Forestry and Land Management (Scotland) Act 2018. The instrument is subject to affirmative procedure.

Purpose of the instrument

The instrument creates exemptions to the requirement to have permission from the forestry regulator, Scottish Ministers, in order to fell trees. This means that the offence of unauthorised felling (Forestry and Land Management (Scotland) Act, s23) will not apply to felling carried out in the circumstances described in this instrument.

It forms part of a package of instruments required to support the commencement of the Forestry and Land Management (Scotland) Act 2018 including the Forestry (Felling) (Scotland) Regulations 2019 and the Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Savings Provisions) Regulations 2019.

Policy Objectives

The Forestry and Land Management (Scotland) Act 2018 was given Royal Assent in May 2018. The commencement date for the Act, and for all of the instruments that will support its commencement, was set for 1 April 2019.

The instrument sets out what felling can be carried out in Scotland without permission from Scottish Ministers (the role of forestry regulator will be discharged by Scottish Forestry, an agency of the Scottish Ministers). These exemptions will mean that the forestry regulator is primarily focused on felling which could lead to the long-term reduction of woodland cover in Scotland through deforestation. They balance the need to control woodland removal and allowing the use of resources or the carrying out of duties.

The exemptions in this instrument are based on exemptions that were contained in the Forestry Act 1967 and the Forestry (Exceptions from Restriction of Felling) Regulations 1979, with proposals for change forming part of a consultation (see below).

The exemptions include the following

- Felling of trees with a diameter of 10cm or smaller.
- Felling of trees in certain places (such as orchards or public open spaces).
- Felling of 5 cubic metres in any quarter, except in small native woodlands or in Caledonian Pinewoods.
- Felling necessary for the prevention of immediate danger.
- Felling immediately required for development (authorised by planning permission).
- Felling of trees obstructing aerodromes or landing installations.
- Felling by or for electricity operators, in certain circumstances.
- Felling by statutory undertakers, in certain circumstances.
- Felling by or for Scottish Water, or by or for a Local Authority, for flood management, in certain circumstances.

- Felling of trees with Dutch Elm Disease.
- Felling in accordance with a plan of operations, under a forestry dedication agreement.
- Felling of dead trees.
- Felling required by an enactment.
- Felling of trees in accordance with a Tree Preservation Order consent (after being referred by the forestry regulator).

Consultation

A public consultation was carried out between 20 August and 14 October 2018. The responses were analysed by independent analysts The Lines Between, and a report of their analysis is available on the Scottish Government website¹.

Responses to the consultation, although small in number, were varied. While the majority of the responses focused on a limited number of issues, consensus emerged on very few. The following table outlines the principal points raised in relation to the exemptions. The analysis covers a much broader range of points as it also reports on wider responses, for example on issues that are dealt with in supporting guidance.

Summary of responses to the consultation	Consideration of responses and any action taken
Concern expressed that trees in churchyards, burial grounds and public open spaces would be exempt.	A similar ‘place exemption’ already existed under the 1967 Act and 1979 Regulations in order to ensure that the forestry regulator only regulates forestry, and does not have a remit covering all trees.
Requests for clarity in the terms used to frame exemptions.	Clarity will be provided through guidance, terms are only defined in the instrument itself where ordinary meanings do not exist or are not sufficient – for example ‘public open space’.
Concerns raised that regulating the felling of windblow would lead to delays in being able to clear timber after a serious weather event.	Regulating the clearance of windblow, in order to ensure restocking in compliance with principles of sustainable forest management, is necessary. Concerns have been acknowledged and guidance will set out how to access a ‘fast-track’ process for obtaining permission in these circumstances.
Concerns regarding the simplification of the size exemption, from three different diameters for three different reasons (8cm, 10cm, 15cm) down to one diameter regardless of reason (8cm).	Exemption reviewed in light of the comments. The instrument exempts felling of any tree up to 10cm in diameter.
Concern expressed that the	Requiring any person felling a dead tree to apply for

¹ <https://www.gov.scot/publications/analysis-responses-consultation-regulation-felling-restocking/>

proposals will reduce the amount of deadwood left in situ and therefore have a negative effect on biodiversity.	permission would be disproportionate as such felling is unlikely to lead to deforestation.
Concerns expressed that increased protection for small native woodlands would hinder normal management of woodlands. Concerns also expressed that this protection was not strong enough and should encompass Caledonian Pinewoods.	Small native woodlands are those most at risk of from gradual removal. Those with long term forest plans will be able to include necessary management within those plans, and new 10 year thinning approvals will provide equivalent permissions for those without long term forest plans. Exemption reviewed in light of comments about increasing protection. The 84 woodlands on the Caledonian Pinewood inventory were added to the woodlands in which the volume exemption cannot be used.

A full list of those who participated in the consultation and agreed to the release of this information, is available on the Scottish Government Consultation Hub².

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA), Data Protection Impact Assessment (DPIA) and Strategic Environmental Assessment (SEA) have been completed for this package of instruments. There are no equality or children's rights and wellbeing impacts to consider.

The DPIA concludes that this package of instruments, and the processes that will underpin them, comply with the General Data Protection Regulation Principles, although it is unlikely that personal data will be processed specifically in relation to the exemptions set out in this instrument.

The SEA predicted that the effects of the new Regulations would largely be 'minor positive' in nature extending to 'major positive' when considering the cumulative effect over the long term. The Environmental Assessment (Scotland) Act 2005 also requires the publication of a Post-Adoption Statement setting out how the results of the consultation and of the SEA have been taken into account. This Statement will be published in due course.

Financial Effects

The Business and Regulatory Impact Assessment carried out for this package of instruments concluded that there would be some short term impacts of a new regime being brought into force as businesses adjusted to any differences. Those impacts could be minimised by ensuring that differences between the old and the new regimes were kept to a minimum, as well as ensuring that transitional arrangements were put in place for continuity with no additional administrative burden (see policy note for the Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Savings Provisions) Regulations 2019). The exemption set out in this instrument are based on those that were in place under

² <https://consult.gov.scot/> (Search 'Regulation of felling and restocking')

the 1967 Act and Regulations made under it. In order to maintain continuity changes have only been made where they were necessary (for example where the differences in the Primary legislation required them) or where responses to the consultation and wider engagement indicated that improvements could be made.

**Scottish Government
Environment and Forestry Directorate**

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