

POLICY NOTE

THE FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018 (COMMENCEMENT, TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2019

SSI 2019/47 (C. 1)

The above instrument was made in exercise of the powers conferred by section 85(2) and (7) of the Forestry and Land Management (Scotland) Act 2018. The instrument is laid with no procedure.

Purpose of the instrument.

The instrument does three things. It

- commences the remaining sections of the Forestry and Land Management (Scotland) Act 2018,
- makes necessary savings to Acts and statutory instruments on commencement, and
- puts in place transitional arrangements to support the change from one regime to the next.

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 (Exemptions) (Scotland) Regulations 2019 and the Forestry (Felling) (Scotland) 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.

In this note

‘The 2018 Act’ means the Forestry and Land Management (Scotland) Act 2018.

‘The 1967 Act’ means the Forestry Act 1967.

‘The 1979 Regulations’ means the Forestry (Felling of trees) Regulations 1979.

Commencement

Some sections of the 2018 Act came into force on receipt of Royal Assent. These sections (76 to 78 and 82 to 86) are largely procedural, for example setting out what procedure is to be used for each Regulation making power.

This instrument commences all other sections of the 2018 Act on 1 April 2019.

Savings and transitional arrangements

Commencing the 2018 Act means that all repeals made by the Act take effect. In some specific circumstances savings are required to preserve the effect of an otherwise superseded provision. Commencing the 2018 Act also means that the 1967 Act regime will end.

Transitional arrangements are required in order to allow, for example, existing licences to operate or transfer to the new regime. This instrument makes those savings and transitional arrangements and, where Forestry Commissioners would have performed a function, that

function will instead be performed by the Scottish Ministers. All of these arrangements aim to maintain continuity and minimise disruption, see section on consultation below.

Most applications for a felling licence, made before 1 April 2019, will be treated as applications for felling permission under the new regulatory regime, i.e. under the provisions of the 2018 Act.

- Some advanced applications, for example where an applicant has already been offered conditions, will continue to be dealt with under the 1967 Act regime.

1967 Act felling licences, both those issued before and after 1 April 2019, will be treated as 2018 Act felling permissions.

- Requests for reviews of decisions will be made under the 1967 Act regime (savings are made to the 1967 Act and the 1979 Regulations for that purpose).
- The 2018 Act ability to vary or revoke a permission will not apply to transitioned licences, nor will the provisions relating to registration.

Applications made and refused before 1 April 2019 will continue to be subject to the compensation regime in the 1967 Act and the 1979 Regulations. This is true whether or not the claim was started before 1 April 2019.

Where an application for a felling licence relates to an area subject to a Tree Preservation Order (TPO), and the application has been referred before 1 April 2019 to the Planning Authority that made the TPO, the process set out in the 1967 Act for dealing with that referral will apply.

Where Land Management Plans or Forest Design Plans are approved before 1 April 2019, they will be treated as 2018 Act felling permissions, although the 2018 Act ability to vary or revoke a permission will not apply, nor will the provisions relating to registration.

Where a notice to require compliance (often referred to as an enforcement notice) has been issued before 1 April 2019, the enforcement and appeals mechanisms in the 1967 Act and the 1979 Regulations will still apply.

1967 Act restocking notices served before 1 April 2019 will continue to be subject to the enforcement regime in the 1967 Act and the 1979 Regulations.

- Appeals will be made under the 1967 Act regime and savings are made to the 1967 Act and the 1979 Regulations for that purpose.

Where land is being acquired, whether by agreement or Compulsory Purchase, under the 1967 Act and the acquisition is not completed by 1 April 2019, the 1967 Act regime will continue to apply.

Any grants or loans given under the Forestry Act 1979 will continue (although, as stated above, the Scottish Ministers will carry out the function of the Forestry Commissioners for that purpose).

None of the repeals and savings made by the 1967 Act will be affected.

Consultation

No public consultation was carried out on the specific provisions in this instrument as commencement Regulations are largely technical. However during engagement with stakeholders on the other Regulations that make up this package of instruments, respondents made it clear that they required continuity and, in particular, no increase in the administrative burden on those relying on current licences to fell or applying to fell.

Impact Assessments

No impact assessments were carried out on the specific provisions in this instrument as commencement regulations are largely technical. The only likely impact of the transitional arrangements were captured in the Business and Regulatory Impact Assessment, see below.

Financial Effects

The Business and Regulatory Impact Assessment carried out for the wider package of instruments, of which this instrument is one, clearly concluded that continuity was key to minimising the impact on businesses operating in Scotland.

With that in mind the transitional arrangements this instrument puts in place mean that all licences to fell, issued under the 1967 Act, will largely be treated as permissions to fell for the purpose of the new regime.

The principal benefit of this approach is that those that hold licences will not have to take any action at the point of transfer. Their licences will effectively become permissions (under the 2018 Act) and nothing, for example the conditions attached, will be changed. To ensure that those who hold licences are not disadvantaged, certain 2018 Act provisions, such as the ability to vary or revoke a permission, are not applied to licences granted under the 1967 Act that are now being treated as permissions under the 2018 Act. A similar approach is taken to applications for felling licences that are already being processed at the point of transfer.

**Scottish Government
Environment and Forestry Directorate**

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