POLICY NOTE

THE FELLING (SCOTLAND) REGULATIONS 2019

SSI 2019/49

The above instrument was made in exercise of the powers conferred by sections 25(3), 27(8) and (9), 32(1) and (2), 34(6) and (7), 36(8) and (9), 47(1) and (3), 68(2) and (3), 76(3) and 77(1) of the Forestry and Land Management (Scotland) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument

The instrument sets out detail relating to the regulation of forestry in Scotland, in particular: applications for permission to fell and how those permissions are granted; restocking and felling directions; appeals against decisions made by the Scottish Ministers in regulating forestry in Scotland; and compensation for permissions refused or Temporary Stop Notices served in error.

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 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 details how the Scottish Ministers will carry out their regulatory functions (the role of forestry regulator will be discharged by Scottish Forestry, an agency of the Scottish Ministers) and the processes outlined in it are based on the processes used prior to it coming into force, with proposals for change forming part of a consultation (see below).

The processes detailed in the instrument can be summarised in the following way.

Applications for permission to fell

- Minimum information required for applications.
- Site visits if required to complete an application.
- Matters to which conditions can relate.
- How decisions will be notified to applicants.
- Restrictions that apply following the refusal of an application.

Restocking directions

- How directions will be notified.
- What the directions must contain.
- Matters to which conditions can relate.
- That directions may not be served where felling was in accordance with a Tree Preservation Order consent.

Felling directions

- How directions will be notified.
- That directions may not be served in places exempt from the felling regime in the Forestry (Exemptions) (Scotland) Regulations 2019.

Appeals

- Who may appeal.
- How appeals should be notified to the Scottish Ministers.
- How an initial determination will be made by the Scottish Ministers (a 'first stage' or 'quick review') which can uphold the appeal and require the decision to be retaken.
- How appeals will be determined by an appointed person should the Scottish Ministers not uphold the appeal at the previous stage.

Compensation

- Who may claim compensation following refusal of a permission.
- How those claims should be made.
- How that compensation will be calculated.
- How claims for compensation, following the revocation of a Temporary Stop Notice, may be made.
- How that compensation will be calculated.
- How disputes regarding compensation claims will be determined.

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 website[1].

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 analysis covers a broad range of points as it reports on wider responses, for example on issues that are dealt with in supporting guidance.

The principal issue raised in relation to this instrument related to the information required in an application for a felling permission, specifically for thinning. Respondents suggested that the Regulations provided an opportunity to improve the manner in which applicants were asked to describe their thinning proposals. The requirement was reviewed in light of these comments and was changed to provide greater flexibilty in how thinning operations are described.

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 Hub[2].

Impact Assessments

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

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

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

The DPIA concludes that this package of instruments, and the processes that will underpin them, complies with the General Data Protection Regulation Principles.

The SEA predicted that the effects of the new Regulations will 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). This instrument puts in place new processes that are closely based on the old processes in order to keep disruption to a minimum.

Scottish Government
Environment and Forestry Directorate

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