POLICY NOTE

THE FORESTRY (EXEMPTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2021

SSI 2021/408

The above instrument was made in exercise of the powers conferred by section 24(1) of the Forestry and Land Management (Scotland) Act 2018 ("the 2018 Act") and all other powers enabling them to do so.

The instrument is subject to the affirmative procedure.

Purpose of the instrument
The instrument has two purposes:

Firstly, to correct a minor typographical error in regulation 2 (interpretation), in the definition of "statutory undertaker".

Secondly, to remove the ability for trees to be felled without felling permissions, in relation to peatland restoration projects, where planning permission has been granted under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (article 3 and paragraph 20A of schedule 1). These Regulations make an exception to the exemption at regulation 4(e) of the Forestry (Exemptions) (Scotland) Regulations 2019 ("the Principal Regulations") the effect of which is, despite having planning permission for a peatland restoration project, felling a tree without a felling permission will constitute an offence under section 23 of the 2018 Act.

Policy Objectives

Under section 23 (offence of unauthorised felling) of the 2018 Act it is an offence to fell a tree unless the felling is exempt under section 24, or the felling is carried out in accordance with a felling permission or direction, a restocking direction, a registered notice to comply, a remedial notice, or a registered remedial notice.

Section 24 (unauthorised felling: exemptions) of the 2018 Act gives Scottish Ministers the power to make regulations specifying when section 23 does not apply. These exemptions are set out in the Principal Regulations.

The Principal Regulations set out what felling can be carried out in Scotland without first obtaining felling permission from the Scottish Ministers (the role of forestry regulator is discharged by Scottish Forestry, an agency of the Scottish Ministers). These exemptions 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.

Regulation 4 of the Principal Regulations specifies the types of felling that are exempt from the offence of unauthorised felling.

Regulation 4(e) provides that it will not be an offence to fell a tree without prior authorisation from the Scottish Ministers where the felling of a tree is immediately required for the purposes of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act 1997.

A new permitted development right ("PDR"), Class 20A (peatland restoration), was inserted into the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 by the Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020 ("the 2020 Order"). Section 30 of the Town and Country Planning (Scotland) Act 1997 provides that an order of this kind may itself grant planning permission for development or any class of development so specified.

Scottish Ministers are concerned that this could potentially result in large scale deforestation, without schemes being given full and proper scrutiny by Scottish Forestry.

Scottish Forestry have agreed with the Scottish Government Planning and Architecture Department, responsible for creating the Peatland Restoration PDR, Nature Scot, SEPA and Historic Environment Scotland that this is an unintended consequence. This is now being addressed by amending the Principal Regulations to exclude tree felling from the PDR approval, so that peatland restoration schemes that propose deforestation will also require Felling Permission.

The new Peatland PDR does not remove the requirement for a determination from Scottish Forestry under the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.

Consultation

No formal consultation was carried out on the specific provisions in this instrument as these Regulations aim to remedy an unintended consequence identified in the consultation process for the new peatland restoration PDR.

The provisions of the 2020 Order, including the provisions relating to peatland restoration, were the subject of a public consultation which ran from 1 October 2020 to 12 November 2020. A report published on 18 December 2020 summarises the responses to the consultation and is available at: https://consult.gov.scot/planning-architecture/programme-reviewing-extending-pdr/

The 'Strategic Environmental Assessment draft post adoption statement', was published in December 2020 and sets out how the assessment and consultation responses have been taken into account within the development of the Proposed programme for reviewing and extending permitted development rights (PDR) in Scotland at this stage of the process.

Appendix A.2: Phase 1 finalised Regulations, discusses the impact of the new PDR on sustainable forest management as well as stating the agreed remedy; to amend the Forestry (Exemptions) (Scotland) Regulations 2019 so that 'any felling considered necessary to deliver a peatland restoration scheme under PDR will still require a felling permission (and consequent revisions to a Forest Plan) to ensure that the potential impacts of woodland removal and timber extraction are fully considered.' See: Permitted development rights -

extension and review: strategic environmental assessment - draft post adoption statement - gov.scot (www.gov.scot)

Planning circular 2/2015: non-domestic permitted development rights - consolidated circular - updated 2021 - gov.scot (www.gov.scot) was published on the 1st April 2021. Annex J explains the change and impact of the new PDR in relation to peatland restoration and felling permission, along with the proposed requirement to amend the Principal Regulations to ensure peatland restoration schemes, that propose tree felling, will be required to obtain felling permission from Scottish Forestry.

Therefore, it is not considered necessary for further consultation on the proposed change to the Principal Regulations.

Impact Assessments

No specific impact assessments were carried out for this instrument given that the effect of the main amendment will be to remedy the unintended consequence created by the introduction of the new peatland restoration PDR, and that impact and solution were discussed, agreed and published in the post adoption statement and subsequent planning circular.

The secondary amendment is purely the correction of a typographical error, there is no fundamental change to the Principle Regulations or 'impact' by making this correction.

Therefore, given these Regulations aim primarily to remedy an unintended consequence of the new peatland restoration PDR, it is not considered that further Impact Assessments will be required for this proposed change to the Principal Regulations.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been carried out for this instrument because the BRIA carried out for the 2020 Order did not raise any concerns or identify any impacts in relation to the introduction of the peatland restoration PDR itself and; there is no fee to apply for Felling Permission.

Furthermore the planning circular gives a clear and structured approach to applicants and planning officials, which if followed will ensure that all relevant permissions are obtained in a timely fashion. This approach suggests that the application for Felling Permission should run consecutively with the PDR approval process to avoid delays in the determination of applications.

The Minister for Environment, Biodiversity and Land Reform confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Environment and Forestry Directorate

September 2021