

FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018

EXPLANATORY NOTES

THE ACT

Part 4 - Felling

Sections 45 to 67 - Compliance

Temporary stop notices

70. [Section 45](#) provides for the Scottish Ministers to give “Temporary Stop Notices” (TSNs) where they have reason to believe that unauthorised felling is being carried out. Subsection (3) sets out matters that a TSN must contain and subsection (4) allows for TSNs to impose conditions. Subsection (5) allows for TSNs to be varied or revoked. Subsection (6) and (7) detail how TSNs are served. Subsections (8) and (9) detail when TSNs have effect, including limiting them to a maximum of 28 days. Subsection (10) provides that a person may stop any activity specified in the TSN despite any provision in any agreement relating to the trees or the land to which the notice relates. Subsection (11) provides the Scottish Ministers with the power to enter land to which the TSN relates in order to monitor compliance and subsection (12) ensures that felling permissions or felling or restocking direction cannot be given while a TSN is in place.
71. [Section 46](#) creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without reasonable excuse, to comply with a TSN.
72. Under section 47, a person who suffers loss as a result of a TSN served where felling was, in fact, authorised is entitled to compensation in accordance with provisions made in regulations by the Scottish Ministers. Section 47(3) provides that regulations may include provision about the procedure for applying, information to be provided in applications, the way in which the amount of compensation is to be determined, the way in which any disputes about compensation are to be determined, and appeals about decisions relating to compensation. Section 76(1)(g) provides that regulations under section 47(3) are subject to negative procedure.

Requests for information

73. [Section 48](#) provides powers for the Scottish Ministers to request information about compliance with felling permission conditions, felling and restocking directions (including any associated conditions), registered notices to comply, remedial notices (including any associated conditions) or registered remedial notices for the purpose of monitoring compliance with those. The persons from whom the Scottish Ministers may request the information are set out in subsection (3).

74. [Section 49](#) creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of knowingly or recklessly providing false or misleading information in response to a request for information under section 48.

Site visits with the consent of the owner or occupier

75. Section 50(1) enables the Scottish Ministers to enter land mentioned in subsection (2) to monitor compliance with felling permission conditions, a felling or restocking direction (including any associated conditions), a registered notice to comply, remedial notice (including any associated conditions) or a registered remedial notice. The power is only exercisable with the consent of an owner or occupier of the land mentioned in subsection (2). If consent is given, the Scottish Ministers may exercise the powers in section 62.

Powers of entry

76. [Sections 51 to 53](#) provide the Scottish Ministers with powers of entry to land for the purposes of—
- (a) determining whether unauthorised felling has taken place or is taking place;
 - (b) determining whether they need to give a felling or restocking direction; or
 - (c) determining whether a person has failed or is failing to comply with a condition on a felling permission, a felling or restocking direction (including any associated conditions), a registered notice to comply, a remedial notice or a registered remedial notice.

Remedial notices

77. [Section 54](#) makes provision about remedial notices, as defined at subsection (2). Subsection (1) enables the Scottish Ministers to give a person a remedial notice if it appears to them that the person has failed or is failing to comply with a condition on felling permission, a felling or restocking direction (including any associated conditions) or a registered notice to comply.
78. Section 54(3) requires that the Scottish Ministers give a copy of a remedial notice to the owner of the applicable land. Subsection (4) provides that a person may take any steps or stop any activity specified in the remedial notice despite any provision in any agreement relating to the trees or the land to which the notice relates or any associated conditions of the felling permission, felling or restocking direction or, as the case may be, registered notice to comply, which would otherwise prevent that person from doing so. Subsection (5) provides that the Scottish Ministers may vary or revoke a remedial notice (including any associated conditions).
79. Subsection (6) enables the Scottish Ministers, by regulations, to make further provision about remedial notices. Regulations may include provision about the imposition of conditions on a remedial notice, which may include steps that must be taken after the notice is complied with (subsection 7). Section 76(1)(h) provides that regulations under section 54(6) are subject to negative procedure.
80. [Section 55](#) creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without reasonable excuse, to comply with a remedial notice (including any associated conditions). Section 56 enables the Scottish Ministers to apply to register remedial notices, specifying the matters set out in subsections (a) and (b). Section 57 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without reasonable excuse, to comply with a registered remedial notice.

Giving documents to owner or occupier

81. [Section 58](#) makes provision for how notices or other documents are to be given to an owner or occupier of land for the purposes of Part 4 of the Act where the person's name or address cannot be ascertained after reasonable enquiry.

Step-in power

82. [Section 59](#) provides powers for the Scottish Ministers to enter land to which a remedial notice (including any associated conditions) or registered remedial notice relates and to take the steps, or stop the activity, set out in the notice. The step-in power may be exercised in circumstances where a person has failed to comply with a remedial notice (including any associated conditions) or registered remedial notice within the period specified in it for compliance.

Powers of entry and step-in power: application to court

83. [Section 60](#) provides that, in connection with the exercise of powers under sections 45, 51, 52, 53 and 59 the Scottish Ministers may apply to the sheriff, a summary sheriff or a justice of the peace for a warrant to enter the land concerned and, if necessary, to use reasonable force in doing so.
84. Subsection (3) provides that a warrant may only be granted if the sheriff, summary sheriff or justice of the peace is satisfied, by evidence on oath, that the conditions specified in that subsection are met. Subsection (4) provides that a warrant may not authorise entry to Crown land, entry to a dwelling or the use of force against an individual. Subsection (5) makes provision about expiry of warrants.

Powers of entry and step-in power: offences

85. [Section 61](#) creates two offences, each punishable upon summary conviction by a fine of up to level 5 on the standard scale. The offences are of intentionally obstructing the Scottish Ministers in exercising their powers under sections 45, 51, 52 or 53 (powers of entry) or section 59 (step-in power).

Powers of entry and step-in power: further provision

86. [Section 62](#) makes further provision for the purpose of the exercise by the Scottish Ministers of the powers in sections 45, 50, 51, 52, 53 and 59. As set out in subsection (2) of that section, this includes powers for the Scottish Ministers to take onto the land other persons, materials and equipment as may be reasonably be required; to take samples; to mark things for identification purposes; to require access to, inspect or take copies of information (including information kept in a computer) and to gather evidence. However, these powers may be exercised only at a reasonable time and do not authorise entry to a dwelling (subsections (3) and (4)). Moreover, a person exercising the power must on request produce written evidence of that person's entitlement to do so (subsection (5)). If the Scottish Ministers cause damage in exercising the powers listed in subsection (1) they must take reasonable steps to remedy the damage or, if it is not possible to do so, must pay compensation (subsection (6)). If the Scottish Ministers enter unoccupied land in exercising the powers listed in subsection (1) they must leave the land as effectively secured against unauthorised entry as they found it and, if they cause loss or damage by failing to comply with that requirement, they must pay compensation (subsections (7) and (8)).
87. Subsection (9) provides that references to the Scottish Ministers in the sections listed from (a) to (g) include persons authorised (in writing) by the Scottish Ministers. This enables the Scottish Ministers to authorise persons to perform the specified functions on their behalf.

Step-in power: recovery of expenses

88. [Section 63](#) makes provision enabling the Scottish Ministers to recover from the person who has failed to comply with a remedial notice (including any associated conditions) or registered remedial notice expenses in connection with the exercise of the Scottish Ministers' section 59 step-in power. The expenses which may be recovered are set out in subsection (2), and include administrative expenses and interest.
89. [Section 64](#) provides powers for the Scottish Ministers to apply to register a notice of liability for expenses specifying the matters set out in that section. This is for the purposes of enabling them to recover the expenses including (in accordance with section 65) from any new owner of the land to which the notice relates unless the liability was discharged prior to the acquisition of the land by the new owner (see section 66).
90. [Section 65](#) makes provision to enable the recovery of expenses from a new owner of land, who will become severally liable for those expenses along with the former owner of the land, where a notice of liability for expenses is registered in relation to the land at least 14 days before the date on which the new owner acquired a right to the land (subsections (1) and (2)). However, subsection (3) provides that the former owner of the land does not cease to be liable for expenses and interest under section 63 by virtue only of ceasing to be the owner of the land. Moreover, subsections (4) and (5) provide the new owner with a right to recover from the previous owner any amount paid by the new owner in satisfaction of the liability for the expenses and interest due under section 63, including in the case where the new owner ceases to own the land.
91. [Section 66](#) introduces a requirement for the Scottish Ministers to apply to register a notice of discharge of liability of expenses where liability for expenses and interest to which a registered notice of liability for expenses has been discharged. The Scottish Ministers must specify the matters in subsection (2) in the notice.

Time limit for prosecution

92. [Section 67](#) makes provision about the time limit for prosecution of offences under sections 23, 26, 28, 35, 37, 39, 46, 49, 55 or 57. It states that proceedings must be commenced within three years of the commission of the offence (or in the case of a continuous contravention, after the last date on which the offence was committed) and within six months of the date on which evidence that the prosecutor believes sufficient to justify proceedings comes to the prosecutor's knowledge. It defines the date on which proceeding shall be deemed to be commenced by reference to the Criminal Procedure (Scotland) Act 1995, section 136(3).