

# FORESTRY AND LAND MANAGEMENT (SCOTLAND) ACT 2018

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## EXPLANATORY NOTES

### THE ACT

#### Part 4 - Felling

##### *Sections 25 – 33 - Felling permission*

41. [Chapter 3](#) of Part 4 makes provision for regulation of felling through felling permissions issued by the Scottish Ministers.
42. Section 25(1) and (2) provides for an owner or - with the written permission of an owner - an occupier of the land on which a tree is located to apply to the Scottish Ministers for permission to fell a tree. Section 25(3) enables the Scottish Ministers, by regulations, to make further provision about applications for felling permission. Regulations may include provision about the way in which applications are to be made and the information to be provided in applications. Section 76(1)(b) provides that regulations under section 25(3) are subject to negative procedure.
43. [Section 26](#) 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 an application for felling permission.
44. [Section 27](#) makes provision about decisions on applications. The Scottish Ministers may grant an application (with or without conditions) or refuse an application, and must have regard to their duty (under section 2) to promote SFM in making a decision. Subsections (4), (5), (6) and (7) respectively make provision about (a) the type of conditions that can be included in a felling permission, which can include conditions setting out any steps to be taken after the felling is carried out (“continuing conditions”), (b) the ability of the Scottish Ministers to require, as a continuing condition on a felling permission, information to be provided to them, (c) specify circumstances in which conditions cannot be imposed, and (d) enable conditions to be varied or revoked. Section 27(8) provides that the Scottish Ministers can, by regulations, make further provision about decisions on applications for felling permissions. Regulations may, in particular, include provision about matters set out in subsection (9). Section 76(1)(c) provides that regulations under section 27(7) are subject to negative procedure.
45. If the Scottish Ministers refuse an application they must give reasons for the refusal (section 27(3)). Under section 32(1), a person who suffers loss as a result of the Scottish Ministers’ refusal of a felling permission is entitled to compensation in accordance with provisions made in regulations by the Scottish Ministers. Section 32(2) provides that regulations may include provision about the persons entitled to compensation, 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

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relating to compensation. Section 76(1)(d) provides that regulations under section 32(1) are subject to negative procedure.

46. **Section 28** 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 continuing condition on a felling permission granted to a person.
47. **Section 29** provides for the Scottish Ministers to be able to, in certain circumstances, vary a felling permission by way of a notice. Those circumstances are detailed in subsection (1) and subsection (3) sets out matters that the notice must set out or specify.
48. **Section 30** provides for the Scottish Ministers to be able to, in certain circumstances, suspend a felling permission by way of a notice. Those circumstances are detailed in subsections (2) and (3) and subsection (5) sets out matters that the notice must set out or specify.
49. **Section 31** provides for the Scottish Ministers to be able to, in certain circumstances, revoke a felling permission by way of a notice. Those circumstances are detailed in subsection (1) and subsection (3) sets out matters that the notice must set out and specify
50. **Section 33** makes provision about the interaction between regulation of felling under the Act and tree preservation orders (TPOs) made or having effect as if made under section 160 of the Town and Country Planning (Scotland) Act 1997 (which is consequentially amended by paragraph 2 of schedule 1 of the Act). Section 33(1) enables the Scottish Ministers to refer an application to fell in respect of a tree which is covered by a TPO which requires consent for felling to the planning authority that made the TPO, or to make a decision on the application themselves. If the Scottish Ministers wish to exercise the power to decide on the application themselves they must comply with the consultation requirements at subsection (2).
51. Subsection (3) provides that where an application is referred to a planning authority, the application is to be treated as an application to the planning authority for consent to fell the tree under the TPO and the provisions of the Town and Country Planning (Scotland) Act 1997 apply. The offence of felling without permission is disapplied in circumstances where an application has been referred to a planning authority under section 33(1)(b), the authority has consented to the felling, and the felling has been carried out in accordance with that consent (subsection (4)).
52. Where a felling permission, a felling or restocking direction, a registered notice to comply, a remedial notice or a registered remedial notice exists in relation to a tree covered by a tree preservation order, felling carried out in accordance with it will not breach a TPO (subsections (5) and (6)).