FORESTRY AND LAND

MANAGEMENT (SCOTLAND) ACT 2018

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EXPLANATORY NOTES

THE ACT

Part 4 - Felling

Sections 34 and 35 - Felling directions

53.   Chapter 4 of Part 4 makes provision for the Scottish Ministers to require felling.

54.   Section 34 makes provision for the issue of directions by the Scottish Ministers requiring that trees are felled ("felling directions"). Subsections (1) and (2) set out the circumstances in which a direction can be given ((a) to prevent deterioration or further deterioration in the quality of timber of the trees, (b) to improve the growth of other trees or (c) to prevent or reduce harm caused by the presence of trees)) and the person (the owner of the land on which the trees are located) to whom a direction can be given. The Scottish Ministers must under subsection (3) have regard to their duty to promote SFM (under section 2) when deciding to give a felling direction and may vary or revoke directions including any conditions imposed on directions (subsection (5)).

55.   Subsection (4) requires the Scottish Ministers to consult a planning authority before giving a felling direction in relation to a tree covered by a TPO and to have regard to any representations made by that authority. Subsection (6) enables the Scottish Ministers to, by regulations, make further provision about felling directions. Regulations may include provision about the circumstances in which a direction may not be given, requirements to be included in a direction, how directions are to be notified, and the imposition of conditions on a felling direction (which may include steps that must be taken after the direction is complied with). Section 76(1)(e) provides that regulations under section 34(6) are subject to negative procedure.

56.   Section 35 creates an offence, punishable upon summary conviction by a fine of up to level 5 on the standard scale, of failure, without a reasonable excuse, to comply with a felling direction (including any condition imposed on it) given to a person.