



## 2010 CHAPTER 10

### PART 1

#### FUNCTIONS OF THE DEPARTMENT

##### **General duty of the Department**

1.—(1) The Department of Agriculture and Rural Development (“the Department”) has the general duty of promoting afforestation and sustainable forestry.

(2) The Department must carry out that duty—

- (a) in relation to forestry land, in such a way as to promote and encourage the enjoyment and recreational use of that land by the public; and
- (b) in relation to other forests, in such a way as to promote the social benefits of those forests.

(3) In this Act—

“forest” includes woodland;

“forestry” includes—

- (a) the production and supply of forest products and the maintenance of adequate reserves of growing trees;
- (b) the management and development of forests so as to contribute to the protection of the environment, biodiversity and the mitigation of, or adaptation to, climate change.

“forestry land” means any land held by the Department for the purposes of any of its functions under this Act;

“forest products” means timber and other products derived from, or produced in the course of, forestry.

### **Principal powers of the Department**

2.—(1) The Department may—

- (a) acquire by agreement any land which it requires for the purposes of, or in connection with, the carrying out of any of its functions under this Act;
- (b) dispose of any forestry land;
- (c) erect such buildings and execute such other works on forestry land as the Department considers necessary for the purposes of any of its functions under this Act;
- (d) make, on such terms and conditions as the Department thinks fit, payments in respect of the afforestation (including the clearing, draining, fencing, planting or replanting, and maintenance) of land to any person who—
  - (i) owns that land; or
  - (ii) appears to the Department to have a substantial estate in that land,
- (e) make, on such terms and conditions as the Department thinks fit, payments for the purpose of forestry management;
- (f) establish and carry on, or assist in the establishment and carrying on of, woodland industries;
- (g) manage, plant and otherwise use for purposes connected with forestry any land held by the Department;
- (h) acquire forest products and sell or otherwise dispose of any forest products belonging to the Department or to any other person, and generally promote the supply, sale and use of forest products;
- (i) undertake, or give assistance or advice in relation to, the clearing, drainage, fencing, planting or replanting, maintenance, use, management or supervision of any forest or any land suitable for forestry.

(2) The powers of the Department under subsection (1)(h) and (i) are exercisable in relation to the forest products, forest or land of any other person only on such terms as may be agreed with that person.

### **Provision of facilities on forestry land**

3.—(1) For the purpose of improving the amenity of any forestry land, the Department may provide on that land such facilities as it considers desirable.

(2) Those facilities may include—

- (a) parking places, caravan parks, camping sites, shelters and toilets;
- (b) places for meals and refreshments;
- (c) viewing points, bridlepaths, nature trails, arboreta, wildlife enclosures, interpretative centres, conservation areas and scenic drives;

(d) such other recreational, conservational or educational facilities as the Department considers appropriate.

(3) The Department may, with the approval of DFP, impose such charges on persons making use of any facilities provided by the Department under this section as it considers reasonable.

#### **Use or development of forestry land**

4.—(1) The Department may use or develop forestry land for a purpose other than forestry.

(2) In determining whether and, if so, how to exercise its powers under this section the Department must have due regard to its general duty under section 1(1).

#### **Compulsory acquisition of land**

5.—(1) The Department may acquire compulsorily any land which it requires, whether for a limited period or otherwise, for the purposes of, or in connection with, providing or improving access to any land so as to facilitate the carrying out of any of its functions under this Act.

(2) The power of acquiring land compulsorily under subsection (1) includes power to acquire, by the creation of a new right, an easement or other right over land.

(3) Schedule 1 has effect in relation to—

- (a) the compulsory acquisition of land under subsection (1); and
- (b) powers of entry in connection with the compulsory acquisition of land under that subsection.

#### **Inquiries, information, etc.**

6.—(1) The Department may—

- (a) carry on, or assist in the carrying on of, such inquiries as the Department thinks desirable for the purposes of any of its functions under this Act, and publish, assist in the publication of, or otherwise make known the result of such inquiries;
- (b) collect and disseminate, or assist in the collection and dissemination of, such information as the Department thinks desirable for the purposes of promoting forestry;
- (c) undertake the collection, preparation, publication and distribution of statistics relating to forestry or to any forest or land suitable for forestry.

(2) The powers under subsection (1) include powers to enter into arrangements with bodies outside Northern Ireland which carry out activities similar to those referred to in that subsection.

(3) The Department—

- (a) shall provide and maintain a register providing such information as the Department considers appropriate as to the location and size of woodlands in Northern Ireland and the types of trees therein;
- (b) shall publish that register in such form as the Department thinks appropriate at intervals not exceeding 10 years;
- (c) may exercise the powers in subsection (1)(b) and (c) in connection with the provision or maintenance of that register.

(4) The Department may exploit any intellectual property or intangible assets arising from—

- (a) the carrying out of any activity referred to in subsection (1);
- (b) the exercise by the Department of its functions under section 5 of the Agriculture Act (Northern Ireland) 1949 (c. 2) (provision of instruction and undertaking of research) in relation to forestry.

(5) “Intellectual property” for the purpose of subsection (4) includes any patent, trademark, copyright, design right, registered design or plant breeder’s right.

(6) Where the Department requests any person to provide or permit the collection of any information or statistics relating to any of the matters referred to in paragraphs (b) and (c) of subsection (1), that person commits an offence if—

- (a) that person fails without reasonable excuse to comply with the request of the Department; or
- (b) in purported compliance with the request of the Department, that person knowingly or recklessly makes a statement or gives information which is false in a material particular.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### **Incidental powers**

7.—(1) For the purpose of the exercise of its functions under this Part, the Department may—

- (a) enter into arrangements with other persons or bodies;
- (b) form, or participate in the forming of, a body corporate;
- (c) invest in a body corporate;
- (d) appoint a person to act as an officer of a body corporate.

(2) The powers under subsection (1)(b) to (d) are exercisable only with the approval of DFP.

(3) The power under subsection (1)(a) is exercisable for the purposes of the exercise of the functions of the Department under section 4(1) only with the approval of DFP.

## PART 2

### PROTECTION OF FOREST TREES FROM DAMAGE

#### **Control of animals in forests**

**8.**—(1) This section applies where any trees growing on land falling within subsection (2) are being damaged by deer or hares (other than Irish hares).

(2) Land falls within this subsection if—

- (a) it is land of 0.2 hectares or more in area which is forest; or
- (b) it is land used for rearing young forest trees.

(3) The occupier of the land may take, kill or destroy any deer or hares (other than Irish hares) which are—

- (a) on that land; or
- (b) on any adjoining land which that person also occupies.

#### **Control (with permission of occupier) of animals on land adjacent to forest**

**9.**—(1) In this section—

“land A” means any land falling within section 8(2);

“land B” means any land—

- (a) which adjoins land A; or
- (b) any part of which is within 500 metres of any part of land A.

(2) The following provisions apply where the Department is satisfied that trees growing on land A are being, or are likely to be, damaged by wild animals present on land B.

(3) The Department may serve on the occupier of land B a notice—

- (a) stating that trees growing on land A are being, or are likely to be, damaged by wild animals present on land B; and
- (b) requesting that the occupier—
  - (i) take effective steps, within 3 months of the date of the service of the notice, to prevent the damage; or
  - (ii) grant permission for an authorised person to enter land B and exercise the powers conferred by subsection (4).

(4) An authorised person may with the permission of the occupier take, kill or destroy any wild animals on land B.

(5) If land A or land B is unoccupied, subsections (3) and (4) apply with the substitution of references to the owner of that land for references to the occupier.

(6) In this section “wild animal” means any animal which is living wild and is likely to damage trees, other than—

- (a) a bird;
- (b) the Irish hare;
- (c) an animal for the time being included in Schedule 5 to the [Wildlife \(Northern Ireland\) Order 1985 \(NI 2\)](#).

### **Control of animals on land adjacent to forest**

**10.**—(1) In this section—

“land A” means any land falling within section 8(2);

“land B” means any land—

- (a) which adjoins land A; or
- (b) any part of which is within 500 metres of any part of land A.

(2) Subsection (3) applies where the Department reasonably suspects that trees growing on land A are being, or are likely to be, damaged by wild animals present on land B.

(3) An authorised person may inspect land B for the purpose of establishing—

- (a) which wild animals (if any) are present on the land;
- (b) the number of wild animals present on the land;
- (c) whether any action should be taken by the Department under any of the following provisions of this section.

(4) Subsection (5) applies where the Department is satisfied (whether as a result of an inspection under subsection (3) or otherwise) that trees growing on land A are being, or are likely to be, damaged by any wild animals present on land B.

(5) The Department may serve on the occupier of land B a notice—

- (a) stating that trees growing on land A are being, or are likely to be, damaged by wild animals present on land B; and
- (b) requesting that, within 3 months of the date of the service of the notice, effective steps be taken to prevent the damage.

(6) Subsections (7) and (8) apply if the occupier of land B does not comply with a notice served under subsection (5).

(7) An authorised person may kill, take or destroy any wild animals on land B during such period (not exceeding 12 months) as the Department may specify by notice served on the occupier of that land.

(8) Where the occupier of land A is not the Department, any costs incurred by the Department in connection with an authorised person taking action under subsection (7) are recoverable as a civil debt from the occupier of land A.

(9) If land B is unoccupied, subsections (5) to (8) apply with the substitution of references to the owner of that land for references to the occupier.

(10) In this section “wild animal” has the same meaning as in section 9.

### **Removal or destruction of vegetation on adjoining land**

**11.—**(1) Subsection (2) applies where the Department is satisfied that, by reason of the presence of any vegetation on uncultivated land adjoining a forest, the forest is liable to be damaged by fire originating on the uncultivated land.

(2) The Department may serve on the occupier of the uncultivated land a notice—

- (a) stating that the vegetation constitutes a potential danger to the forest; and
- (b) requesting that, within 30 days from the date of service of the notice—
  - (i) any vegetation growing on the part of the land within a distance of 15 metres from the boundary of the forest be removed or destroyed; or
  - (ii) such other measures as are specified in the notice be taken in relation to that vegetation for the purposes of reducing the risk of the forest being damaged by fire.

(3) If the occupier does not comply with a notice served under subsection (2), an authorised person may, within 4 months from the date of the service of the notice, remove or destroy any vegetation growing on the part of the land within a distance of 15 metres from the boundary of the forest or take such other measures in relation to that vegetation as the Department considers appropriate for the purposes of reducing the risk of the forest being damaged by fire.

(4) If the uncultivated land is unoccupied, subsections (2) and (3) apply with the substitution of references to the owner of that land for references to the occupier.

### **Protection for persons acting under sections 8 to 11**

**12.—**(1) A person is not guilty of an offence under—

- (a) section 7(1)(a) or 7A(1)(a) of the Game Preservation Act (Northern Ireland) 1928 (c. 25), or
- (b) Article 19(1) or (4) of the [Wildlife \(Northern Ireland\) Order 1985 \(NI 2\)](#), by reason of any act falling within subsection (2).

- (2) An act falls within this subsection if it is done—
  - (a) in pursuance of the power in section 8(3), 9(4) or 10(7); or
  - (b) for the purpose of complying with a notice under section 9(3) or 10(5).
- (3) A person is not guilty of an offence under—
  - (a) section 7B or 7E of the Game Preservation Act (Northern Ireland) 1928, or
  - (b) Article 10(4) or 14 of the Wildlife (Northern Ireland) Order 1985,by reason of any act falling within subsection (4).
- (4) An act falls within this subsection if it is done—
  - (a) for the purpose of complying with a notice under section 11(2); or
  - (b) in pursuance of the power in section 11(3).
- (5) But nothing in section 8 or 10 affects the operation of any statutory provision relating to game licences or firearm licences.

### **Burning of vegetation**

**13.—**(1) A person shall not burn any vegetation growing within one and a half kilometres of a forest which that person does not own unless that person has, within the period mentioned in subsection (2), served on the owner of the forest notice of that person's intention to burn that vegetation.

(2) That notice must be served not more than one month and not less than 14 days before the date on which it is intended to burn the vegetation.

(3) A person who burns any vegetation in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(4) Where a notice has been served under subsection (1) on the owner of a forest, that owner may, within 10 days after receiving the notice, serve on the person serving the notice a counter-notice objecting to the proposed burning on the ground that it is liable to cause damage to the forest.

(5) Subsection (6) applies to a person who burns any vegetation—

- (a) in contravention of subsection (1); or
- (b) after receiving a counter-notice served under subsection (4).

(6) That person is liable for all damage caused by the burning to any forest in respect of which a notice was, or ought to have been, given under subsection (1); and accordingly damages are recoverable by the owner of that forest from the person burning the vegetation.

(7) Subsection (6) does not prejudice any other remedy or the rights of any other person.



**Protection of forest trees, etc. from pests**

**14.—**(1) The [Plant Health Act \(Northern Ireland\) 1967 \(c. 28\)](#) is amended as follows.

(2) In section 3B (matters which may be included in orders under the Act) after subsection (1) insert—

“(1A) An order under this Act which contains a statement that it is made for the purpose of protecting forest trees, timber and other forest products from attack by pests, may impose such reasonable fees or other charges as the Department may, with the consent of the Department of Finance and Personnel, prescribe—

- (a) in connection with applications for and the issue of any licence or certificate which may be issued in pursuance of such an order in connection with the import or export of any article;
- (b) in respect of the performance by the Department of any service without the performance of which any requirement for the issue of such a licence or certificate would not be met.”.

**PART 3****FELLING OF TREES***Restriction of felling***Requirement of licence for felling**

**15.—**(1) Subject to subsection (2), a person shall not fell trees growing on land of 0.2 hectares or more in area unless a licence granted by the Department under this Part (“a felling licence”) is in force authorising the felling.

(2) Subsection (1) does not apply to—

- (a) the felling of trees with a diameter not exceeding 8 centimetres or, in the case of coppice or underwood, with a diameter not exceeding 15 centimetres;
- (b) the felling of fruit trees;
- (c) the felling of trees on land comprised in an orchard, garden, churchyard or on open space used (otherwise than in pursuance of Part 3 of the [Access to the Countryside \(Northern Ireland\) Order 1983 \(NI 18\)](#)) for the purpose of public recreation;
- (d) the topping or lopping of trees or the trimming or laying of hedges;
- (e) the felling by any person of trees on land occupied by that person or by a tenant of that person—

- (i) where the trees have a diameter not exceeding 10 centimetres and the felling is carried out in order to improve the growth of other trees; or
    - (ii) where the aggregate cubic content of the trees which are felled by that person without a licence (exclusive of trees to whose felling subsection (1) does not apply) does not exceed 5 cubic metres in any quarter;
  - (f) the felling of trees for the prevention of danger or the prevention or abatement of a nuisance;
  - (g) the felling of a tree in compliance with any obligation imposed by or under any statutory provision (including a provision of this Act);
  - (h) the felling of a tree carried out by, or at the request of, an electricity undertaker, because the tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by the undertaker as to have the effect mentioned in paragraph 14(1)(a) or (b) of Schedule 4 to the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#);
  - (i) the felling of a tree where the felling is immediately required for the purpose of carrying out development authorised by planning permission;
  - (j) the felling by statutory undertakers of a tree on land in their occupation which obstructs the construction of any works required for the purposes of the undertaking by those undertakers, or of a tree which interferes with the maintenance or operation of any works vested in those undertakers;
  - (k) the felling of trees by a government department;
  - (l) the felling of a tree which requires the consent of the Department of the Environment under the provisions of a tree preservation order;
  - (m) the felling of a tree to which Article 66B of the [Planning \(Northern Ireland\) Order 1991 \(NI 11\)](#) applies (trees in conservation area).
- (3) Any person who fells trees in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale or twice the sum which appears to the court to be the value of the trees, whichever is the higher.
- (4) Regulations may—
- (a) make provision as to the calculation of the area of any land for the purposes of subsection (1);
  - (b) amend subsection (2), whether by amending or removing an existing exemption or adding a new exemption.
- (5) In this section—

“electricity undertaker” means a licence holder within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992 by whom the powers conferred by paragraph 14 (tree lopping) of Schedule 4 to that Order are exercisable;

“electric line” and “electrical plant” have the same meanings as in Part 2 of the Electricity (Northern Ireland) Order 1992;

“planning permission” means permission granted or deemed to have been granted under the Planning (Northern Ireland) Order 1991;

“quarter” means the period of three months beginning with the 1st January, 1st April, 1st July or 1st October in any year;

“statutory undertaker” has the same meaning as in the Planning (Northern Ireland) Order 1991;

“tree preservation order” means an order made under Article 65 of the Planning (Northern Ireland) Order 1991;

and references to the diameter of trees shall be construed as references to the diameter, measured over the bark, at a point 1.3 metres above the ground level.

### **Application for felling licence**

**16.—**(1) An application for a felling licence may be made to the Department in the prescribed manner by any person who has such an estate in the land on which the trees are growing as enables that person, with or without the consent of any other person, to fell the trees.

(2) On an application under this section the Department may—

- (a) grant the licence, subject to section 18; or
- (b) refuse it.

(3) Where the Department refuses to grant a felling licence, it shall give notice in writing to the applicant of the grounds for the refusal.

### **Compensation on refusal of felling licence**

**17.—**(1) If the Department refuses an application for a felling licence in the case of any trees, any person who is for the time being the owner of the trees is entitled to compensation for any depreciation in the value of the trees which is attributable to deterioration in the quality of the timber comprised therein in consequence of the refusal of a felling licence for them.

(2) Compensation under this section shall be recoverable from the Department on a claim made in the prescribed manner.

(3) Claims for the compensation in the case of any trees may be made from time to time in respect of deterioration taking place after the refusal of a felling licence for those trees, but—

- (a) no such claim shall be made in respect of deterioration taking place more than 10 years before the date of the claim; and
  - (b) if the trees have been felled, no such claim shall be made after the expiration of one year from the date of the felling.
- (4) In calculating compensation—
- (a) no account shall be taken of deterioration in the quality of the timber which is attributable to neglect of the trees after the refusal of a felling licence for them; and
  - (b) the value of the trees at any time shall be ascertained on the basis of prices current at the date of the claim.
- (5) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

### **Operation and conditions of felling licence**

**18.—**(1) A felling licence shall continue in force for such period (not being less than 5 years from the date on which it is granted) as is specified in the licence.

(2) A felling licence in respect of trees on any land shall be granted subject to—

- (a) the conditions set out in the felling management plan for that land; and
- (b) such other conditions (if any) as are specified in the licence.

(3) The felling management plan for any land is a document which sets out conditions regulating the felling of trees on that land authorised by a felling licence; and accordingly a felling licence authorises the felling of trees on any land in accordance with, and subject to, the felling management plan for the time being in force in relation to that land.

(4) The conditions in a felling management plan for any land may in particular—

- (a) set out the times at which, or periods within which, the felling of specified trees is authorised;
- (b) require the restocking or stocking of that land with trees of a specified species and the maintenance of those trees in accordance with the rules and practice of good forestry for a period not exceeding the period for which the licence remains in force;
- (c) prohibit the restocking of open ground created by the felling of trees for a period not exceeding the period for which the licence remains in force.

(5) In determining the felling management plan for any land which consists of, or includes, ancient woodland, the Department shall have regard to the desirability of maintaining the special character of that woodland.

(6) Regulations may make provision about the drawing up, form, content and amendment of, and other matters relating to, felling management plans.

### **Deferred decision on an application for felling licence**

**19.**—(1) Where a person applies for a felling licence and the Department does not within 3 months after receiving the application, or within such further time as may be agreed with the applicant, give notice to the applicant of its decision on the application, the provisions of this Part apply in relation to the application as if it had been refused.

(2) Subsections (3) and (4) apply if on an application for a felling licence it appears to the Department that the applicant is not entitled to an estate in the land which would enable the applicant to comply with the conditions of the licence (if granted).

(3) The Department may give notice in writing to that effect to the applicant and postpone consideration of the application until the person entitled to such an estate is joined as a party to the application.

(4) Where a notice under subsection (3) is given, subsection (1) applies as if, instead of referring to a period of 3 months after the Department receives the application, it referred to a period of 3 months after the date on which the person entitled to such an estate in the land as is mentioned in the notice is joined as a party to the application.

### **Appeal against decision of Department on application for felling licence**

**20.**—(1) A person aggrieved by—

- (a) the refusal of the Department to grant a felling licence on an application, or
- (b) any conditions subject to which a felling licence is granted by the Department,

may appeal to a person appointed under section 26.

(2) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the decision of the Department on the application; or
- (b) in the case of an appeal under subsection (1)(a), direct the Department to issue a felling licence subject to the such conditions as are specified in the direction; or
- (c) in the case of an appeal under subsection (1)(b), direct the Department to modify the conditions subject to which the felling licence was granted.

(3) It is the duty of the Department to give effect to any direction under subsection (2)(b) or (c).

**Fees in connection with felling licences**

**21.—**(1) Such fees as may be prescribed shall be charged by the Department in respect of—

- (a) applications for felling licences;
- (b) the issue of felling licences;
- (c) the continuation in force of felling licences.

(2) Regulations may provide—

- (a) for fees to be payable at such times as may be prescribed;
- (b) for fees to be payable in one sum or by instalments.

(3) The Department may decline to proceed with—

- (a) any application for a felling licence, or
- (b) the issue of any felling licence,

until any fee or instalment of a fee in respect of the application or issue (as the case may be) is duly paid.

(4) If, in the case of any application for a felling licence, any fee or instalment of a fee in respect of the application for or issue of the licence is not duly paid by the prescribed time—

- (a) the application shall be treated as withdrawn at that time; and
- (b) any decision made on the application ceases to have effect at that time.

(5) If any fee or instalment of a fee in respect of the continuation in force of a felling licence is not duly paid by the prescribed time, the licence terminates at that time.

(6) The Department may, if it considers there to be exceptional circumstances that justify its doing so in any case where subsection (4) or (5) has applied, direct that as from the time mentioned in that subsection its effect in that case be disregarded.

(7) Regulations under this section may provide for fees to be remitted or refunded (in whole or part) in prescribed cases.

*Restocking notice***Power of Department to require restocking after unauthorised felling**

**22.—**(1) The Department may serve a notice under this section (a “restocking notice”) on a person where it appears to the Department that—

- (a) the person has committed an offence under section 15(3); and
- (b) the person has such an estate in the land in question as is mentioned in section 16(1).

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*Status: This is the original version (as it was originally enacted).*

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- (2) A restocking notice is a notice requiring the person on whom it is served—
- (a) to restock or stock with trees of a specified species the land or such other land as may be agreed between the Department and that person; and
  - (b) to maintain those trees in accordance with the rules and practice of good forestry for a period, not exceeding 5 years, specified in the notice.

### **Appeal against restocking notice**

**23.**—(1) A person on whom a restocking notice has been served who objects to the notice or to any requirement contained in the notice may appeal to a person appointed under section 26.

(2) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the notice, or
- (b) direct the Department to withdraw the notice or modify it in such manner as is specified in the direction.

(3) It is the duty of the Department to give effect to any direction under subsection (2)(b).

### *Enforcement of felling licence conditions and restocking notice*

### **Notice to require compliance with felling licence conditions or restocking notice**

**24.**—(1) The provisions of this section apply if—

- (a) any condition of a felling licence is not complied with; or
- (b) any restocking notice served by the Department is not complied with.

(2) The Department may give to the person responsible a notice (an “enforcement notice”) requiring such steps as may be specified in the notice to be taken within such time (not being less than the prescribed period after the notice has become operative) as may be so specified for remedying the default.

(3) For purposes of subsection (2) “the person responsible” is—

- (a) in the case of non-compliance with the conditions of a felling licence, the person specified in subsection (4); and
- (b) in the case of non-compliance with a restocking notice, the person on whom the notice was served.

(4) The person referred to in subsection (3)(a) is—

- (a) the applicant for the licence, if on the date the notice is served the applicant has such estate in the land as is referred to in section 16(1); or
- (b) in any other case, the owner of the land.

(5) If after the expiration of the time specified in the enforcement notice any steps required by that notice have not been taken, an authorised person may, subject to section 25, take those steps.

(6) If an authorised person, in the exercise of powers under subsection (5), takes any steps required by an enforcement notice, the Department may recover from the person to whom the notice was given any expenses reasonably incurred by the Department in connection with the authorised person taking those steps.

(7) Any sums recoverable under subsection (6) may be recovered summarily as a civil debt.

(8) A person who without reasonable excuse fails to take any steps required by an enforcement notice given to that person commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) A person who is required by an enforcement notice to carry out works or take any other steps may carry out those works or take those steps notwithstanding any lease, covenant or contract relating to the trees or land affected by the notice.

#### **Appeal against enforcement notice**

**25.—**(1) A person to whom an enforcement notice is given in relation to a felling licence may appeal against the enforcement notice to a person appointed under section 26 on the grounds—

- (a) that the conditions of the licence have been complied with; or
- (b) that the steps required by the enforcement notice to be taken are not required for compliance with the conditions of the licence.

(2) A person to whom an enforcement notice is given in relation to a restocking notice may appeal against the enforcement notice to a person appointed under section 26 on the grounds—

- (a) that the restocking notice has been complied with; or
- (b) that the steps required by the enforcement notice to be taken are not required by the restocking notice.

(3) An enforcement notice shall be inoperative—

- (a) until the expiration of the period for bringing an appeal under this section; and
- (b) where an appeal is brought under this section, until the conclusion of any proceedings under this section on that appeal.

(4) On an appeal under this section the person appointed under section 26 may—

- (a) confirm the enforcement notice, or



- (b) direct the Department to withdraw the notice or modify it in such manner as is specified in the direction.
- (5) It is the duty of the Department to give effect to any direction under subsection (4)(b).

### *Supplementary*

#### **Appeals under this Part**

- 26.**—(1) The Department shall appoint a person to determine an appeal under section 20, 23 or 25.
- (2) A civil servant employed in the Department shall not be appointed under this section.
- (3) The Department may by regulations provide—
- (a) for appeals under section 20, 23 and 25 to be made in such manner and within such time as is prescribed;
  - (b) for the procedure to be followed, and powers to be exercisable, by a person appointed under this section in, or in connection with, determining an appeal under section 20, 23 or 25.
- (4) The Department may pay to a person appointed under this section such remuneration or allowances as it may, with the consent of DFP, determine.

#### **Identification of trees**

- 27.** An authorised officer may take such steps, whether by marking or otherwise, as the Department considers necessary for identifying trees—
- (a) which are the subject of a felling licence; or
  - (b) in respect of which a felling licence has been refused.

#### **Regulations as to applications, claims and notices**

- 28.** A power conferred by this Part to prescribe the manner in which an application, a claim or a notice is to be made or given under this Part includes power to require—
- (a) that any particulars specified in the application, claim or notice be verified in the prescribed manner;
  - (b) that notice of the application, claim or notice be given to a prescribed person or body.

#### **Application of this Part to Crown land**

- 29.**—(1) In this section “Crown land” means—

- (a) land an interest in which belongs to Her Majesty in right of the Crown; and
  - (b) land an interest in which belongs to a government department or is held in trust for Her Majesty for the purposes of a government department.
- (2) Subject to subsection (3), this Part applies in relation to Crown land and trees growing on such land to the extent only of any estate therein which is for the time being held otherwise than on behalf of the Crown.
- (3) Except with the consent of the appropriate authority—
- (a) no conditions shall be imposed on the grant of a felling licence in respect of trees on Crown land;
  - (b) no restocking notice shall be given in respect of Crown land.
- (4) In this section “the appropriate authority” in relation to any land means—
- (a) in the case of land belonging to Her Majesty in right of the Crown, the Crown Estate Commissioners or other government department having the management of the land in question;
  - (b) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that department;

and if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to DFP, whose decision shall be final.

### **Interpretation of this Part**

**30.** In this Part—

- “enforcement notice” has the meaning given in section 24(2);
- “felling” includes intentionally destroying by any means;
- “felling licence” has the meaning given by section 15(1);
- “government department” means a Northern Ireland department or a department of the Government of the United Kingdom;
- “prescribed” means prescribed by regulations;
- “regulations” means regulations made by the Department;
- “restocking notice” has the meaning given by section 22(1).

## PART 4

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Right of access to, and byelaws for, forestry land*

#### **Public right of access to, and byelaws for, forestry land**

**31.**—(1) Subject as follows, the public shall have right of access on foot to all forestry land for the purposes of recreation.

(2) That right of access does not extend—

- (a) to any building or structure on forestry land; or
- (b) to any facility on forestry land in respect of which a charge is payable under section 3.

(3) That right of access is subject—

- (a) to byelaws under subsection (4); and
- (b) in the case of land held by the Department under a lease, to the terms of the lease.

(4) The Department may make byelaws—

- (a) making such provision as may appear to the Department to be necessary for the preservation of trees or timber on forestry land;
- (b) prohibiting or regulating any act or thing likely to injure or disfigure forestry land or the amenities of, or facilities provided on, that land;
- (c) providing for the reasonable use of forestry land by the public for the purposes of recreation;
- (d) excluding or restricting the right of access conferred by subsection (1) in circumstances or for purposes specified in the byelaws and subject to such conditions (if any) as may be so specified.

(5) An authorised person may exercise such powers and perform such duties as the Department considers necessary for the enforcement of byelaws made under subsection (4).

(6) In particular an authorised person may remove or exclude from any forestry land a person who commits or whom the authorised person reasonably suspects of committing an offence.

(7) Where byelaws under subsection (4) declare a contravention of any provision of the byelaws to be an offence, a person contravening that provision commits an offence and is liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and

- (b) in the case of a continuing offence, to a further fine not exceeding one-tenth of level 3 on the standard scale in respect of each day during which the offence is continued after conviction.

### *Powers of entry*

#### **Powers of entry**

**32.—**(1) Subject to the following provisions of this section, an authorised person may, on production if required of that authority, at any reasonable time enter any land for the purpose of—

- (a) exercising any functions of an authorised person under this Act; or
- (b) enabling the Department to carry out any of its functions under this Act.

(2) A person is not entitled to exercise a power of entry conferred by subsection (1) in relation to any land unless that person has given at least 24 hours' notice of the intended entry to the occupier of the land or such lesser period of notice as may be agreed between that person and the occupier.

(3) Nothing in this section authorises a person to enter a dwelling house.

(4) If it is shown to the satisfaction of a lay magistrate on a sworn complaint in writing—

- (a) that admission to the land which any person is entitled to enter by virtue of subsection (1) has been refused to that person, or that refusal is apprehended, or that the land is unoccupied, or the occupier is temporarily absent, or that the case is one of urgency, and
- (b) that there are reasonable grounds for entry to the land for any purpose for which entry is required,

the lay magistrate may by warrant authorise that person to enter on the land if need be by force.

(5) Every warrant granted under this section continues in force until the purpose for which entry is necessary has been satisfied.

(6) Any person entering any land by virtue of the power of entry conferred by subsection (1) or by virtue of a warrant granted under subsection (4)—

- (a) may take onto the land such other persons and such equipment as may be necessary; and
- (b) on leaving any unoccupied land entered by virtue of such a power of entry or such a warrant shall leave it as effectually secured against trespassers as it was found.

(7) Where, in the exercise of the power of entry conferred by subsection (1) or in executing any warrant granted under subsection (4), any damage is caused to land or goods (other than damage expressly authorised by this Act) any person

interested in the land or goods may recover compensation in respect of that damage from the Department.

(8) Any question of disputed compensation under subsection (7) shall be referred to and determined by the Lands Tribunal.

### *Offences*

#### **Obstruction of officers, etc.**

**33.—**(1) Any person who intentionally obstructs—

- (a) any officer of the Department in the exercise of any function under this Act,
- (b) an authorised person in the exercise of any such function, or
- (c) any other person engaged on works in pursuance of this Act,

commits an offence.

(2) Any person who—

- (a) pulls down, removes or damages any works done in pursuance of this Act, or
- (b) removes, defaces or damages any pegs, poles or marks placed or made by any authorised person for the purpose of, or in connection with, any such works,

commits an offence.

(3) Any person guilty of an offence under this section is liable on summary conviction—

- (a) to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 6 months or to both; and
- (b) in the case of a continuing offence, to a further fine not exceeding one-tenth of level 4 on the standard scale in respect of each day during which the offence is continued after conviction.

#### **Prosecutions under this Act**

**34.—**(1) Notwithstanding anything in Article 19(1) of the [Magistrates Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#), proceedings for an offence under this Act may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the complainant to warrant the proceedings came to the knowledge of the complainant; but no proceedings shall be brought by virtue of this subsection more than 2 years after the commission of the offence.

(2) For the purposes of subsection (1)—

- (a) a certificate signed by or on behalf of the complainant and stating the date on which such evidence as is mentioned in that subsection came to the knowledge of the complainant shall be conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

### *Supplementary*

#### **Regulations**

**35.**—(1) No regulations shall be made under section 15 or 21 unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(2) All other regulations under this Act are subject to negative resolution.

(3) Regulations under this Act may contain such incidental, supplementary, transitional and saving provisions as appear to the Department to be necessary or expedient.

#### **Interpretation**

**36.** In this Act—

“afforestation” includes re-afforestation;

“authorised person”, in relation to any provision of this Act, means a person authorised in writing by the Department for the purposes of that provision;

“the Department” means the Department of Agriculture and Rural Development;

“DFP” means the Department of Finance and Personnel;

“forest”, “forestry”, “forestry land” and “forest products” have the meanings given by section 1(3);

“notice” means notice in writing;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“woodland industry” means any industry which uses timber or other forestry products as a major part of its raw materials.

#### **Application to the Crown**

**37.**—(1) Subject to—

- (a) sections 15(2)(k) and 29 (felling licences), and
- (b) the provisions of this section,

this Act binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

(2) A contravention by the Crown of any provision of, or made under, this Act does not make the Crown criminally liable; but the High Court may, on the application of the Department, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (2), any provision of, or made under, this Act applies to persons in the public service of the Crown as it applies to other persons.

(4) The powers conferred by section 32 are exercisable in relation to Crown land only with the consent of the appropriate authority.

(5) In this section “the appropriate authority” and “Crown land” have the same meanings as in section 29.

### **Amendments and repeals**

**38.**—(1) In section 5 of the [Agriculture \(Northern Ireland\) Act 1949 \(c. 2\)](#) (instruction and research in agriculture and related subjects) in subsection (3) in the definition of “related subjects” for paragraph (f) substitute—

“(f) forestry within the meaning of the Forestry Act (Northern Ireland) 2010;”.

(2) In Article 3 of the [Agriculture \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1994 \(NI 6\)](#) (general duty of Department to balance interests)—

- (a) the existing provision becomes paragraph (1); and
- (b) after that paragraph insert—

“(2) Paragraph (1) does not apply in relation to forestry land within the meaning of the Forestry Act (Northern Ireland) 2010.”.

(3) The statutory provisions set out in Schedule 2 are repealed to the extent specified in the second column of that Schedule.

### **Commencement**

**39.**—(1) Sections 1 to 34 and 38 (and the Schedules) come into operation on such day or days as the Department may by order appoint.

(2) No order may be made under subsection (1) in relation to any provision of section 10 unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

(3) An order under subsection (1) may contain such transitional or saving provisions as the Department thinks appropriate.

### **Short title**

**40.** This Act may be cited as the Forestry Act (Northern Ireland) 2010.