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Sustainable forest management in Scotland: the new mantra

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The last two years have seen a complete overhaul of the forestry legislation in Scotland. Although this may appear from the name to be about forestry, it is inescapably also about arboriculture and will continue to be on the radar of every practising arboriculturist or arborist due to the need to know whether permission is required for any proposed tree works and how to apply for it.

The big change is the transfer of the forestry functions of government in Scotland from the UK's Forestry Commission to two new bodies: Scottish Forestry (policy and enforcement) and Forestry and Land Scotland (management of publicly owned forests).

There has been a consequent comprehensive change in the legislation. It is 100 years since the Forestry Commission (FC) was established in the UK, but for the first time Scotland now has entirely separate legislation. Gone in Scotland is the Forestry Act 1967 and unelected commissioners, and instead we now have the Forestry and Land Management (Scotland) Act 2018 under the responsibility of the elected Scottish ministers. For most purposes the operative change date was 1 April 2019.

Of course, much changed in the 100 years after the Commission was founded. After the First World War Britain's tree cover was down to 4%, and the war effort had been seriously hampered by a lack of wood for things like coal pit props and even coffins. The Commission was set up to re-establish tree stocks including by buying and planting out land. It's been a long haul, but Scotland now has about 19% cover. In the meantime, society has changed such that the role of the forestry estate is in places as much recreational in purpose as it is silvicultural.

The overarching principles of the new legislation put a different onus on the ministers than there was on the commissioners. Whereas the Commission had the 'general duty of promoting the interests of forestry, the development of afforestation and the production and supply of timber and other forest products and [in Scotland anyway] promoting the establishment and maintenance of adequate reserves of growing trees', conversely the Scottish ministers now 'must promote sustainable forest management' (my italics). It doesn't stop with the ministers. Every Scottish

public authority *must* also 'in exercising any of its functions, promote sustainable forest management ...'. Out is the specific aim of maintenance of adequate reserves; in is the 'realisation of the social benefits of forestry'.

The rest of this article focuses on a few specifics which may be of interest to Association members, namely changes to felling licence/permission exemptions, new rules on how to apply for licences/permissions, the role of the chief forester and changes to the plant health rules and roles.

Felling licences – exemptions

The section of the Forestry Act 1967 relating to needing (or being exempt from the need for) felling licences no longer applies to Scotland. Instead the Scottish 2018 Act gets straight to the point: 'A person commits an offence if the person fells a tree unless ...' an exemption applies or permission has been given (or a direction or notice has been issued). We should no longer speak of 'felling licences'; they are now to be called 'felling permissions'.

As ever, the exemptions from the need for permission can be of day-to-day importance. There are a few important changes to the exemptions.

- The distinction between 8cm diameter felling, 10cm coppice or underwood and 15cm thinnings is gone; there is now just one stem diameter limit of 10cm.
- The distinction between volumes of timber for sale and volumes for personal use has gone; there is now just one 5-cubic-metres-per-quarter limit. A useful clarification has been added that the limit is per owner or tenant regardless of the size of the holding and that the exemption is on top of volumes felled under any of the other exemptions.
- Clarification has been given that burial grounds, formerly inferred to be part of exempt churchyards, are exempt.



- The definition of the public open spaces exemption has been narrowed to require them to be 'designed and maintained for use by the public'.
- The fruit tree exemption is gone, but the orchard exemption remains.
- Changes to the 'prevention of danger' exemption require the felling to be 'necessary' and the danger to be 'immediate', and clarification is given that the targets are not just persons but also 'property'.
- Clarification has been made that the felling of dead trees is exempt, but with associated government indications that windthrow removals are not.

Consented Tree Preservation Order removals continue to be exempt, but with some limitations. Previously, felling applications went to the Commission, with mandatory consultation with the council that held the TPO; if the council objected to the tree loss, the application was decided by the ministers as a TPO application and approval then exempted the need for a licence. Under the new rules, the application goes directly to ministers, who consult with the council and can then either grant permission or refer the application to the council to decide as a TPO application. Curiously, the ministers no longer have the power to deal with such a felling application as a TPO application, and so the amenity of the area cannot be considered by them. Conversely, a felling application does not have to contain the information that a TPO application must, and could be refused or delayed for that reason alone. And, of course, councils are now bound by law to promote sustainable forestry management, conflicting with their discretion in dealing with tree preservation and conservation matters ...

The 'nuisance' exemption has been removed. An owner whose trees are causing a legal nuisance (such as structural damage to a neighbouring property) cannot now abate it without permission, and there is no compensation for refusal.

A few exemptions that had been hidden away in the 1979 exemptions Regulations have been included:

- Felling for the safe use of aerodromes and landing equipment.
- The exemption type that had existed in the Act for electricity operators has been extended to all statutory undertakers, Scottish Water and

flood prevention undertakers.

- Felling of elms with Dutch elm disease is exempt if the greater part of the crown is dead.

An entirely new set of classes of woodlands where the 5-cubic-metre exemption does not exist have been added. These are (a) any small woodlands comprising mostly native species (which are listed in the Regulations) and (b) Caledonian pinewoods (which are named in the Regulations).

One major change which requires special explanation is the removal of the exemption for lopping or topping trees. The indications are that lopping or topping is allowed, but in a rather contrived way. Firstly, 'felling' no longer means felling; the meaning is to include other ways of killing trees, such as ringbarking or damaging them so badly that they die. Secondly, then, lopping or topping a tree to the extent that it dies is to be construed as felling and is therefore an offence.

This is likely to require repeated explanation and may make prosecution for the slow demise of heavily pruned trees extraordinarily difficult, if not impossible.

Felling without permission or exemption carries a fine of up to £5,000 per tree, twice as much as before.

Felling licences – consideration of applications

New Regulations list the things that must

by law be included in an application for felling permission and these include:

- the name and address of both the applicant and the landowner
- a map of the felling area
- whether the trees are in a Conservation Area or subject to a Tree Preservation Order
- the existing and proposed species mix
- whether the proposed felling in the felling area involves thinning, clear felling, selective felling, coppicing or the felling of individual trees
- where thinning is proposed, information indicating number, basal area and volume of trees before and after thinning
- proposed commencement date
- where the application proposes restocking, the type, species, density/number of the trees and location of restocking
- where the application does not involve restocking, a statement of the reasons for that

For anything other than a few trees, some mensuration knowledge is likely to be needed to make a correct application.

In keeping with the shift in onus towards the social benefits of forestry, the criterion to be applied in considering applications has changed. Under the old rules an application could only be refused if it was not in the interests of good forestry or agriculture or of the amenities of the district or not in line with the duty of promoting the establishment and maintenance of adequate reserves of

growing trees. Instead, now the Scottish ministers must have regard to their duty to promote sustainable forest management. That appears to be the only criterion that can be applied to determining applications and will conflict with tree preservation criteria when a TPO is also present.

Chief forester

The Act requires the ministers to appoint a 'chief forester', and separate Regulations specify that this person must be a Chartered Forester or Chartered Arboriculturist or have at least a relevant Honours Degree. The role of the chief forester is to assist and advise the ministers in the carrying out of their functions under the new legislation.

The ministers have initially appointed former Forestry Commissioner for Scotland Jo O'Hara. She joined Forestry Commission Scotland as Deputy Director in October 2013 and was made Commissioner for Scotland in 2015. She spent five years working for the Scottish Government on natural resources policy and has also been a member of the Forest Enterprise England Management Board responsible for Forest and Corporate Planning. She was also programme manager for the certification of the Forestry Commission estate across Great Britain. Jo O'Hara is also the new Chief Executive of Scottish Forestry and is supported by the Scottish Forestry Strategic Advisory Group.

Not just any AGM!

The next Scottish Branch AGM is scheduled for Saturday 25 January 2020 and it promises to be a very worthwhile event.

With Dr Duncan Slater talking about branch unions and Paul Muir presenting and demonstrating static integrated tree testing, I am in no doubt the day will be both entertaining and educational.

The AGM is being held within the impressive grounds of Camperdown Park, Dundee. Camperdown is a destination worthy of a visit by anyone interested in trees but has been purposely selected this year so that the branch can pay its respects to Eric Hamilton, namely by planting a tree in his memory.

So, I sincerely hope you reserve 25 January in your diary and look forward to seeing you then. This free event will be open for booking via the AA website.

Chris Simpson

RBGE: a visit to the archives

Chris Simpson, Scottish Branch Chair

How many of us are aware of the fantastic free arboricultural resource we have on our doorsteps, right here in central Scotland?

You are probably well aware of the world-class tree collection found at the Royal Botanic Garden Edinburgh (RBGE), but did you know you can access an equally world-class library of arboriculture-related books? Well, you can and it's free.

On Saturday 26 October, Will Hinchliffe and Lorna Mitchell very kindly gave their time to show a small but enthusiastic group around their fantastic library. The Scottish National Botanical & Horticultural Library is a truly impressive resource.

Lorna had looked out a number of historically important publications for us. Amongst these are the Scottish Arboricultural Society's journals that include excursion write-ups dating back to 1880, which did make me wonder if anyone will look back on the efforts of the AA Scottish Branch in a hundred years time.

We saw a wonderful 'Hortus siccus' (collection of dried pressings) that dates back to 1848

and contains over 3 million pressings, with tens of thousands added each year. Other highlights included a first edition of John Evelyn's *Sylva* (1664), *Pinetum Britannicum* (1895), *Trees and Shrubs in Fife & Kinross* (1879) and the incredibly old *Herbal Plants and Uses* (1485). And to see artefacts such as David Douglas's telescope, taken from the bull-pit in which he died, is truly a delight.

The time flew past and after lunch Will very kindly led the group around the gardens, sharing his incredible knowledge of the various species (that the rest of us rarely get the opportunity to work with) and patiently answering all questions.

Many thanks to Lorna and Will for arranging this event; it was most worthwhile. The only thing they ask in return is that we all make use of this fantastic resource and visit <https://journal.rbge.org.uk> when we need to research arboricultural matters. Sounds like a great deal to me.