

Forestry Act 1967: Felling Licences and Exemptions

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Forestry Act 1967

- Creates the **legal framework** for felling trees in **England and Wales**.
- Mandates that a **felling licence** is required to fell all “**growing**”, i.e. living, trees – unless an exemption applies.

Common exceptions

- Less than **5m³** of timber in any “**calendar quarter**” (i.e. Jan – Mar, etc.)
- Prevention of **danger** or prevention or abatement of a **nuisance**.

- **Immediately required** for the purpose of carrying out **development authorised** under the Town and Country Planning Act 1990.
- Carried out by a **statutory undertaker** (utilities)
- In compliance with any **obligation** imposed by or under an **Act of Parliament**.

SCC Streets Ahead

- **July 2012 SCC** entered into 25 Year city wide highways maintenance contract with **Amey**, known as the '**Streets Ahead**' programme.
- **£2bn contract** to maintain, roads, pavements, street lights, bridges etc.

- Contained a commitment to **fell 200 trees per annum** and **5,474 trees** were felled between 2012 and 2018.
- SCC claimed that the felling works were exempt under the provisions of the **Highways Act 1980** and the **Equalities Act 2010**.
- **FOI release** of the contract triggered **FC investigation** for alleged illegal felling.

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- **FOI release** of the contract triggered **FC investigation** for alleged illegal felling.
- FC received **limited cooperation from SCC**.

Forestry Commission (FC) findings

- FC published alleged illegal felling report on 18 July 2019.
- Found insufficient evidence of an offence having been committed, but also found that SCC had not followed good practice.

Claimed exceptions (Act of Parliament)

- **Highways Act 1980** places a “**duty**” on LA’s to maintain the highway (s.41).
- The Act also contains “**powers**” to improve the highway.

Claimed exceptions (Act of Parliament)

- Equality Act 2010 places a duty to “**make reasonable adjustments**” for people with disabilities (s.20).
- S.149 sets out the **public sector equality duty**, to “have due regard”.

Good Practice: Record keeping:

Matter for LA's, but FC suggests:

Date of felling, location of tree, job number, species of tree, reason for felling, the exception to a felling licence relied upon, size of tree, age, condition, history of previous works, surrounding surface type (paving, grass, etc.).

Good Practice: Record keeping:

Case law: R (Grundy Excavations) v Forestry Commission [2003] EWHC Admin 272

“Under section 17 of the 1967 [Forestry] Act the prosecution must prove that the accused felled the trees. Assuming it to be common ground that no licence was issued, it is then for the accused to prove on the balance of probabilities that no licence was required”.

Good Practice: Engagement:

...with residents.

...with FC.

Good Practice: Tree Management:

- **Felling** should be the **last resort**, alternatives do exist.
 - Pollarding, rubber crumb inserts, kerbside buildouts, etc.
- Trees' **value increase** with maturity.
- Unlike other street furniture, **mature trees cannot be replaced** like for like.

Good Practice: Contract Drafting:

- Tree maintenance **not explicitly mentioned** in the contract.
- **Felling** became the **default**.
- Consequently, highly likely that **other** arboreal or engineering **solutions** were charged to SCC at **above market rate**.

FC Sheffield Tree Felling Investigation Report

<https://www.gov.uk/government/publications/all-aged-illegal-tree-felling-investigation-report-sheffields-streets-ahead-programme>