

REFERENCE COMMITTEE (RESTOCKING NOTICE)

Introduction

A Reference Committee is set up under the provisions of Section 27 of the Forestry Act 1967 (as amended) to report to forestry Ministers in cases relating to appeals concerning a range of issues including the replanting conditions attached to a felling licence; a Restocking Notice served by the Forestry Commissioners; or a Notice requiring compliance with licence conditions.

Background

The Forestry Commissioners' powers to control tree felling, as the appropriate forestry authority, are set out in Part II of the Forestry Act 1967 (as amended). This includes licensing the felling of trees to which restocking conditions may be attached and to serve notices requiring a person to restock land where a person has been convicted of illegal felling or where it appears to the Commissioners that an offence has been committed. The Forestry Commission's organisational structure means that these activities are carried out by the Forest Services part of the Forestry Commission.

The Act provides that anyone aggrieved by the service of a Restocking Notice may in certain circumstances object to the Notice, or the conditions in the notice, and have their case referred by the appropriate Forestry Minister to a Reference Committee. This Committee makes a report to the Minister who, after considering the report, can direct the Commissioners to withdraw the Notice or notify the objector that it shall have effect subject to modification, as the Minister shall direct.

Relevant extracts from the Forestry Act are at Annex 1.

The Role of the Reference Committee (Restocking Notice)

The role of the Committee is to provide a report to the Minister on the Restocking Notice and any conditions contained in the Notice. The Reference Committee process should not be seen as an alternative trial in cases where there has not been a prosecution. It is part of a de novo appeal process, where the merits of the Notice and its conditions are being examined by the Committee within a legal framework and having regard to the evidence and submissions of the objector and Forest Services.

The Forestry Act 1967 requires the Committee to afford the person who made the objection an opportunity to appear before it to make representations. Forest Services will also appear before it to make representations and to provide information, including in relation to the duty of promoting the establishment and maintenance of adequate reserves of growing trees. If it thinks fit, or if the objector requires it, the Committee will inspect the trees or land to which the reference relates.

Appointment

The Committee comprises a Chair and two members. The Chair of the Committee is appointed by the Minister and will usually be the Chair of the area's Forestry and Woodlands Advisory Committee¹ (or an adjacent area's Chair if the Chair in the area where the case is located has had any previous involvement). The two other members are appointed by the Minister from a Panel of persons already appointed by them (or their predecessors) and held for the appointment of Reference Committees.

Conduct of the Committee

The conduct of the Committee is a decision for the Chair, within the requirements of the Forestry Act. It is usual practice for the Committee to meet at a venue close to the land subject to the Notice in order to visit the site and hear the representations from the person, or representative of the person, who has made the objection. Forest Services officials who were responsible for issuing the Restocking Notice would also be expected to attend any site visit and the Committee meeting.

Officers from the Forestry Commissions' Office, who have no connection with the investigations or the issue of Restocking Notices, provide administrative and secretariat support. This includes procedural guidance to the Committee to help ensure it functions effectively and fulfils the statutory requirements.

Preparing for the Meeting

The Secretariat will provide the Chairman and Committee members with the relevant extracts from the Forestry Act, a copy of the formal notice of objection requesting the Minister to refer the case to a Committee and any supporting documents provided by the person making the objection. The Committee will also be provided with a copy of the Restocking Notice (including map) served by the Forestry Commission (Forest Services) and any background information provided by Forest Services on how the decision on the restocking requirement was reached.

The Secretariat will invite both the Objector and Forest Services to provide written submissions to the Committee setting out their arguments in order to help inform the Committee. Forest Services officials would normally provide details of any prosecution and conviction or details of the information that made it appear to the Commissioners that the person in question has committed an offence, where there has not been a prosecution. The Objector's submissions, whether written or oral, should be limited to the ground or grounds of the request for the referral to the Reference Committee which the Minister has actually referred to the Committee. The Committee does not

¹ Forestry and Woodlands Advisory Committee is the working title of the Regional Advisory Committee as constituted under Section 37 of the Forestry Act 1967

entertain public law challenges to the issuing or service of a Restocking Notice. The correct mechanism for pursuing public law challenges is by way of judicial review.

Public Interest

In some cases there can be considerable public interest in the future management of land that has been subject to a Restocking Notice, particularly where the unlicensed felling of the trees has been controversial, and members of the public may wish to make their views known. Although there is no explicit provision in the Forestry Act for members of the public to make representations to the Committee, it will consider accepting written representations from other interested parties. The Secretariat will collate these and ensure that they address matters that are relevant to the Committee's considerations.

Reference Committee Meeting

The Chair will determine the precise sequence of events on the day. The Chair will also decide beforehand if a site visit is required, if not requested by the Objector, and whether this should take place before or after representations have been heard from the Objector. If it has initially been decided to visit the site after hearing representations it may be decided during the course of the meeting that a site visit is not needed.

Proceedings usually commence with the Committee having a short discussion of the issues and having an opportunity to put any questions to the Secretary where any clarification of process and responsibilities is needed. The Committee would then invite the Objector and/or their representatives to join them and the Forest Services Officials presenting the Commission's case.

The Committee would then hear representations and question the Objector before inviting Forest Services to put their case to the Committee and answer questions. Both the Objector and Forest Services' officials should, through the Chair, have the opportunity put questions to the other party. Once everyone has had an opportunity to have their say and comment on the information presented the Committee would then ask both the Forest Services' officials and the Objector to leave the meeting. The Committee then considers the evidence and arguments presented and discusses the content of its report to the Minister.

The Role of the Chair

In addition to contributing their own expertise to the issues being considered the Chair is required to ensure an effective and efficient meeting. By their very nature Objections to a Restocking Notice and defence of the Notice and the conditions

attached to the Notice have the potential to be confrontational. It is therefore important that the Chair maintains close control of the meeting including ensuring that all participants are able to input to the discussions fairly.

The Role of the Members

The members of the Committee are there to provide their professional expertise on the issue being considered and work together to ensure that all the issues are fully aired. The Committee members are expected to question both the Objector and Forest Services, seeking clarification on any issues where they are unclear or where they consider that there has been an incomplete response to a relevant question.

The Role of the Secretary

The role of the Secretary is to advise the Committee through the Chair, on matters of procedure. The Secretary will also provide procedural advice to the Objector. The Secretary is not a member of the Committee and only has an advisory role. However, the Secretary may bring to the attention of the Chair any material fact that may have been overlooked. The Secretary will arrange for notes of the meeting to be kept and for these to be circulated for the agreement of, so far as possible, all parties after the meeting, except for the discussion on the content of the report at the end of the meeting which will only be agreed with the Committee.

After the Meeting

Draft notes of the meeting will be circulated to those who took part to check for factual accuracy. If it is not possible for all parties to agree the notes, which normally accompany the report of the Committee to the Minister, then the area of disagreement will be recorded in the meeting notes.

The Secretary will help ensure that the Committee's report and any advice to the Minister is presented in the required format and provide feedback to the Committee on the Minister's decision. The Secretary will also convey the Minister's decision to the objector and the Forestry Commission officials involved in the case, along with an explanation of the basis for the Minister's decision.

Other Issues

If the consideration of the Objection raises issues outside the competence of the Committee then this should be noted in the Committee's report and the Committee is able to make a recommendation to the Minister that they should seek additional advice. The Committee will not consider matters of public law with respect to the

issuing and service of the Restocking Notice, as these are not matters on which a Restocking Notice should be referred to a Reference Committee, even though they may have been included in the initial Objection.

In some cases, consideration of the Objection to a Restocking Notices can raise points related to more general and wider policy and delivery issues. In such cases the Committee should consider whether or not they wish to draw attention to these issues and include advice on them in their report.

This document provides information and guidance. It does not purport definitively or comprehensively to set out the law. Objectors and others may wish to seek their own independent legal advice.

**Forestry Commission
Commissioners' Office
May 2020**

Annex 1

Forestry Act 1967

(This does not include the amendments made as a result of the creation of Natural Resources Wales or the completion of Scottish devolution, which have no material impact on the control of tree felling in England)

Section 17B (Appeal against restocking notices)

(1) A person on whom a restocking notice has been served who objects to the notice or to any condition contained therein may by notice served within the prescribed time and in the prescribed manner request the Minister where the restocking notice relates to land in England and Wales, and the Scottish Ministers where the restocking notice relates to land in Scotland to refer the matter to a committee appointed in accordance with section 27 of this Act; and—

(a) the Minister or, as the case may be, the Scottish Ministers shall, unless he is or they are of the opinion that the grounds of the request are frivolous, refer the matter accordingly; and

(b) the committee, after compliance with subsection (3) of that section, shall thereupon make a report to the Minister or, as the case may be, the Scottish Ministers.

(2) The Minister or, as the case may be, the Scottish Ministers may, after considering the committee's report, direct the Commissioners to withdraw the notice or to notify the objector that it shall have effect subject to such modification as the Minister or, as the case may be, the Scottish Ministers shall direct.

Section 27 (Committees of reference for purposes of ss 16,17B,20,21,25)

(1) References in sections 16, 17B, 20, 21 and 25 of this Act to a committee appointed in accordance with this section are to a committee consisting of—

(a) a chairman appointed by the Minister in relation to cases where the trees are, or the land is, in England and Wales, and the Scottish Ministers in relation to cases where the trees are, or the land is, in Scotland; and

(b) two other members selected by the Minister or, as the case may be, the Scottish Ministers from a panel of persons appointed by him after such consultation as is provided for below, for the conservancy in which the trees are growing:

Provided that no Forestry Commissioner or person employed by the Commissioners shall be a member of any such committee.

(2) The consultation required by subsection (1)(b) above is to be with—

(a) the regional advisory committee for the said conservancy; and

(b) organisations appearing to the Minister or, as the case may be, the Scottish Ministers to represent the interests of owners of woodlands and timber merchants respectively, and

(c) organisations concerned with the study and promotion of forestry.

(3) On any reference being made to them under this Part of this Act a committee appointed in accordance with this section shall—

(a) afford to the person concerned with the subject matter of the reference an opportunity of appearing before them and of making representations to them on the matter in question;

(b) if they think fit, or are so required by the said person, inspect the trees or land to which the reference relates; and

(c) take into consideration any information furnished to them by the Commissioners as to the performance within the conservancy in which the trees are growing of their duty of promoting the establishment and maintenance of adequate reserves of growing trees.

For purposes of this subsection “the person concerned with the subject-matter of the reference” is the person at whose request the reference was made, except that in the case of a reference by the Minister or, as the case may be, the Scottish Ministers of a notice under section 21 it is the person by whom the notice was given.

(4) The Minister may pay to the members of a committee appointed by him under this section such remuneration as he may, with the consent of the Treasury as regards England and Wales, determine.

(4A) The Scottish Ministers may pay to the members of a committee appointed by them under this section such remuneration as they may determine.