

Memorandum of Understanding between Highways England Company Limited and Forestry Commission England

Tree Felling

Purpose

- 1 This document confirms Forestry Commission England's (FCE) and Highways England Company Limited's (Highways England) interpretation of the Forestry Act 1967 (as amended) ("FA 1967") in relation to Highways England's duties and the arrangements FCE and Highways England will take to address any reports of alleged illegal tree felling.

Background and general Principles

- 2 The Forestry Commission (FC) regulates tree felling through a licensing system set out under section 9 of the FA 1967. However, section 9(4)(b) of the FA 1967 provides that no felling licence is required when the tree felling is 'in compliance with any obligation imposed by or under an Act of Parliament'. For Highways England, such obligations will generally be found in the Highways Act 1980 ("HA 1980") and the relevant provisions of that Act are set out in more detail below. In addition, the FA 1967 contains a number of standard exemptions applicable to all tree felling and these are also summarised later in this MoU.
- 3 As well as the exemptions in the FA 1967, Regulation 4(2) of the Forestry (Exceptions from Restriction of Felling) Regulations 1979 ("1979 Regulations") exempts the felling of trees by statutory undertakers "on land in their occupation which obstruct the construction of any works required for the purposes of the undertaking of those undertakers or of trees which interfere with the maintenance or operation of any works vested in those undertakers". A statutory undertaker includes persons authorised by any enactment to carry on any road transport and will include Highways England.

Exemptions under Highways Act powers

- 4 Section 154 of the HA 1980 allows a highway authority to require the cutting or felling of trees etc. that overhang a highway and endanger or obstruct the passage of vehicles or interfere with the view of drivers of

vehicles or the light from a public lamp. Such work would not require a felling licence.

- 5 Section 79 of the HA 1980 allows Highways England to require the removal of trees on corners and bends to maintain visibility of the road. Section 136 also allows Highways England to require the carrying out of works to trees to prevent damage to the highway due to exclusion of sun and wind. In reality these two powers are rarely used (section 154 is the principle provision relied upon). However, where tree felling is undertaken under these sections, a felling licence would not be required due to section 9(4)(b) of the FA 1967¹.
- 6 Section 96 of the HA 1980 provides Highway Authorities with discretionary power to plant trees and to do anything expedient for the maintenance or protection of trees on highway land. However, section 96(6) provides that no such tree or shrub shall be allowed to remain in a situation that hinders the reasonable use of the highway by any person entitled to use it, or so as to be a nuisance or injurious to the owner or occupier of premises adjacent to the highway. Tree felling to remove a nuisance or hindrance under this section of the HA 1980 would not require a felling licence due to the exemption under section 9(4)(b) of the FA 1967.
- 7 In contrast, any exercise of Highways England's power to maintain and protect trees under section 96(1) which involves the felling of trees (e.g. where trees are thinned) is unlikely to qualify as an exemption to the FA 1967 because there is no legal obligation to undertake such work².
- 8 In summary, a felling licence will not be required where Highways England require tree felling under the HA 1980:
 - to remove or prevent an obstruction or hindrance to the reasonable use of the highway or which may be a nuisance or injurious to the owner of premises adjacent to the highway; or
 - to prevent an interference with the operation or maintenance or operation of a highway.

Because such work is a legal requirement on Highways England it does not require a felling licence.

¹ This applies irrespective of whether Highways England are doing the work or a it is a private land owner taking action under a notice.

² Under section 41 of Highways England 1980 a highway authority does have a duty to maintain its highways. However, case law suggests that "maintenance" for these purposes is focussed on the state of repair of the carriageway itself rather than the removal of obstructions that might be caused by the growth of trees.

- 9 Highways England undertake only as much work as is required to make the road safe and to that end these exemptions will be applied proportionately on a risk-based basis. Highways England hold records that confirm why the tree felling is required for these purposes. If necessary such records will be made available to FC staff as per section 22 of this MoU.

Standard Exemptions under Forestry Act 1967

- 10 When the exemptions specific to Highways England do not apply the work will be subject to the standard exemptions that apply to tree felling operations.
- 11 In all cases the 'lopping and topping of trees' does not require a felling licence as per section 9(2)(c) of the FA 1967. This includes pollarding.
- 12 In all cases a felling licence is not required by a land owner where the volume of licensable trees felled in a calendar quarter is less than five cubic metres and no more than two cubic metres of the volume will be sold – section 9(3)(b) FA 1967. Licensable trees are:
- When felling – any trees more than eight centimetres in diameter (at breast height, i.e., 1.3 metres up the main stem or stems where the tree forks below this height). Felling is the felling of individual trees or groups of trees to such an extent that restocking would be required, e.g., the felling opens the canopy sufficiently to allow restocking.
 - When thinning – any trees more than ten centimetres in diameter (at breast height). Thinning is the removal of a proportion of trees in a forest after canopy closure, usually to promote growth and greater value in the remaining trees. This is usually no more than 30% of the standing volume once every ten years for broadleaves and up to once every five years for conifers. This will apply to many of Highways England's tree thinning operations where young trees were originally planted close together.
 - When cutting coppice material or underwood - any trees more than 15 centimetres in diameter (at breast height). Cutting coppice is the periodical cutting back of trees to ground level (to stimulate growth and provide wood products). Cutting maiden (single) stems to create coppice would constitute felling.
- 13 In the case of Highways England, the five cubic metre allowance will apply to a stretch of road itself, rather than each woodland along a stretch of road. This ensures parity with other land managers who have a single five cubic metre allowance across all the woodland on each of their land holdings.

- 14 In addition to the exemptions that apply to ensure operation of a safe highway, a felling licence is not required to fell other trees that pose an immediate and real danger or are a nuisance to a third party as per section 9(4)(a) FA 1967. When relying on this exemption a landowner such as Highways England will need to hold a report that confirms the trees posed an immediate danger or were a nuisance which required felling of the trees, prior to the operation commencing.
- 15 Under section 9(4)(d) FA 1967 a licence is not required for a felling which is required **immediately** for the purposes of works carried out by Highways England in exercise of its functions under the Highways Act 1980³ (e.g. a road project) This would include the area for main carriageway, drainage, embankments etc. What it would not cover is removal of trees for temporary storage facilities, worker accommodation etc. Highways England will seek a felling licence for tree felling for such purposes. Outline planning approval does not provide an exemption to the Forestry Act.
- 16 There are two other standard exemptions, both of which are rarely used by Highways England. One is the exemption in section 9(2)(b) FA 1967 relating to the felling of fruit trees or trees standing or growing on land comprised in an orchard, garden, churchyard or public open space. The other is the exemption in section 9(4)(c) where the felling is at the request of an electricity operator due to the fact that the tree is or will be in such close proximity to an electric line or electrical plant maintained by that operator.
- 17 Highways England will continue to work with the relevant plant health authorities to comply with the requirements of Statutory Plant Health Notices. Where such notices require the felling of trees and shrubs this work will not require a felling licence.
- 18 FCE will issue a felling licence to allow the thinning of all woodlands in Highways England ownership. Such licences would have a five year life span and be issued at a National level. This felling licence will cover stretches of Highways England network managed by independent network consortiums.

³ Section 9(4)(d) FA 1967 exempts felling which is immediately required for the purpose of carrying out development authorised by planning permission granted or deemed to be granted under the Town and Country Planning Act 1990. Class B of Part 13 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 grants planning permission for the carrying out by the Secretary of State of works in exercise of his functions under the Highways Act 1980, or works in connection with, or incidental to, the exercise of those functions.

General Practice

- 19 Irrespective of when a felling licence is required Highways England will adhere to their guidance for drafting woodland management plans, identify trees and woodland for action and undertaking works. An overview of these procedures and the associated documents are provided in Annex A.
- 20 When next reviewing their guidance for woodland management, Highways England will consider how these documents align with the requirements and guidelines for sustainable forest management set out in the UK Forestry Standard.

Investigations into alleged illegal tree felling

- 21 FCE will investigate any reports of alleged illegal tree felling that may relate to Highways England work in the following manner:
 - a) FCE will notify Highways England of the reported tree felling immediately by contacting Highways England's **Matthew Sweeting, Divisional Director**, Highways England | The Cube | 199 Wharfside Street | Birmingham | B1 1RN Tel: 0161 9308757
 - b) The appropriate Highways England operational unit will discuss the work with the FCE to confirm it was undertaken by them or at their request and the reasons for this within 48 hours. FCE will then be able to determine whether the work was subject to an exemption or requires further investigation.

Review

- 22 This MoU will be reviewed twelve months after the later of the two dates shown in the signature block below.
- 23 Thereafter FCE and Highways England will discuss the need to meet and review the MoU every five years, prior to the expiry of the blanket felling licence.

Signatories

For the Forestry Commission

Name:

Position:

Date:

[Redacted Signature]

30 JULY 2015

For Highways England Company Limited

[Redacted Signature]

Name:



Position:

Director

Date:

17/8/15
