

Operations Note 037

Date: 4 March 2015

## Public open space and felling licence requirements

### Purpose

This Operation Note has been prepared to provide Local Authorities with advice on when a felling licence may be needed to fell trees on land that is used as public open space as defined in the Forestry Act 1967 (as amended).

### Defining Public Open Space

The basic principle that underpins the Forestry Act 1967 (Section 9(1)) is that **all** tree felling requires a licence, unless where the specific historically defined exemptions exist. It is clearly the intention of section 9 that, **other than very small areas of tree cover**, mature trees should generally require a felling licence.

Public Open space is defined in the Forestry Act as:

*"public open space" means land laid out as a public garden or used (otherwise than in pursuance of section 193 of the Law of Property Act 1925 or of Part V of the National Parks and Access to the Countryside Act 1949 or Part I of the Countryside and Rights of Way Act 2000) for the purpose of public recreation, or land being a disused burial ground;"* (section 9(6)).

Put simply the underlined text means that **a felling licence is required** where the right of public access is provided through:

- Section 193 of the Law of Property Act 1925.
- National Parks and Access to the Countryside Act 1949.
- Part I of the Countryside and Rights of Way Act 2000.

In addition the definition of public open space in the Forestry Act 1967 was amended by section 24(4) of the Countryside Act 1968. This amendment excludes Country Parks created by Local Authorities under section 7 of Countryside Act 1968 from the definition of public open space. So again a felling licence is needed in this situation.

These situations deal with large areas of land and again reinforce the conclusion that it is **not** the intention of the Forest Act to exempt large areas of land from the licensing system, even where that land is provided by the local authority to give the public opportunities to enjoy the countryside.

With this in mind we have, for some time now, worked on the principle that for land to qualify as 'public open space' under the Forestry Act the public must have **legal right of access to the land**. Areas of land where the public enjoy informal recreation such as local woodland and other areas of land with trees **would not qualify as public open space under the Forestry Act unless they are a park** (but not Country Parks created by the Local authority under section 7 of Countryside Act 1968) **or a Village or Town Green**.

In conclusion the classification of land as a **public** open space does not provide an exemption to the requirements of the Forestry Act. If you are in doubt as to whether a felling licence is required please contact your local Forest Commission Area (link below) to discuss the situation.

### Sources of further advice

The [Grants and Regulations website](#) contains all the information you need to apply for a felling licence. Alternatively, you can request this information from your local [Forestry Commission Local Area Office](#)

### Versions

Version 1 Issued 4 March 2015