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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 113**

**The Forestry (Environmental Impact  
Assessment) (Scotland) Regulations 2017**

**PART 2**

**DETERMINING WHETHER EIA IS REQUIRED**

**EIA forestry project**

**8.**—(1) Subject to regulation 9 and to paragraph 4(11) of schedule 4, the occurrence of an event mentioned in paragraph (2) will determine for the purposes of these Regulations that a forestry project is an EIA forestry project.

(2) The events are—

- (a) the adoption by the Commissioners of a screening opinion to the effect that the forestry project is an EIA forestry project;
- (b) the giving of a statement of reasons by the Commissioners under paragraph 3(5) of schedule 4;
- (c) the making by the Scottish Ministers of a screening direction to the effect that the forestry project is an EIA forestry project; or
- (d) if none of the events in sub-paragraph (a), (b) or (c) has occurred, the submission by the applicant, in relation to the forestry project, of a report referred to by the applicant as an EIA report.

**Exemptions**

**9.**—(1) The Commissioners may, in accordance with Article 2(4) of the Directive (but without prejudice to Article 7 of the Directive), direct that these Regulations do not apply in relation to a forestry project specified in the direction where, in the opinion of the Commissioners, compliance with these Regulations would have an adverse effect on the purpose of the forestry project.

(2) Where such a direction is given under paragraph (1), the Commissioners must—

- (a) make available to the public concerned the information considered in making the direction and the reasons for making the direction;
- (b) consider whether another form of assessment would be appropriate; and
- (c) if in the opinion of the Commissioners another form of assessment would be appropriate, take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public concerned.

(3) The Commissioners may direct that these Regulations do not apply in relation to a forestry project specified in the direction if the forestry project comprises a project having the response to civil emergencies as its sole purpose and where, in the opinion of the Commissioners, compliance with these Regulations would have an adverse effect on that purpose.

(4) The Commissioners may, in accordance with Article 2(5) of the Directive (but without prejudice to Article 7 of the Directive), direct that the provisions relating to public consultation in regulation 18 do not apply in cases where a forestry project specified in the direction is adopted pursuant to an enactment (including an Act of the Scottish Parliament or any instrument made under such an Act) provided that the objectives of the Directive are met.

### **EIA forestry project thresholds**

**10.** Subject to regulation 11(2), a forestry project is to be taken as not likely to have significant effects on the environment if the area covered, or to be covered, by the project does not exceed any relevant threshold in schedule 1.

### **General provisions relating to screening**

**11.—**(1) When making a determination as to whether a forestry project is an EIA forestry project, the Commissioners, or as the case may be, the Scottish Ministers must—

- (a) in all cases take into account—
  - (i) such of the selection criteria set out in schedule 2 as are relevant to the forestry project proposed; and
  - (ii) the available results of any relevant assessment of the effects of the forestry project proposed; and
- (b) where information is provided to them by virtue of regulation 12(2) or (3) or 14(1)(a), base their determination on that information.

(2) In a case where the forestry project proposed does not exceed any relevant threshold set out in schedule 1, the Commissioners must adopt their opinion or, as the case may be, the Scottish Ministers must make their direction, in accordance with regulation 10 unless there are exceptional circumstances which, taking account of the selection criteria in schedule 2, make it likely that the forestry project will have significant effects on the environment.

(3) Where the Commissioners adopt a screening opinion or the Scottish Ministers make a screening direction—

- (a) that screening opinion or screening direction must be accompanied by a written statement giving, with reference to such criteria set out in schedule 2 which are relevant to the forestry project proposed, the main reasons for their conclusion as to whether the forestry project proposed is, or is not, an EIA forestry project; and
- (b) where the screening opinion or the screening direction is to the effect that the forestry project proposed is not an EIA forestry project, the statement referred to in subparagraph (a) must state any features of the forestry project or proposed measures envisaged to avoid or prevent significant adverse effects on the environment.

(4) As soon as possible after adopting a screening opinion, the Commissioners must send a copy of the screening opinion and a copy of the written statement referred to in paragraph (3)(a) to the applicant.

(5) The Scottish Ministers may make a screening direction either—

- (a) of their own volition; or
- (b) if requested to do so in writing by an applicant under regulation 13(5).

(6) As soon as possible after making a screening direction, the Scottish Ministers must send a copy of the screening direction and a copy of the written statement referred to in paragraph (3)(a) to—

- (a) the applicant;

- (b) the Commissioners; and
  - (c) where the screening direction is made following a request made by a person other than the applicant, to the person who made the request.
- (7) A later screening direction supersedes the terms of an earlier screening opinion or screening direction.
- (8) In paragraph (2), the reference to circumstances which are, in the opinion of the Commissioners or, as the case may be, the Scottish Ministers, exceptional circumstances must be construed in accordance with paragraph 6 of schedule 1.

### **Requests for screening opinion of the Commissioners**

- 12.**—(1) An applicant may, in writing, request the Commissioners to adopt a screening opinion.
- (2) A request for a screening opinion under paragraph (1) must be accompanied by—
- (a) a plan sufficient to identify the land;
  - (b) a description of the forestry project proposed, including in particular—
    - (i) a description of the physical characteristics of the forestry project and, where relevant, of demolition works;
    - (ii) a description of the location of the forestry project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
  - (c) a description of the aspects of the environment likely to be significantly affected by the forestry project proposed; and
  - (d) a description of any likely significant effects, to the extent of the information available on such effects, of the forestry project proposed on the environment resulting from—
    - (i) the expected residues and emissions and the production of waste, where relevant;
    - (ii) the use of natural resources, in particular soil, land, water and biodiversity.
- (3) A request for a screening opinion may, in addition to the information required in accordance with paragraph (2), also be accompanied by a description of any features of the forestry project, or proposed measures, envisaged to avoid or prevent significant adverse effects on the environment.
- (4) The information referred to in paragraph (2) is to be compiled taking into account, where relevant—
- (a) the selection criteria set out in schedule 2; and
  - (b) the available results of any relevant assessment.

### **Screening opinions – time period for decision**

- 13.**—(1) Where the Commissioners receive a request for a screening opinion under regulation 12(1), they must, unless a screening direction is made by the Scottish Ministers, adopt a screening opinion on or before—
- (a) the expiry of the period of 28 days beginning with the date of receipt of the request;
  - (b) the expiry of such longer period, not exceeding the period of 90 days beginning with the date of receipt of the request, as may be agreed in writing between the Commissioners and the applicant; or
  - (c) where notice is given under paragraph (2), the date specified in the notice as the date by which the Commissioners are to adopt a screening opinion.
- (2) Where the Commissioners consider that due to exceptional circumstances relating to the nature, complexity, location or size of the forestry project proposed that it is not practicable for them

to adopt a screening opinion within the period of 90 days beginning with the date of receipt of the request, the Commissioners may extend that period by notice in writing given to the applicant.

(3) Notice under paragraph (2) must state the Commissioners' justification for the extension and specify the date by which the Commissioners are to adopt a screening opinion pursuant to the request.

(4) The Commissioners must, if they consider that they have not been provided with sufficient information to adopt a screening opinion, notify the applicant in writing of the points on which they require further information.

(5) Where the Commissioners—

- (a) fail to adopt a screening opinion within the relevant period mentioned in paragraph (1); or
- (b) adopt an opinion to the effect that the forestry project is an EIA forestry project,

the applicant may request the Scottish Ministers to make a screening direction.

(6) The applicant may make a request pursuant to paragraph (5) even if the Commissioners have not received the information which they have sought under paragraph (4).

(7) For the purposes of paragraphs (1) and (2), the date on which a request for a screening opinion under regulation 12(1) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening opinion in accordance with regulation 12(2) is received by the Commissioners.

#### **Requests for screening directions by the Scottish Ministers**

**14.—**(1) An applicant who pursuant to regulation 13(5) requests the Scottish Ministers to make a screening direction must submit with that request—

- (a) a copy of the request to the Commissioners under regulation 12(1) and the information provided in accordance with regulation 12(2) and any other documents which accompanied the request;
- (b) a copy of any notification under regulation 13(4) which has been received and of any response;
- (c) a copy of any screening opinion received from the Commissioners and of any accompanying statement of reasons; and
- (d) any representations that applicant wishes to make.

(2) When an applicant makes a request pursuant to regulation 13(5), that applicant must send to the Commissioners a copy of that request and of any representations made to the Scottish Ministers, and the Commissioners may provide the Scottish Ministers with their comments on the request and representations.

(3) Where the Scottish Ministers consider that they have not been provided with sufficient information to make a screening direction they—

- (a) must notify in writing the applicant making the request pursuant to regulation 13(5) of the points on which they require further information; and
- (b) may request the Commissioners to provide such information as they can on any of those points.

(4) The Scottish Ministers must make a screening direction within—

- (a) the period of 28 days beginning with the date of receipt of the request pursuant to regulation 13(5) or such longer period, not exceeding 90 days beginning with the date of the request, as they may reasonably require; or
- (b) where notice is given under paragraph (5), within the period beginning with the date of receipt of the request and ending on the date specified in the notice as the date by which the Scottish Ministers are to make a screening direction.

(5) Where the Scottish Ministers consider that due to exceptional circumstances relating to the nature, complexity, location or size of the forestry project proposed that it is not practicable for them to adopt a screening direction within the period of 90 days beginning with the date of receipt of the request, they may extend that period by notice in writing given to the applicant who made the request for the screening direction.

(6) Notice under paragraph (5) must state the Scottish Ministers' justification for the extension and specify the date by which the Scottish Ministers are to make the screening direction.

(7) For the purposes of paragraphs (4) and (5), the date on which a request for a screening direction pursuant to regulation 13(5) is to be taken to have been received is the date on which the last of the items or information required to be contained in or accompany a request for a screening direction in accordance with paragraph (1)(a) to (c) is received by the Scottish Ministers.