

**EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL IMPACT ASSESSMENT (FORESTRY) (ENGLAND AND
WALES) (AMENDMENT) REGULATIONS 2006**

2006 No. 3106

1. This explanatory memorandum has been prepared by the Forestry Commission and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Instrument brings about minor changes to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228) (the EIA Forestry Regulations). It includes changes needed to implement the requirements of Council Directive 85/337/EEC (the Environmental Impact Assessment (EIA) Directive) and to update the Regulations to reflect the current access to information regime.

2.2 The changes: -

- improve the information provided to the public as part of the Forestry Commission's decision making process in relation to environmental impact assessment;
- Broaden the range of statutory environmental bodies consulted by the Forestry Commission;
- substitute a reference to the provisions of the Environmental Information Regulations 2004 (SI 2004/3391).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 The EIA Forestry Regulations implement the EIA Directive insofar as the Directive requires the EIA process to be applied to projects involving afforestation, deforestation, forest road works and forest quarry works. These projects are included in the descriptions of projects listed in Annex II of the EIA Directive as projects that might have significant effects on the environment.

4.2 European Directive 2003/35/EC (known as the Public Participation Directive or PPD) transposes the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (also known as the Aarhus Convention) into European Community law.

4.3 Whilst the EIA Directive already includes procedures to ensure that the public is consulted on projects to which it applies, the PPD makes further amendments to this Directive that must be reflected in the EIA Forestry Regulations.

4.4 In addition, changes to the Regulations are needed to implement existing requirements of the EIA Directive and to reflect the requirements of the Environmental Information Regulations 2004.

5. Territorial Extent and Application

5.1 This Statutory Instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The FC is committed to bringing its EIA process into line with current EC requirements to secure improved public participation. Accordingly consultation on the changes described in paragraph 2 was carried out amongst a range of organisations and individuals with an interest in the issue. This consultation involved a written paper inviting answers to two specific questions and more general views about the material presented. Written papers were distributed and also placed on the Forestry Commission's web site so that a wider audience could get access to the paper and submit responses.

7.2 Only five responses were received and there were no comments of a substantive nature that were considered to affect the proposed changes. There was some concern that the increased availability of information might give rise to disclosure of the location of rare species but powers exist under the Environmental Information Regulations 2004 to prevent this in appropriate cases.

7.3 The other main concern was that there might be an increased burden on the applicant for consent to carry out a project under the EIA process. We agreed this may be the case in some situations but that the additional burden was only slight and was outweighed by the improved access to information provided to the public.

7.4 Details of the changes to the Regulations will be published on the Forestry Commission website. The current explanatory booklet about the EIA process will be updated to explain what the changes mean.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible.

9. Contact

9.1 Graham Cullen at the Forestry Commission Tel: 0131 314 6286 or e-mail: graham.cullen@forestry.gsi.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

Article 3 of the Public Participation Directive (Directive 2003/35/EC) amends Council Directive 85/337/EEC as amended by Council Directive 97/11/EC – The Environmental Impact Assessment (EIA) Directive

The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228) need to be brought in line with the amended EIA Directive.

Background

The new EC Public Participation Directive (2003/35/EC) arises from EU adoption of the UNECE Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

Article 3 of the Public Participation Directive amends the EIA Directive. The EIA Directive is applied through a range of EIA Regulations relating to land-use matters such as town and country planning, transport, intensive agricultural use of uncultivated land and semi-natural areas and land drainage, etc.

The Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (SI 1999/2228) (“the 1999 Regulations”) apply the EIA process to projects involving afforestation, deforestation, forest road works and forest quarry works. These projects are included in the descriptions of projects listed in Annex II of the EIA Directive as projects that might have significant effects on the environment.

Amended Article	Objective	Implementation
2.3	Removes the discretion afforded to Member States to decide whether information gathered under another form of assessment (in the context of a decision whether to exempt a project from the EIA requirements) should be made available to the public.	Regulation 2(3) amends regulation 4 of the 1999 Regulations to require the Forestry Commissioners, where they have decided another for of assessment would be appropriate, to take appropriate steps to bring information obtained under it to the attention of the public concerned.
6.2(c)	Requires the Member State to inform the public of information relevant to the	Regulation 2(5) amends regulation 13 of the 1999 Regulations to include in the publicity requirements information supplied by the applicant at a later

Amended Article	Objective	Implementation
	decision whether to grant consent for a project which only becomes available after the public has been informed of the application and the availability of the environmental statement.	stage, whether or not this is required by the Forestry Commissioners by a notice served under regulation 11. Regulation 2(6) makes a similar amendment to regulation 14 to require this information to be made available to another EEA state.
6.2(d)	Requires the Member State to inform the public of the nature of possible decisions following an application for consent.	Regulation 2(5) amends regulation 13 of the 1999 Regulations to include in the publicity requirements a statement in relation to the application for consent that the Commissioners may grant consent subject only to the conditions required by regulation 18 or subject to additional conditions; or they may refuse consent.

Additional notes
Regulation 2(2)(a) amends the definition of 'countryside bodies' in regulation 2(1) of the 1999 Regulations to add to the specific bodies referred to by name any other body designated by statutory provision as having specific environmental responsibilities. The amendment gives effect to Article 6(1) of the EIA Directive which refers to 'the authorities likely to be concerned by the project by reason of their specific environmental responsibilities'.
Regulation 2(4) amends regulation 12 of the 1999 Regulations to update the reference to the Environmental Information Regulations to those introduced in 2004.
Regulation 2(7) amends regulation 24 of the 1999 Regulations to require the Commissioners to keep a register of a direction made by the appropriate Authority of its own motion under regulation 7(8) as to whether a project is a relevant project requiring consent under the Regulations. This amendment is needed to give effect to Article 4(4) of the EIA Directive which requires competent authorities to make available to the public their determinations as to whether projects are required to be subject to assessment under the Directive.

Partial Regulatory Impact Assessment

Partial Regulatory Impact Assessment of the proposed regulations to amend the Environmental Impact Assessment (Forestry) legislation in England and Wales to implement amendments to Directive 85/337/EEC made by Article 3 of Directive 2003/35/EC.

1. Title

Regulatory Impact Assessment for Transposing Article 3 of the Public Participation Directive (2003/35/EC) in England and Wales.

2. Purpose and Intended Effect of the Measures

2.1 The Objective

The objective is to transpose into national legislation, by regulation, the amendment of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, otherwise known as “the EIA Directive” made by Article 3 of Directive 2003/35/EC (known as the Directive on public participation or “the Public Participation Directive”). One of the Directive’s objectives is to improve the public participation within the EIA Directive. Article 6 of the Public Participation Directive requires Member States to comply with the Directive by 25 June 2005.

This regulatory impact assessment refers to the transposition of amendments to the EIA Directive made by Article 3 of the Public Participation Directive. While many of the requirements contained in Article 3 of the Public Participation Directive are already provided for in the existing Environmental Impact Assessment (Forestry) regulations, further amendments are proposed to fully implement its provisions.

2.2 Background & Risk Assessment

The importance of fostering increased public participation in environmental decision-making was recognised at the international level in the UNECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (“the Aarhus Convention”). The Community signed this on 25 June 1998 and the UK has also signed it. Since signing the Aarhus Convention in 1998, the EU has taken steps to update existing legal provisions in order to meet the requirements of the Aarhus Convention by means of legislation directed to Member States. The main legal instrument used to align Community legislation with the provisions of the Aarhus Convention on public participation is the Public Participation Directive. Directive 85/337/EEC, as amended by Directive 97/11/EC, was first transposed in England and Wales in 1988. These regulations were subsequently added to and updated to take account of amendments to the EIA Directive adopted in 1997. Similar Regulations have been made for the rest of the UK.

The main aim of the EIA Directive is to ensure that the authority giving the primary consent for a particular project to proceed makes its decision in the full knowledge of any likely significant effects on the environment. The Directive therefore sets out a procedure that must be followed for certain types of project before they can be given 'development consent'. This procedure – known as Environmental Impact Assessment (EIA) – is a means of drawing together, in a systematic way, an assessment of a project's likely significant environmental effects. This helps to ensure that the importance of the predicted effects, and the scope for reducing them, are properly understood by the public and the relevant competent authority before it makes its decision.

Article 2 of the EIA Directive provides that EIA may be integrated into existing procedures for consent to projects in Member States. For relevant forestry projects in England and Wales, the EIA Directive is implemented through The Environmental Impact Assessment (Forestry)(England and Wales) Regulations 1999.

This impact appraisal deals with the Regulations in relation to Forestry legislation.

If the UK does not transpose the Public Participation Directive, it will be subject to infraction proceedings by the European Commission. An infraction proceeding against UK Government for late transposition has already commenced.

There are no associated health effects. The Public Participation Directive is about public consultation and not about setting environmental targets or standards.

3. Options

3.1 Option 1: Do Nothing

This is not a realistic or desirable option. Our obligations under EU law must be implemented by legislative means and an alternative method of implementation is not possible. Failure to implement properly will result in proceedings in the European Court of Justice and an increased risk of challenge on individual consent decisions.

3.2 Option 2: Transpose into UK law using Regulations

The Directive on public participation places an obligation on Member States to ensure that the Directive is fully transposed into national legislation. In transposing the Directive into national legislation, it is necessary to place an obligation on an individual or organisations with the powers to ensure that the Directive's objectives are met as far as possible. It is for this reason that it is proposed to transpose the Directive's amendment of Directive 85/337/EEC into national legislation by means of amending Environmental Impact Assessment legislation.

4. Benefits

4.1 Option 1

There are no benefits associated with this option, as by failing to transpose, the UK would risk infraction proceedings by the European Commission.

4.2 Option 2

The Forestry Commissioners and Forestry Ministers frequently take decisions, which may have a significant effect on the environment. Effective public participation in the decision making process has several benefits. It enables the public to express, and the decision-maker to take account of, opinions and concerns, which may be relevant to the decisions in question. This increases the accountability and transparency of the decision-making process and contributes to public awareness of environmental issues. The current regulations already contain a number of provisions aimed at securing effective public participation. The proposed amendments will serve to strengthen those provisions.

5. Costs

Compliance costs

5.1 Option 1

Failure to transpose could result in considerable costs if the European Commission brought infraction proceedings against the UK.

5.2 Option 2

The costs to business will be de minimus. The majority of the requirements of amendment to EIA Directive 85/337/EEC are already implemented under existing legislation. The burden of the additional requirements will fall to the Forestry Commissioners and Forestry Ministers (as the competent authority) and concern the detail of the information to be publicised for the environmental impact assessment procedure.

6. Business Sectors affected

The burden of the additional procedural requirements will fall mainly on Forestry Commissioners and the Forestry Ministers. However some procedural and financial requirements may fall to developers, particularly in relation to additional advertising. It is expected that businesses which will mainly be affected will be larger scale developers, though the number is likely to be very small (i.e. 1-2 per year).

7. Compliance costs for business

There may be modest increased costs to businesses in having to pay costs associated with advertising additional information. However it is anticipated that these costs will be minimal in comparison to the costs of preparing a statement. All the Member States are required to transpose the Directive.

8. Issues of Equity and Fairness

None.

The burden of the additional procedural requirements will fall mainly on the Forestry Commissioners and the Forestry Ministers.

9. Consultation with small business: the Small Firms' Impact Tests

No direct costs to businesses are anticipated. A small Firm's Impact Test has therefore not been carried out.

10. Enforcement and Sanctions

Permissions granted in breach of the Regulations are vulnerable to court challenges; there is no change in this respect.

11. Monitoring and Review

The Directive requires Member States to provide information to the European Commission on their application of the Directive.

12. Consultation

Within Government

UK Government Departments (including Gibraltar), in consultation with the Forestry Commission, consulted on the UK position in the negotiation of the Public Participation Directive as a whole.

Public consultation

A full public consultation on the policy to deliver Option 2 has been concluded and a Partial Regulatory Impact Assessment formed part of it. The consultation involved a written paper inviting answers to two specific questions and more general views about the material presented. Written papers were distributed and also placed on the Forestry Commission's web site so that a wider audience could get access to the paper and submit responses.

Only five responses were received and there were no comments of a substantive nature that were considered to affect the proposed changes. There was some concern that the increased availability of information might give rise to disclosure of the location of rare species but powers exist under the Environmental Information Regulations 2004 to prevent this in appropriate cases.

The other main concern was that there might be an increased burden on the developer for consent to carry out a project under the EIA process. We agreed this may be the case in a very limited number of situations but that the additional burden was only slight and was outweighed by the improved access to information provided to the public.

13. Summary and Recommendations

The proposed amendments to the regulations are necessary in order to transpose the amendment of Directive 85/337/EEC made by the Public Participation Directive. Many of those requirements are already in place within the existing regulations and their costs to the Forestry Commissioners are, therefore, already incorporated in existing budgets. Additional burdens and their attendant costs are considered negligible. It is our recommendation that we transpose the amendment of Directive 85/337/EEC made by the Public Participation Directive by making appropriate amendments to the EIA Regulations.

12. Declaration and Publication

I have ready the Regulatory Impact Assessment and I am satisfied the Benefits justify the costs.

SignedBarry Gardiner.....

Date22nd November 2006.....

**(Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs)**

Contact Point

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