
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 113

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

PART 1

INTRODUCTORY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 and come into force on 16th May 2017.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1999 Regulations” means the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999⁽¹⁾;

“additional information” means—

- (a) supplementary information required in accordance with regulation 21(2); or
- (b) any other information provided by the applicant which is substantive information about a matter to be included in the EIA report in accordance with regulation 6(3);

“afforestation” means initial afforestation for the purpose of conversion to another type of land use (within the meaning of paragraph 1(d) of Annex II to the Directive);

“applicant” means a person applying for EIA consent under regulation 6(1) and includes, for the purposes of—

- (a) screening opinions, screening directions, scoping opinions, scoping directions and regulation 17, a prospective applicant; and
- (b) an appeal under regulation 30, the applicant who is appealing;

“application website” means a website maintained by the Commissioners, for the purpose of making publicly available information relating to applications to which these Regulations apply;

“the Commissioners” means the Forestry Commissioners constituted under the Forestry Acts 1919 to 1945 and continued in existence by section 1 of the Forestry Act 1967⁽²⁾;

“the consultation bodies” means—

- (a) the local authority (or local authorities, as the case may be) for the area where the forestry project is, or is proposed to be, situated;

(1) S.S.I. 1999/43, as amended by S.S.I. 2006/614, S.S.I. 2010/460 and S.S.I. 2013/177.

(2) 1967 c.10.

- (b) the Scottish Environment Protection Agency, established under section 20 of the Environment Act 1995⁽³⁾;
- (c) Scottish Natural Heritage, established under section 1 of the Natural Heritage (Scotland) Act 1991⁽⁴⁾;
- (d) Historic Environment Scotland, established by section 1 of the Historic Environment Scotland Act 2014⁽⁵⁾; and
- (e) any other body designated by any enactment (including an Act of the Scottish Parliament or an instrument made under any such Act) as having specific environmental responsibilities;

“decision notice” has the meaning given in regulation 24;

“deforestation” means deforestation for the purposes of conversion to another type of land use (within the meaning of paragraph 1(d) of Annex II to the Directive);

“development” means development within the meaning of section 26 of the Town and Country Planning Act 1997⁽⁶⁾;

“the Directive” means [Directive 2011/92/EU](#) of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment⁽⁷⁾;

“EIA application” means an application under regulation 6(1) for consent to carry out an EIA forestry project;

“EIA consent” means consent given under regulation 7(1)(a) or, as the case may be under regulation 30(5)(a) or (b) to carry out an EIA forestry project;

“EIA forestry project” means a forestry project which, subject to regulations 8 and 10 and schedule 1, is likely to have significant effects on the environment by virtue of factors such as its nature, size or location and which—

- (a) does not involve development; or
- (b) involves development—
 - (i) which is not EIA development within the meaning of regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017⁽⁸⁾; or
 - (ii) in respect of which planning permission is granted by Part 7 of schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992⁽⁹⁾;

“EIA report” has the meaning given in regulation 6(3) and, where an applicant submits a revised, updated or supplementary EIA report (or a report which the applicant refers to as such) includes the revised, updated or supplementary EIA report;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000⁽¹⁰⁾;

“enforcement notice” means an enforcement notice served under paragraph 3(1) of schedule 4 and includes, as the case may be, an enforcement notice as varied by service of a notice under paragraph 3(6) of schedule 4;

(3) 1995 c.25.

(4) 1991 c.28.

(5) 2014 asp 19.

(6) 1997 c.8. Section 26 was last amended by section 63(2) of the Marine (Scotland) Act 2010 (asp 5).

(7) O J L 26, 28.1.2012, p.1 as amended by [Directive 2014/52/EU](#) (O J L 124, 25.4.2014, p.1).

(8) S.S.I. 2017/102.

(9) S.I. 1992/223. Part 7 was amended by S.I. 1992/1078, S.I. 1994/3294, S.S.I. 2014/142 and S.S.I. 2014/300.

(10) 2000 c.7. The definition of “electronic communication” was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

“environmental impact assessment” has the meaning given in regulation 5(1);

“environmental information” means any EIA report and any additional information, any representations made by any consultation body required by these Regulations to be invited to make representations and any representations duly made by any other person about the environmental effects of the forestry project;

“forestry project” means a project which includes any of the following activities:—

- (a) afforestation;
- (b) deforestation;
- (c) forest quarry works; or
- (d) forest road works;

“forest quarry works” means operations on land used or to be used for the purposes of forestry, or on land held or occupied with that land, to obtain the materials required for forest road works;

“forest road works” means the formation, alteration or maintenance of private ways on land used or to be used for the purposes of forestry;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹¹⁾;

“mandatory conditions” means the conditions specified in regulation 4;

“prospective applicant” means a person who is minded to carry out a forestry project in Scotland but who has not made an EIA application in respect of that forestry project;

“register” means a register kept by the Commissioners at a Conservancy office for the purposes of public inspection of the following (so far as they relate to the area of that particular Conservancy):—

- (a) directions given under regulation 9;
- (b) screening opinions;
- (c) screening directions;
- (d) scoping opinions;
- (e) scoping directions;
- (f) decision notices;
- (g) notices of appeal decisions under regulation 30;
- (h) EIA reports, including any additional information relevant to them; and
- (i) statements of reasons which accompanied any of the above;

“relevant assessment” means, in relation to a forestry project, an assessment, or verification, of effects on the environment carried out pursuant to national legislation which is relevant to the assessment of the environmental impacts of the forestry project;

“scoping direction” means a direction made by the Scottish Ministers under regulation 16 as to the scope and level of detail of information to be provided in the EIA report;

“scoping opinion” means an opinion adopted by the Commissioners under regulation 15 as to the scope and level of detail of information to be provided in the EIA report;

“screening direction” means a direction made by the Scottish Ministers under regulation 14 as to whether a project is, or is not, an EIA forestry project;

“screening opinion” means an opinion adopted by the Commissioners under regulation 13 as to whether a project is, or is not, an EIA forestry project;

(11) 1994 c.39. Section 2 was amended by section 120 and schedule 22, paragraph 232(1) of the Environment Act 1995 (c.25).

“sensitive area” means any of the following:—

- (a) a site of special scientific interest;
- (b) land in respect of which an order has been made under section 23 of the Nature Conservation (Scotland) Act 2004⁽¹²⁾;
- (c) a European site within the meaning of regulation 10 of the Conservation (Natural Habitats, &c.) Regulations 1994⁽¹³⁾;
- (d) a property appearing in the World Heritage List kept under article 11(2) of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage⁽¹⁴⁾;
- (e) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁵⁾;
- (f) a National Scenic Area as designated by a direction made by the Scottish Ministers under section 263A of the Town and Country Planning (Scotland) Act 1997⁽¹⁶⁾; and
- (g) an area designated as a National Park by a designation order made by the Scottish Ministers under section 6(1) of the National Parks (Scotland) Act 2000⁽¹⁷⁾;

“site of special scientific interest” has the same meaning as in section 58(1) of the Nature Conservation (Scotland) Act 2004⁽¹⁸⁾; and

“Union legislation” means any enactment in national legislation giving effect to rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU treaties.

(2) Other expressions used both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they do for the purposes of the Directive.

Prohibitions relating to EIA forestry projects

3.—(1) Subject to a direction made under regulation 9, no person may carry out any work or operation relating to an EIA forestry project unless—

- (a) EIA consent has been granted in respect of that EIA forestry project; and
 - (b) the EIA forestry project is carried out in accordance with the EIA consent.
- (2) The Commissioners may not grant EIA consent in relation to an EIA forestry project unless—
- (a) an environmental impact assessment has been carried out in respect of that EIA forestry project;
 - (b) they take into account the environmental information in carrying out such an environmental impact assessment;
 - (c) the mandatory conditions are attached to the EIA consent;
 - (d) they comply with the requirements of regulation 25; and
 - (e) they determine the application in accordance with regulation 7(2) and (3).

(12) 2004 asp 6.

(13) S.I. 1994/2716, relevantly amended by S.S.I. 2007/80.

(14) See Command Paper 9424.

(15) 1979 c.46.

(16) Section 263A was inserted by section 50 of the Planning etc. (Scotland) Act 2006 (asp 17).

(17) 2000 asp 10.

(18) In section 58(1) the definition of “site of special scientific interest” was amended by section 37(4)(a) of the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6).

Mandatory conditions

4. The mandatory conditions are—
- (a) work in relation to the EIA forestry project must be started within such period as is specified in the EIA consent (being a period of no more than 5 years beginning with the date on which EIA consent is granted); and
 - (b) no work may be carried out in relation to the EIA forestry project after the expiration of such period as is specified in the EIA consent (being a period of no more than 10 years beginning with the date on which the EIA consent is granted).

Environmental impact assessment

- 5.—(1) An environmental impact assessment is a process consisting of—
- (a) the preparation of an EIA report by the applicant;
 - (b) the carrying out of consultation, publication and notification as required by Parts 4, 5, 6 and, where relevant, 7;
 - (c) the examination by the Commissioners of the information presented in the EIA report and any other environmental information;
 - (d) the reasoned conclusion by the Commissioners on the significant effects of the EIA forestry project on the environment, taking into account the results of the examination referred to in sub-paragraph (c) and, where appropriate, their own supplementary examination; and
 - (e) the integration of the Commissioners' reasoned conclusion into the decision notice in accordance with regulation 24.
- (2) The environmental impact assessment must identify, describe and assess in an appropriate manner, in light of the circumstances relating to the forestry project, the direct and indirect significant effects of the forestry project on the factors specified in paragraph (3) and the interaction between those factors.
- (3) The factors are—
- (a) population and human health;
 - (b) biodiversity, and in particular species and habitats protected under Council [Directive 92/43/EEC](#) on the conservation of natural habitats and of wild fauna and flora⁽¹⁹⁾ and [Directive 2009/147/EC](#) of the European Parliament and of the Council on the conservation of wild birds⁽²⁰⁾;
 - (c) land, soil, water, air and climate; and
 - (d) material assets, cultural heritage and the landscape.
- (4) The effects to be identified, described and assessed under paragraph (2) include the expected effects deriving from the vulnerability of the forestry project to risks of major accidents and disasters, so far as relevant to the project concerned.
- (5) The Commissioners must ensure that they have, or have access as necessary to, sufficient expertise to examine the EIA report.

Application for EIA consent

- 6.—(1) An application for EIA consent under regulation 7 must be made in writing to the Commissioners.

(19) OJ L 206, 22.7.1992, p.7.

(20) OJ L 20, 26.1.2010, p.7.

(2) An EIA application must be accompanied by an environmental impact assessment report (in these Regulations referred to as “EIA report”).

(3) An EIA report is a report prepared in accordance with this regulation by the applicant which assesses the environmental impact of the EIA forestry project and which includes (at least)—

- (a) a description of the EIA forestry project comprising information on the site, design, size and other relevant features of the project;
- (b) a description of the likely significant effects of the EIA forestry project on the environment;
- (c) a description of the features of the EIA forestry project and any measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the EIA forestry project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the EIA forestry project on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any other information specified in schedule 3 relevant to the specific characteristics of the EIA forestry project or of the type of EIA forestry project in question and to the environmental features likely to be affected.

(4) Where a scoping opinion is adopted or a scoping direction is made, the EIA report must be based on that scoping opinion or scoping direction and must include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the EIA forestry project on the environment, taking into account current knowledge and methods of assessment.

(5) With a view to avoiding duplication of assessments, account is to be taken of the available results of other relevant assessments in preparing the EIA report.

(6) In order to ensure the completeness and quality of the EIA report—

- (a) the applicant must ensure that the EIA report is prepared by competent experts; and
- (b) the EIA report must be accompanied by a statement from the applicant outlining the relevant expertise or qualifications of those experts.

(7) An applicant must supply to the Commissioners such number of copies of the application, the EIA report and any other documents accompanying the application, as the Commissioners may reasonably require.

Determination of applications for EIA consent

7.—(1) Where an EIA application is made to the Commissioners, they may (subject to regulation 3(2) and regulation 25)—

- (a) grant EIA consent subject only to the mandatory conditions or also subject to such further conditions as they think fit; or
- (b) refuse to grant EIA consent.

(2) The Commissioners must determine an EIA application before the expiry of the period of 6 months beginning with the date on which the Commissioners receive the EIA application or within such other period as may be agreed with the applicant.

(3) Despite paragraph (2), the Commissioners must not determine an EIA application before the expiry of any period referred to in regulation 18(2)(f), 19(1)(b) or, where relevant, regulation 27.

(4) For the purposes of paragraph (2), the date on which the Commissioners receive the EIA application is the date on which the Commissioners are in receipt of—

- (a) the EIA application;
- (b) the accompanying EIA report;
- (c) any supplementary information requested by the Commissioners under regulation 21(2);
- (d) any evidence requested by the Commissioners under regulation 21(4); and
- (e) any other additional information provided by the applicant.