

ENVIRONMENTAL IMPACT ASSESSMENT CHANGES

Forestry Commission Scotland (FCS) is responsible for administering Environmental Impact Assessment Regulations for forestry. The existing Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 has recently been amended by EIA Directive 2014/52/EU. The Directive aims to streamline aspects of the EIA process, and improve transparency and consistency in EIA practice.

The **Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017**, comes into force on **16th May 2017**.

Transitional arrangements for this are as follows:

- For applications submitted (EIA determinations) to FCS for a screening opinion up to and including 15th May 2017, and for all EIA currently in process, the 1999 Regulations will apply.
- For applications submitted to FCS for a screening opinion on 16th May 2017 and onwards, the new 2017 Regulations will apply.

The 2017 Regulations will be reflected in new guidance and training. However, following the review of forestry planting approval procedures undertaken by Jim Mackinnon, the EIA process is currently being addressed in the implementation plan. Therefore guidance relating to these Regulations will be captured in this implementation plan process and subsequent outputs.

This Briefing Note provides a summary of the changes required from the Directive. It is not envisaged that the new Regulations will cause any major change to the current procedures with the exception of the increased threshold for screening afforestation proposals.

Summary of changes to the Forestry EIA Regulations

This is not an exhaustive summary of all of the changes made by the Directive but it is a list of the main changes to the Regulations that will influence forestry EIA screening opinions (formerly referred to as 'determinations') and the process for EIA consent.

1. Thresholds for forestry projects that are likely to have significant effects on the environment are contained in Schedule 1 of the Regulations. A significant change to the threshold for projects outside of sensitive areas for afforestation is effective from 16th May. This threshold will now be **20 hectares**, up from 5 hectares. The list of sensitive areas has also been expanded to include **deep peat soil**, see below.

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Operation	Threshold where any part of the land is in a sensitive area	Threshold where <u>no part</u> of the land is in a sensitive area
Afforestation	2 hectares – in National Scenic Area No threshold in other sensitive areas (listed below)	20 hectares
Deforestation	0.5 hectares – in National Scenic Area No threshold in other sensitive areas (listed below)	1 hectare
Forest Roads	No threshold – All projects	1 hectare
Forest Quarries	No threshold – All projects	1 hectare

Sensitive areas:

- Site of Special Scientific Interest or National Nature Reserve
- Special Protection Area or Special Area of Conservation
- World Heritage Site
- Scheduled Ancient Monuments
- National Scenic Area
- National Park
- Deep peat soil¹

2. Screening opinion requests from applicants will need to contain specific information including the characteristics and location of the forestry project, characteristics of the potential significant impacts, and any opportunities for mitigation. The selection criteria for screening forestry projects are included in Schedule 2 of the Regulations. The selection criteria are extensive and information must be provided where relevant to the proposed forestry project. A new '[Screening Opinion Request Form](#)' has been created for use by applicants. This form and Schedule 2 can be found on the [Applying for opinion](#) webpage.
3. Screening opinions must also be published electronically; they will be contained on our existing [EIA register](#) until a new system is developed. FCS will now include a reasoned conclusion within the screening opinion letter.
4. If consent is required, the findings of the EIA must be presented in an Environmental Impact Assessment (EIA) Report. The term EIA Report has replaced the term Environmental Statement.

¹ Defined as: organic soil which contains more than 60 per cent of organic matter and exceeds 50cm in thickness (Soil Survey of Scotland (1984))

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5. Where a Habitats Regulation Assessment (Appropriate Assessment) is required in addition to an EIA, these two assessments must be co-ordinated.
6. In order to ensure the completeness and quality of the EIA Report, the applicant must ensure that the EIA Report is prepared by competent experts. This is the responsibility of the applicant. 'Competent expert' has not been defined in the Regulation, although it does state that the applicant must provide a statement 'outlining the relevant expertise or qualifications of such experts'.
The content of the EIA Report stays broadly the same as previously required, but is worded somewhat differently. The detailed requirements are included in Schedule 3 of the Regulations, and can be found on the [Applying for consent](#) webpage.
7. The EIA Report must now be published electronically for consultation purposes. FCS will use the current [EIA projects](#) page with the assistance of cloud storage (if required) to publish the EIA Report in full. This does not substitute the provision of copies being made available locally and/or to specific consultees by the applicant.
8. The minimum time for public consultation on the EIA Report has been increased from 28 days to 30 days.
9. When providing consent in a decision notice on a submitted EIA Report, FCS must provide:
 - A reasoned conclusion on the significant effects of the proposed EIA forestry project on the environment
 - Any conditions to which the decision is subject
 - A description of any monitoring measure requiredMonitoring measures must be proportionate to the nature, location and size of the forestry project and the significance of its effects on the environment. If monitoring is put in place it will be a condition of the forestry project.
10. Enforcement notices were, and still will be, served for carrying out work without consent, or for breaching the terms of consent. Where previously it was only an offence not to comply with these enforcement notices, penalties have now also been introduced for those providing false or misleading statements. This relates directly to the decision on an EIA application where a person (as well as body corporate, partnership or association):
 - Knowingly or recklessly makes a statement which is false or misleading within their application
 - Intends to deceive by using any document which is false or misleading
 - Intends to deceive by withholding material information

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