

2017 No. 592

FORESTRY, ENGLAND AND WALES

The Environmental Impact Assessment (Forestry) (England and Wales) (Amendment) Regulations 2017

<i>Made</i>	- - - -	<i>24th April 2017</i>
<i>Laid before Parliament</i>		<i>25th April 2017</i>
<i>Coming into force</i>	- -	<i>16th May 2017</i>

The Secretary of State has been designated^(a) for the purpose of making Regulations under section 2(2) of the European Communities Act 1972^(b) in relation to the environment.

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, having taken into account the selection criteria in Annex III to Council 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^(c), as amended by Directive 2014/52/EU of the European Parliament and of the Council^(d)

Citation, commencement, application and interpretation

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

(2) These Regulations apply to England and Wales, subject to paragraphs (3) and (4).

(3) Regulations 6, 21(a), 22 and 24(4) apply in relation to projects in England only.

(4) Regulation 24(5) applies in relation to projects in Wales only.

(5) In these Regulations, “the 1999 Regulations” means the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999^(e).

Amendment of the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

2. The 1999 Regulations are amended in accordance with regulations 3 to 27.

(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(c) OJ No L 26, 28.1.2012, p.1.

(d) OJ No L 124, 25.4.2014, p.1. See Article 4(3) of Directive 2011/92/EU as substituted by Article 1(4)(a) of Directive 2014/52/EU.

(e) S.I. 1999/2228, relevant amending instruments are S.I. 2006/3106, 2011/1824, 2013/755 (W. 90) and 2016/58 (W. 28).

Amendment of regulation 1

- 3.**—(1) Regulation 1 (title, commencement and extent) is amended as follows.
- (2) In paragraph (2), after “Wales”, insert “, subject to paragraphs (3) and (4)”;
- (3) After paragraph (2), insert—
- “(3) Regulations 3(4) and (5), 3A, 3B, 24(1)(za) and 26 and paragraph 1A of Schedule 2 apply in relation to projects in England only.
- (4) Paragraph 2 of Schedule 2 applies in relation to projects in Wales only.”.

Amendment of regulation 2

- 4.**—(1) Regulation 2 (interpretation) is amended as follows—
- (2) In paragraph (1)—
- (a) for the definition of “the appropriate Authority” substitute—
- ““the appropriate Authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers;”;
- (b) in the definition of “countryside bodies”(a), in paragraphs (a) and (b), after “responsibilities” insert “or local or regional competences”;
- (c) after the definition of “development”, insert—
- ““Directive 92/43” means Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(b) as last amended by Council Directive 2013/17/EU(c);
- “Directive 2009/147” means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(d), as amended by Council Directive 2013/17/EU;”;
- (d) for the definition of “the Directive”(e) substitute—
- “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, as amended by Directive 2014/52/EU of the European Parliament and of the Council;”
- (e) after the definition of “EEA State”, insert—
- ““environmental impact assessment” means—
- (a) the preparation of an environmental statement;
- (b) the carrying out of consultations under regulation 9(f) and, where relevant, regulation 14(g);
- (c) the consideration of the environmental statement and other information under regulation 15(h);
- (d) reaching a conclusion about the likely significant effects of the project under regulation 15; and
- (e) the consideration of that conclusion under regulation 15, before the decision whether or not to grant consent;”;

(a) The definition of “countryside bodies” was substituted by S.I. 2013/755 (W. 90).

(b) OJ No L 206, 22.7.1992, p. 7.

(c) OJ No L 158, 10.6.2013, p. 193.

(d) OJ No L 20, 26.1.2010, p. 7.

(e) The definition of “the Directive” was amended by S.I. 2006/3106.

(f) Regulation 9 was amended by S.I. 2013/755 (W. 90).

(g) Regulation 14 was amended by S.I. 2006/3106 and 2013/755 (W. 90).

(h) Regulation 15 was amended by S.I. 2013/755 (W. 90).

- (f) for the definition of “environmental statement” substitute—
- ““environmental statement” means a statement that—
- (a) includes such of the information referred to in Part 1 of Schedule 1 as is relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected;
 - (b) includes at least the information referred to in Part 2 of Schedule 1;
 - (c) takes into account the results of any relevant UK environmental assessment reasonably available to the proposer;
 - (d) is based on any opinion issued pursuant to regulation 6(a) and, where such an opinion is issued, includes the information that may reasonably be required for reaching a conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment;
 - (e) is prepared by competent persons; and
 - (f) is accompanied by a statement from the proposer outlining the relevant experience or qualifications of such persons;”;
- (g) after the definition of “environmental statement”, insert—
- ““EU environmental assessment” means an assessment carried out—
- (a) under an obligation to which section 2(1) of the European Communities Act 1972 applies (other than under the Directive), or
 - (b) under the law of any part of the United Kingdom implementing an EU obligation other than an obligation arising under the Directive,
- of the effect of anything on the environment;”;
- (h) after the definition of “relevant project”, insert—
- ““UK environmental assessment” means an assessment carried out in accordance with an obligation under the law of any part of the United Kingdom of the effect of anything done on the environment.”.
- (3) After paragraph (1), insert—
- “(1A) In these Regulations, any reference to the likely significant effects, or the likely significant adverse effects, of projects on the environment includes a reference to the effects of the projects on the environment once the projects are completed and in operation.
- (1B) In paragraph (1A), the reference to the environment includes a reference to the matters referred to in Schedule 4.”.

Amendment of regulation 3

- 5.**—(1) Regulation 3 (interpretation of “relevant project”) is amended as follows.
- (2) In paragraph (1)(c)(i), at the end, omit “or”.
 - (3) In paragraph (1)(c)(ii)(b)—
 - (a) omit “and Wales”;
 - (b) from “Regulations” to the end, substitute “Regulations 2017; or”.
 - (4) After paragraph (1)(c)(ii), insert—
 - “(iia) involves development in Wales which is not mentioned in Schedule 1, or in column 1 of the table in Schedule 2, to the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017(c);”.

(a) Regulation 6 was amended by S.I. 2013/755 (W. 90).

(b) Paragraph (1)(c)(ii) was amended, in relation to England, by S.I. 2011/1824 and in relation to Wales, by S.I. 2016/58 (W. 28).

(c) S.I. 2017/565 (W. 134).

(5) For paragraph (1)(c)(iii), substitute—

“(iii) involves development in England for which planning permission is granted by Part 6 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(a); or”.

(6) After paragraph (1)(c)(iii), insert—

“(iv) involves development in Wales for which planning permission is granted by Part 7 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995(b).”.

(7) For paragraph (3), substitute—

“(3) For the purposes of paragraph (1)(b), and subject to paragraphs (4) and (5) (in relation to England) and regulations 6(3) and 7(6), a project is to be treated as being likely to have, or not to have, significant effects on the environment in accordance with—

- (a) paragraph 1A of Schedule 2, in relation to projects in England; and
- (b) paragraph 2 of Schedule 2, in relation to projects in Wales.”.

(8) After paragraph (3), insert—

“(4) For the purposes of paragraph (1)(b), where the project is an afforestation project in England of the kind to which regulation 3A applies, the project is to be treated as being likely to have, or not to have, significant effects on the environment in accordance with that regulation.

(5) For the purposes of paragraph (1)(b), where the project is an afforestation project in England of the kind to which regulation 3B applies, the project is to be treated as being likely to have, or not to have, significant effects on the environment in accordance with that regulation.”.

New regulations 3A and 3B

6. After regulation 3, insert—

“Prior basic notification to the appropriate forestry body

3A.—(1) This regulation applies to a proposed afforestation project in England covering an area of land—

- (a) which extends to more than 2, but no more than 5, hectares; and
- (b) no part of which is in a sensitive area.

(2) Where this regulation applies to a project, its proposer must send notification of its proposal (“prior basic notification”) to the appropriate forestry body.

(3) The proposer’s prior basic notification must include—

- (a) a description of the proposal for the project;
- (b) a map or plan sufficient to identify the land that is the subject of the proposed project (including its boundaries); and
- (c) information about the proposer and any agent or manager of the proposer with authority to act on behalf of the proposer in respect of the project.

(4) Where the appropriate forestry body receive prior basic notification in respect of a project, they may, within the period of 28 days beginning with the day on which they receive the notification, request further information from the proposer in respect of that project.

(5) Where the appropriate forestry body receive—

(a) S.I. 2015/596.

(b) S.I. 1995/418. Part 7 of Schedule 2 was revoked, with savings, in relation to England by S.I. 2015/596. It was amended, in relation to Wales, by S.I. 2012/2318 (W. 252).

- (a) prior basic notification in respect of a project, and
- (b) any further information requested under paragraph (4),

they must assess whether the project is likely to have significant effects on the environment.

(6) Where the appropriate forestry body do not, within the relevant period, notify the proposer in writing that, according to their assessment, the project is likely to have significant effects on the environment, the proposer may conclude that the project is to be treated as being unlikely to have significant effects on the environment for the purposes of regulation 3(1)(b).

(7) A proposer who applies for a grant from the appropriate forestry body or from the National Forest Company for the purposes of a proposed project of the kind described in paragraph (1)—

- (a) is not required to send prior basic notification to the appropriate forestry body in respect of the project to which the grant relates; and
- (b) where the appropriate forestry body or the National Forest Company offer a grant to the proposer, may conclude that the project to which the grant relates is to be treated as being unlikely to have significant effects on the environment.

(8) In paragraph (1), “sensitive area” has the same meaning as in Schedule 2.

(9) In paragraph (6), the “relevant period” means a period of 28 days beginning with—

- (a) the day on which the appropriate forestry body receive prior basic notification in respect of the project; or
- (b) where the appropriate forestry body have requested further information under paragraph (4), the day on which the body receive that information pursuant to that paragraph.

Prior full notification to the appropriate forestry body

3B.—(1) This regulation applies to a proposed afforestation project in England covering an area of land which—

- (a) extends to more than 5, but no more than 50, hectares; and
- (b) is in a low-risk area.

(2) Where this regulation applies to a project, its proposer must send notification of its proposal (“prior full notification”) to the appropriate forestry body.

(3) The proposer’s prior full notification must include—

- (a) a description of the proposals for the project, including evidence that the proposals are consistent with good forestry practice;
- (b) information about the land which the project covers or affects, including a map or plan sufficient to identify the land and its boundaries, habitats and water features;
- (c) evidence that the proposer has consulted on the project with the person responsible for maintaining the Local Environment Records for the area and with—
 - (i) in respect of the possible impact of the project on any water features, the Environment Agency;
 - (ii) in respect of the possible impact of the project on the landscape, the relevant local authority;
 - (iii) in respect of the possible impact of the project on the historic environment, the person responsible for maintaining the Historic Environment Records for the area; and
- (d) information about the proposer and any agent or manager of the proposer with authority to act on behalf of the proposer in respect of the project.

(4) Where the appropriate forestry body receive prior full notification in respect of a project, they may, within the period of 42 days beginning with the day on which they

receive that notification, request further information from the proposer in respect of that project.

(5) Where the appropriate forestry body receive—

- (a) prior full notification in respect of a project, and
- (b) any further information requested under paragraph (4),

they must assess whether the project is likely to have significant effects on the environment.

(6) Where the appropriate forestry body do not, within the relevant period, notify the proposer in writing that, according to their assessment, the project is likely to have significant effects on the environment, the proposer may conclude that the project is to be treated as being unlikely to have significant effects on the environment for the purposes of regulation 3(1)(b).

(7) In paragraph (1), a “low-risk area” means an area of land any part of which is not—

- (a) in a sensitive area;
- (b) land where the level of peat in the ground is equal to or greater than 50 centimetres in depth;
- (c) identified as an Important Bird Area by the Royal Society for the Protection of Birds, in its role as a BirdLife Partner to BirdLife International^(a);
- (d) identified as affecting water bodies failing, or at risk of failing, due to acidification for the purposes of Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy^(b);
- (e) a nature reserve established by a local authority under section 21(1) of the National Parks and Access to the Countryside Act 1949^(c);
- (f) common land;
- (g) the subject of a commitment under Article 28 of Regulation (EU) 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005^(d);
- (h) land classified as “the best and most versatile agricultural land” according to the Agricultural Land Classification^(e);
- (i) a habitat of the type in the list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006^(f), as being, in the opinion of the Secretary of State, of principal importance for the purpose of conserving biodiversity;
- (j) registered as a battlefield in the Register of Historic Battlefields held by the Historic Buildings and Monuments Commission for England;
- (k) registered as a park or garden under section 8C of the Historic and Ancient Monuments Act 1953^(g).

(8) In paragraph (3)(c)(ii), “relevant local authority” means the local authority for the area in which it is proposed to carry out the project.

(9) In paragraph (6), the “relevant period” means a period of 42 days beginning with—

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- (a) Important Bird Areas are mapped by the Royal Society for the Protection of Birds. The maps can be found at <http://www.magic.gov.uk/>.
 - (b) OJ No L 327, 22.12.2000, p. 1.
 - (c) 1949 c. 97. Section 21(1) was amended by paragraph 15(e) of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c. 16).
 - (d) OJ No L 347, 20.12.2013, p. 487 as last amended by Commission Delegated Regulation (EU) 2016/142.
 - (e) A description of land classified as “the best and most versatile agricultural land” can be found at: publicationsnaturalengland.org.uk/file/4424325
 - (f) 2006 c. 16.
 - (g) 1953 c. 49. Section 8C was inserted by section 33 of, and Schedule 4 to, the National Heritage Act 1983 (c. 47).

- (a) the day on which the appropriate forestry body receive prior full notification in respect of the project; or
 - (b) where the appropriate forestry body have requested further information under paragraph (4), the day on which that information is received pursuant to that paragraph.
- (9) In paragraph (7)—
- (a) “common land” means—
 - (i) land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006^(a); and
 - (ii) land to which Part 1 of that Act does not apply and which is subject to rights of common within the meaning of that Act;
 - (c) “sensitive area” has the same meaning as in Schedule 2;
 - (d) “water features” includes boreholes, wells, adits, springs, seepage and wetland areas, ponds, lakes and watercourses;
 - (e) “watercourses” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.”.

Amendment of regulation 4

- 7.—(1) — Regulation 4 (restriction on relevant projects) is amended as follows.
- (2) In paragraph (1), for “paragraph (2) below” substitute “regulations 4A and 4B”.
 - (3) Omit paragraphs (2) to (5)^(b).

New regulations 4A and 4B

8. After regulation 4, insert—

“National defence and civil emergencies

4A.—(1) The appropriate forestry body may determine that a project, or a part of a project, is exempt if—

- (a) the project has national defence as its sole purpose; and
- (b) they consider that an environmental impact assessment in respect of the project or the part of the project would have an adverse effect on the fulfilment of that purpose.

(2) The appropriate forestry body may determine that a project is exempt if—

- (a) the project has the response to a civil emergency as its sole purpose; and
- (b) they consider that an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of that purpose.

(3) The effect of a determination that a project is exempt under paragraph (1) or (2) is that these Regulations do not apply in respect of the project.

(4) The effect of a determination under paragraph (1) that a part of a project is exempt is that the project is to be treated under these Regulations as not including the part which is the subject of the determination.

^(a) 2006 c. 26.

^(b) Paragraph (5) of regulation 4 was inserted by S.I. 2006/3106. Paragraphs (2) to (5) of that regulation were amended by S.I. 2013/755 (W. 90).

Exceptional circumstances

4B.—(1) The appropriate forestry body may determine that a project is exempt if they are satisfied that—

- (a) it is appropriate to do so by reason of exceptional circumstances;
- (b) an environmental impact assessment in respect of the project would have an adverse effect on the fulfilment of the project’s purpose;
- (c) the objectives of the Directive will be met even though such an assessment is not carried out; and
- (d) the project is unlikely to have significant effects on the environment in another EEA State.

(2) The effect of a determination that a project is exempt under paragraph (1) is that these Regulations, except for paragraphs (3) and (4), do not apply in respect of the project.

(3) The appropriate forestry body must not make a determination under paragraph (1) that a project is exempt unless they have considered whether any other form of assessment is appropriate.

(4) After the appropriate forestry body make a determination under paragraph (1), they must as soon as practicable make available to the public concerned—

- (a) the determination, including an explanation of the reasons for it; and
- (b) the information obtained under any other assessment considered appropriate in accordance with paragraph (3).”.

Amendment of regulation 5

9.—(1) — Regulation 5 (application for an opinion whether a project is a relevant project) is amended as follows.

(2) For paragraph (2)(b) and (c), substitute —

- “(b) the information on the characteristics of the project and its likely significant effects on the environment specified in Schedule 2A; and
- (c) such further information or representations as the proposer may wish to provide or make, including a description of any features of the project or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.”.

(3) After paragraph (2), insert —

“(2A) When compiling the information referred to in paragraph (2)(b), the proposer shall take into account—

- (a) any criteria in Schedule 3 which are relevant to the project; and
- (b) the results of any relevant EU environmental assessment which are reasonably available to the proposer.”.

Amendment of regulation 6

10.—(1) Regulation 6 (opinions of the appropriate forestry body) is amended as follows.

(2) For paragraph (1), substitute—

“(1) Where the proposer applies to the appropriate forestry body under regulation 5, they shall give to the proposer written notice of their opinion within 28 days beginning with—

- (a) the date of their receipt of the application; or

- (b) where they notify the proposer under regulation 5(3)(a) that they require further information, the date of their receipt of that information.”.
- (3) After paragraph (1), insert—
 - “(1A) In exceptional cases, where the nature, complexity, location or size of the project demands a longer period to reach an opinion, the appropriate forestry body may extend the deadline in paragraph (1), informing the proposer in writing of the reasons justifying the extension and of the date on which their opinion is expected.”.
- (4) In paragraph (2), at the end, insert “and the results of any relevant EU environmental assessment which are reasonably available to the appropriate forestry body”.
- (5) For paragraph (3), substitute—
 - “(3) In a case where, in accordance with—
 - (a) regulation 3A, 3B or paragraph 1A of Schedule 2, in relation to England, or
 - (b) paragraph 2 of Schedule 2, in relation to Wales,
 the project is to be treated as being unlikely to have significant effects on the environment, the appropriate forestry body shall form their opinion in accordance with regulation 3(3) to (5) except where, in their opinion, there are exceptional circumstances which, taking account of the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.”.
- (6) After paragraph (4), insert—
 - “(4A) Where the opinion of the appropriate forestry body is that a project is not a relevant project, the appropriate forestry body shall state—
 - (a) the main reasons for being of that opinion, with reference to the relevant selection criteria in Schedule 3; and
 - (b) where proposed by the proposer, any features of the project or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects of the project on the environment.”.

Amendment of regulation 7

- 11.** For regulation 7(6) (directions by the appropriate Authority), substitute—
 - “(6) In a case where, in accordance with—
 - (a) regulations 3A and 3B and paragraph 1A of Schedule 2, in relation to England, or
 - (b) paragraph 2 of Schedule 2, in relation to Wales,
 the project is to be treated as being unlikely to have significant effects on the environment, the appropriate Authority shall make its decision in accordance with regulation 3(3) to (5) except where, in its opinion, there are exceptional circumstances which, taking into account the selection criteria in Schedule 3, make it likely that the project will have significant effects on the environment.”.

Amendment of regulation 9

- 12.—**(1) Regulation 9 (request as to the information to be included in an environmental statement) is amended as follows.
 - (2) In paragraph (1), after “to give their opinion as to”, insert “the scope and level of detail of”.
 - (3) In paragraph (2), omit “Where a proposer requests an opinion under paragraph (1) above”.

(a) Regulation 5(3) was amended by S.I. 2013/755 (W. 90).

New regulation 9A

13. After regulation 9, insert—

“Co-ordination

9A.—(1) Where, in respect of a relevant project, there is a requirement to carry out a Habitats Regulation Assessment, the appropriate forestry body must where appropriate ensure that environmental impact assessments carried out under these Regulations and the Habitats Regulation Assessment are co-ordinated or carried out jointly.

(2) In this regulation, a “Habitats Regulation Assessment” means an assessment under regulation 61 of the Conservation of Habitats and Species Regulations 2010(a).”.

Amendment of regulation 10

14. In regulation 10(1)(d)(b) (applications for consent), after “regulation 13(1)” insert “and (1A)”.

Amendment of regulation 13

15.—(1) Regulation 13 (publicity) is amended as follows.

(2) For paragraph (1)(c), substitute—

“(1) A person who makes an application for consent under regulation 10 or who provides further information in relation to that application, whether under regulation 11 or otherwise, shall publish a notice, in accordance with paragraphs (1A) and (2), for the purposes of ensuring—

- (a) the application for consent or, as the case may be, the further information, is made available to the public; and
- (b) the public concerned is given an opportunity to express an opinion before the application for consent is determined.”.

(3) After paragraph (1), insert—

“(1A) A notice required by paragraph (1) shall be published—

- (a) in such newspapers as the appropriate forestry body reasonably may require;
- (b) electronically; and
- (c) by other appropriate and reasonably practicable means.”.

(4) In paragraphs (2)(b) and (d) and (3)(d), for “28 days” substitute “30 days”.

Amendment of regulation 15

16.—(1) Regulation 15 (determination of applications) is amended as follows.

(2) After paragraph (3), insert—

“(4) The appropriate forestry body shall—

- (a) determine the application, and
- (b) grant or refuse consent in respect of that application,

within a period of time which is reasonable, taking into account the nature and complexity of the application.

(a) S.I. 2010/490. Regulation 61 was amended by S.I. 2012/1927.

(b) Regulation 10(1) was amended by S.I. 2013/755 (W. 90).

(c) Paragraph (1) was amended by S.I. 2006/3106 and 2013/755 (W. 90).

(d) Paragraphs (2) and (3) were both amended by S.I. 2006/3106 and 2013/755.

(5) The appropriate forestry body shall not grant or refuse consent under paragraph (1) unless they are satisfied that their determination under this regulation is up to date (and a determination is taken to be up to date if, in the opinion of the appropriate forestry body, it addresses the significant effects of the project on the environment).

(6) For the purposes of determining the application, the appropriate forestry body shall ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.”.

Substitution of regulation 16

17. For regulation 16(a) (notification of decisions), substitute—

“Notification of decisions

16.—(1) Where an application for consent has been determined by the appropriate forestry body, they must give notice in writing of their decision to—

- (a) the applicant;
- (b) the countryside bodies;
- (c) the relevant local authority; and
- (d) any person from whom they received representations in relation to the application.

(2) The appropriate forestry body’s notice must state that they have taken into account the environmental information relating to the application.

(3) Where the decision in paragraph (1) is to grant consent, the notice must include—

- (a) the determination of the appropriate forestry body pursuant to regulation 15;
- (b) any conditions included in the consent under regulation 18, including, where appropriate, a description of any monitoring measures; and
- (c) a description of any features of the project or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment.

(4) Where the decision in paragraph (1) is to refuse consent, the notice must include the main reasons for the refusal.

(5) The appropriate forestry body must publish a notice of their decision under paragraph (1)—

- (a) in any newspapers in which notice of the application was published in accordance with regulation 13(1A);
- (b) electronically; and
- (c) by other appropriate and reasonably possible means.

(6) The notice published under paragraph (5) must give details of the place and times at which the public may inspect a statement of—

- (a) the content of the appropriate forestry body’s decision and any conditions included in the decision;
- (b) the main reasons and considerations on which the decision is based including a summary of the results of the consultations and the information gathered pursuant to regulations 9, 10, 11(b) and 14 and how those results have been incorporated or otherwise addressed; and
- (c) where necessary, the main measures to avoid, reduce and, if possible, offset the major adverse effects of the project.

(a) Regulation 16 was amended by S.I. 2013/755 (W. 90).

(b) Regulations 10 and 11 were amended by S.I. 2013/755 (W. 90).

(7) In paragraph (1)(c), “relevant local authority” means the local authority for the area in which it is proposed to carry out the project.”.

Amendment of regulation 17

18. In regulation 17(8)(b)(a) (appeals against decisions of the appropriate forestry body), for “regulation 16(b)” substitute “regulation 16(5)”.

Amendment of regulation 18

19.—(1) Regulation 18 (conditions to be included in every consent) is amended as follows.

(2) Renumber regulation 18 as paragraph (1) of that regulation.

(3) In paragraph (1)—

- (a) in sub-paragraph (a), at the end, omit “and”;
- (b) in sub-paragraph (b), at the end, insert “; and”;
- (c) after sub-paragraph (b) insert—

“(c) the applicant shall implement procedures to monitor significant adverse effects on the environment.”.

(4) After paragraph (1), insert—

“(2) In paragraph (1)(c), the types of parameters to be monitored and the duration of monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.”.

Amendment of regulation 19

20. In regulation 19(2) (application to the court by person aggrieved), for “regulation 16(b)” substitute “regulation 16(5)”.

Amendment of regulation 24

21. In regulation 24(1)(b) (registers of opinions, directions, determinations etc. for public inspection)—

(a) before sub-paragraph (a), insert—

“(za) each assessment under regulation 3A or 3B;”;

(b) for sub-paragraph (a), substitute—

“(a) each determination under regulation 4A or 4B;”.

New regulation 26

22. After regulation 25, insert—

“Review: England

26.—(1) The Secretary of State, in relation to England, must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 16th May 2022.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(a) Regulation 17(8) was amended by S.I. 2013/755 (W. 90).

(b) Paragraph (1) was amended by S.I. 2013/755 (W. 90).

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015^(a) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the Directive is implemented in other member States.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).”.

Substitution of Schedule 1

23. For Schedule 1 (information for inclusion in environmental statements), substitute—

“SCHEDULE 1

Regulation 2(1)

Information for inclusion in environmental statements

Part 1

1. Description of the project, including in particular—

- (a) a description of the location of the project;
- (b) a description of the physical characteristics of the whole project, including where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the project (in particular, any production process): for instance, energy demand and energy used, the nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) resulting from the operation of the proposed project.

2. A description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the applicant, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario), and an outline of the likely evolution thereof, without implementation of the project, as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.

^(a) 2015 c. 26. Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12).

4. A description of the factors specified in paragraph 1 of Schedule 4 likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects and landscapes.

5. A description of the likely significant effects of the project on the environment resulting from, amongst others—

- (a) the construction and existence of the project, including where relevant, demolition works;
- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example, due to accidents or disasters);
- (e) the cumulation of effects with existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the project on climate (for example, the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- (g) the technologies used.

6. The description of the likely significant effects on the factors specified in paragraph 1 of Schedule 4 must cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent or temporary, positive and negative effects of the project. This description must take into account the environmental protection objectives established at Union or member State level which are relevant to the project.

7. A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

8. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example, the preparation of a post-project analysis). That description must explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and must cover both the construction and operational phases.

9. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to legislation such as Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances^(a), amending and subsequently repealing Council Directive 96/82/EC or Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations^(b) or UK environmental assessments may be used for this purpose provided that the requirements of the Directive are met. Where appropriate,

(a) OJ No L 197, 24.7.2012, p. 1.

(b) OJ No L 219, 25.7.2014, p. 42.

this description must include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

10. A non-technical summary of the information provided under paragraphs 1 to 9.

11. A reference list detailing the sources used for the descriptions and assessments included in the statement.

PART 2

1. A description of the project comprising information on the site, design, size and other relevant features of the project.

2. A description of the likely significant effects of the project on the environment.

3. A description of the features of the project or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment.

4. A description of the reasonable alternatives studies by the applicant which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment.

5. A non-technical summary of the information provided under paragraphs 1 to 4.”.

Amendment of Schedule 2

24.—(1) Schedule 2 (thresholds for identification of projects likely to have significant effects on the environment) is amended as follows.

(2) In the heading, for “Thresholds for identification” substitute “Descriptions”.

(3) In paragraph 1—

(a) before the definitions of “National Park” and “Area of Outstanding Natural Beauty”, insert—

““low-risk area” has the meaning given in regulation 3B(7);”;

(b) in the definition of “National Park” and “Area of Outstanding Natural Beauty”, for “of the next definition” substitute “in the definition of “sensitive area””;

(c) after the definition of “National Park” and “Area of Outstanding Natural Beauty” insert—

““Ramsar Convention” has the meaning given in section 37A(4) and (5) of the Wildlife and Countryside Act 1981(a);”;

(d) in the definition of “sensitive area”—

(i) omit paragraph (b);

(ii) for paragraph (h), substitute—

“(h) a European site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2010(b);”;

(iii) after paragraph (h), insert—

“(i) any land in Great Britain designated under paragraph 1 of Article 2 of the Ramsar Convention for inclusion in the list of wetlands of international importance referred to in that Article;

(a) 1981 c. 69. Section 37A was inserted by section 77 of the Countryside and Rights of Way Act 2000 (c. 37).

(b) Regulation 8 was amended by S.I. 2012/1927.

- (j) land declared to be a national nature reserve under section 35(1) of the Wildlife and Countryside Act 1981(a);
- (k) any land which is a nature reserve within the meaning given in section 15 of the National Parks and Access to the Countryside Act 1949(b).”;
- (e) omit the definition of “specified threshold”.
- (4) After paragraph 1, insert—

“Descriptions of projects in England likely to have significant effects on the environment

1A.—(1) For the purposes of regulation 3(3), a project in England of a type, description and size specified in columns 1, 2 and 3 of each entry in the Table below, is to be treated as being likely to have, or not to have, significant effects on the environment in accordance with column 4 of the appropriate entry.

(2) This paragraph applies subject to paragraph 3 of this Schedule.

Table

<i>Row</i>	<i>Column 1 Type of project</i>	<i>Column 2 Description of land covered, or proposed to be covered, by the project</i>	<i>Column 3 Size of area of land covered, or proposed to be covered, by the project</i>	<i>Column 4 Likelihood of the project having significant effects on the environment</i>
1	Afforestation	The land, or part of the land, is in a sensitive area which is a National Park or an Area of Outstanding Natural Beauty	2 hectares or less	Unlikely to have significant effects
2	Afforestation	The land, or part of the land, is in a sensitive area which is a National Park or an Area of Outstanding Natural Beauty	More than 2 hectares	Likely to have significant effects
3	Afforestation	The land, or part of the land, is in a sensitive area which is not a National Park or an Area of Outstanding Natural Beauty	Area of any size	Likely to have significant effects
4	Afforestation	No part of the land is in a sensitive area	2 hectares or less	Unlikely to have significant effects
5	Afforestation	No part of the land is in a sensitive area	More than 2, but no more than 5, hectares	Unlikely to have significant effects, unless written

(a) Section 35(1) was amended by paragraph 85 of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006.

(b) Section 15 was substituted by paragraph 12 of Part 1 of Schedule 11 to the Natural Environment and Rural Communities Act 2006.

				notification is given by the appropriate forestry body pursuant to regulation 3A
6	Afforestation	No part of the land is in a sensitive area and the area is a low-risk area	More than 5, but no more than 50, hectares	Unlikely to have significant effects, unless written notification is given by the appropriate forestry body pursuant to regulation 3B
7	Afforestation	No part of the land is in a sensitive area and the area is a low-risk area	More than 50 hectares	Likely to have significant effects
8	Afforestation	No part of the land is in a sensitive area and the area is not a low-risk area	More than 5 hectares	Likely to have significant effects
9	Deforestation	The land, or part of the land, is in a sensitive area which is a National Park or an Area of Outstanding Natural Beauty	0.5 hectares or less	Unlikely to have significant effects
10	Deforestation	The land, or part of the land, is in a sensitive area which is a National Park or an Area of Outstanding Natural Beauty	More than 0.5 hectares	Likely to have significant effects
11	Deforestation	The land, or part of the land, is in a sensitive area which is not a National Park or an Area of Outstanding Natural Beauty	Area of any size	Likely to have significant effects
12	Deforestation	No part of the land is in a sensitive area	1 hectare or less	Unlikely to have significant effects
13	Deforestation	No part of the land is in a sensitive area	More than 1 hectare	Likely to have significant effects
14	Forest road works	The land, or part of the land, is in a sensitive area	Area of any size	Likely to have significant effects
15	Forest road works	No part of the land is in a sensitive area	1 hectare or less	Unlikely to have significant effects
16	Forest road works	No part of the land is in a sensitive area	More than 1 hectare	Likely to have significant effects
17	Forest quarry works	The land, or part of the land, is in a sensitive area	Area of any size	Likely to have significant effects

18	Forest quarry works	No part of the land is in a sensitive area	1 hectare or less	Unlikely to have significant effects
19	Forest quarry works	No part of the land is in a sensitive area	More than 1 hectare	Likely to have significant effects.”

(5) In paragraph 2—

- (a) in the heading, after “Thresholds”, insert “for identification of projects in Wales likely to have significant effects on the environment”; and
- (b) in sub-paragraph (1), after “any project”, insert “in Wales”.

(6) In paragraph 3, for sub-paragraph (1), substitute—

“(1) Where the project under consideration is an extending project—

- (a) the areas specified in Column 3 of the Table in paragraph 1A, and
- (b) the thresholds specified in Columns 2 and 3 of the Table in paragraph 2,

shall not apply, and the threshold or areas applicable for that project for the purposes of regulation 3(3) shall be instead such balance (if any), in hectares, of the area specified in Column 3 or, as the case may be, Columns 2 and 3, in those Tables opposite the entry in Column 1 for that type of project as remains after deduction of the accumulated material past project area.”.

New Schedule 2A

25. After Schedule 2, insert—

“SCHEDULE 2A

Regulation 5(2)(b)

Information to be provided by the proposer for an application for an opinion whether a project is a relevant project

1. A description of the project including, in particular—

- (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works; and
- (b) a description of the location of the project, with particular regard to the environment sensitivity of geographical areas likely to be affected.

2. A description of the aspects of the environment likely to be significantly affected by the project.

3. A description of any likely significant effects of the project on the environment, to the extent of the information available on such effects, resulting from—

- (a) the expected residues and emission and the production of waste, where relevant; and
- (b) the use of natural resources, in particular soil land, water and biodiversity.”.

Substitution of Schedule 3

26. For Schedule 3 (projects having significant effects on the environment: selection criteria), substitute—

“SCHEDULE 3 Regulations 5(2A), 6(2), 6(3),
6(4A), 7(5) and 7(6)

**Projects having significant effects on the environment: selection
criteria**

Characteristics of the project

- 1.** The characteristics of the project must be considered having particular regard to—
 - (a) the size and design of the project;
 - (b) cumulation with other existing or approved projects;
 - (c) the use of natural resources, in particular land, soil, water and biodiversity;
 - (d) the production of waste;
 - (e) pollution and nuisances;
 - (f) the risk of major accidents or disasters relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;
 - (g) the risks to human health (for example, due to water contamination or air pollution).

Location of the project

- 2.** The environmental sensitivity of geographical areas likely to be affected by projects must be considered, with particular regard, to—
 - (a) the existing and approved land use;
 - (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
 - (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
 - (i) wetlands, riparian areas, river mouths;
 - (ii) coastal zones and the marine environment;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under national legislation, Natura 2000 areas designated by member States pursuant to Directive 92/43 and Directive 2009/147;
 - (vi) areas in which there has already been a failure to meet the environmental quality standards, laid down in legislation and relevant to the project, or in which it is considered that there is such a failure;
 - (vii) densely populated areas;
 - (viii) landscapes and sites of historical, cultural or archaeological significance.

Types and characteristics of the potential impact

- 3.** The likely significant effects of the project on the environment must be considered in relation to criteria set out in paragraphs 1 and 3 above, with regard to the impact of the project on the factors specified in Schedule 4, taking into account—
 - (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
 - (b) the nature of the impact;

- (c) the transboundary nature of the impact;
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing or approved projects;
- (h) the possibility of effectively reducing the impact.”.

Substitution of Schedule 4

27. For Schedule 4 (environmental factors), substitute—

“SCHEDULE 4 Regulations 2(1B), 15(3), 17(7)
and 21(7) and Schedules 1 and 3

Environmental factors

The factors specified are—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43 and Directive 2009/147;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape;
- (e) the interaction between the factors mentioned in paragraphs (a) to (d); and
- (f) the expected effects on those factors deriving from the vulnerability of the project to risks of major accidents or disasters that are relevant to the project concerned.”.

Transitional provisions

28.—(1) These Regulations do not apply to any project—

- (a) where the proposer has, before the commencement date, applied to the appropriate forestry body under regulation 5(1) of the 1999 Regulations for their opinion as to whether the project is a relevant project but the appropriate forestry body have not, by that date, given written notice of their opinion under regulation 6(1) of the 1999 Regulations;
- (b) where, before the commencement date, the appropriate forestry body have given their opinion of their own motion under regulation 6(5) of the 1999 Regulations as to whether the project is or would be a relevant project;
- (c) where the proposer has, before the commencement date, applied to the appropriate Authority for a direction under regulation 7(1)(a) of the 1999 Regulations but the appropriate Authority has not, by that date, given a direction under regulation 7 of those Regulations;
- (d) where —
 - (i) the proposer has, on or after the commencement date, applied to the appropriate Authority for a direction under regulation 7(1) of the 1999 Regulations in respect of the project;
 - (ii) the appropriate Authority has not given a direction under that regulation; and

(a) Regulation 7(1) was amended by S.I. 2013/755 (W. 90).

- (iii) the proposer had, before the commencement date, applied to the appropriate forestry body under regulation 5(1)(a) of the 1999 Regulations for their opinion as to whether the project was a relevant project;
 - (e) where the proposer has, before the commencement date, requested the appropriate forestry body to give their opinion under regulation 9(1) of the 1999 Regulations as to the scope and level of detail of the information to be contained in the environmental statement required for the project but the appropriate forestry body have not, before the commencement date, given their opinion under that regulation; or
 - (f) where an application has been submitted under regulation 10(1) of the 1999 Regulations in respect of the project before the commencement date.
- (2) In paragraph (1), “commencement date” means the date on which these Regulations come into force.

24th April 2017

Thérèse Coffey
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement, in relation to certain forestry projects, Directive 2014/52/EU (“Directive 2014/52”) of the European Parliament and of the Council amending Directive 2011/92/EU (“Directive 2011/92”) on the assessment of the effects of certain public and private projects on the environment. These Regulations extend to England and Wales.

Regulations 3 to 27 contain amendments to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (“the 1999 Regulations”). In summary:

- (a) new regulation 3A (inserted by regulation 6) requires the proposer of an afforestation project in England, which extends to more than 2, but no more than 5, hectares and which is not in a sensitive area, to make a request to the appropriate forestry body to assess whether the project is likely to have significant effects on the environment;
- (b) new regulation 3B (inserted by regulation 6) places a corresponding requirement on the proposer of an afforestation project in England, which extends to more than 5, but not more than 50, hectares and which is in a low-risk area;
- (c) new regulations 4A and 4B (inserted by regulation 8) make provision for a determination that the 1999 Regulations do not apply in relation to certain projects;
- (d) new regulation 9A (inserted by regulation 13) makes provision for the co-ordination of environmental impact assessments;
- (e) regulation 16 is substituted (by regulation 17) to make new provision for the manner in which the appropriate forestry body must give notice of, and publicise, their decision to refuse or grant consent for a project;
- (f) new regulation 25 (inserted by regulation 22) requires the Secretary of State to carry out a review of the 1999 Regulations, in relation to England, at intervals not exceeding 5 years;
- (g) Schedules 1 and 3 are substituted (by regulations 23 and 26 respectively) and new Schedule 2A is inserted (by regulation 25) to reflect the amendments made by Directive 2014/52 to Annexes IV, III and II.A to Directive 2011/92 respectively;

(a) Regulation 5(1) was amended by S.I. 2013/755(W. 90).

- (h) new paragraph 1A is inserted into Schedule 2 (by regulation 24(4)) to provide for the descriptions of projects, in England, which are to be treated as likely to have, or not to have, significant effects on the environment, for the purposes of regulation 3(1)(b);
- (i) Schedule 4 is substituted (by regulation 27) to reflect the amendments made by Directive 2014/53 to Article 3 of Directive 2011/92.

A full regulatory impact assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available from the Trees, Woodlands & Forestry Policy Land Use Team at the Department for Environment, Food and Rural Affairs, Nobel House, 17 Smith Square, London SW1P 3J and is also available alongside these Regulations on www.legislation.gov.uk. An Explanatory Memorandum and a transposition note are also available with these Regulations on www.legislation.gov.uk. Copies have been placed in the Libraries of both Houses of Parliament.

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