STATUTORY INSTRUMENTS

2017 No. 592

FORESTRY, ENGLAND AND WALES

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

Made - - - -	*24th April 2017*
Laid before Parliament	*25th April 2017*
Coming into force - -	*16th May 2017*

The Secretary of State has been designated(**1**) for the purpose of making Regulations under section 2(2) of the European Communities Act 1972(**2**) 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(**3**), as amended by Directive 2014/52/EU of the European Parliament and of the Council(**4**)

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(**5**).

(**1**) S.I. 2008/301.
(**2**) 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).
(**3**) OJ No L 26, 28.1.2012, p.1.
(**4**) 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.
(**5**) 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 the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

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

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"(**6**), 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(**7**) as last amended by Council Directive 2013/17/EU(**8**);

"Directive 2009/147" means Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds(**9**), as amended by Council Directive 2013/17/EU;";

(d) for the definition of "the Directive"(**10**) 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(**11**) and, where relevant, regulation 14(**12**);

(**6**) The definition of "countryside bodies" was substituted by S.I. 2013/755 (W. 90).
(**7**) OJ No L 206, 22.7.1992, p. 7.
(**8**) OJ No L 158, 10.6.2013, p. 193.
(**9**) OJ No L 20, 26.1.2010, p. 7.
(**10**) The definition of "the Directive" was amended by S.I. 2006/3106.
(**11**) Regulation 9 was amended by S.I. 2013/755 (W. 90).
(**12**) Regulation 14 was amended by S.I. 2006/3106 and 2013/755 (W. 90).

(c) the consideration of the environmental statement and other information under regulation 15(**13**);

(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;";

(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(**14**) 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.

(**13**) Regulation 15 was amended by S.I. 2013/755 (W. 90).
(**14**) Regulation 6 was amended by S.I. 2013/755 (W. 90).

(2) In paragraph (1)(c)(i), at the end, omit "or".

(3) In paragraph (1)(c)(ii)(**15**)—

(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(**16**);".

(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(**17**); 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(**18**).".

(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.

(**15**) 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).
(**16**) S.I. 2017/565 (W. 134).
(**17**) S.I. 2015/596.
(**18**) 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).

(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) 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—