
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environmental Assessment (Forestry) Regulations 1998, (S.I.1998/1731) (“the 1998 Regulations”) provided for the implementation in relation to forestry projects in Great Britain of Council Directive 85/337/EEC on the assessment of the effects of certain public and private and public projects on the environment. The present Regulations implement, for Scotland, changes made to that Directive made by Council Directive 97/11/EC. They also implement the extension of both Directives to the Contracting Parties of the European Economic Area (EEA) under Article 74 and Annex XX paragraph I.1 of the Agreement on the European Economic Area, as given effect by Decision No.20/1999 of the EEA Joint Committee adopted on 26th February 1999 (not yet published).

These Regulations restate the provisions in the 1998 Regulations with revisions and amendments, and the 1998 Regulations are therefore revoked with respect to Scotland.

Regulation 2 defines terms used in the Regulations. As in the 1998 Regulations, there is a prohibition on carrying out any work or operations in relation to a project which is a “relevant project” (as defined) unless consent has been obtained from the Forestry Commissioners or, on appeal, the Scottish Ministers. A further new provision gives the Forestry Commissioners power, in accordance with Directive 85/337/EEC, as amended, to exempt particular projects from the application of the Regulations (regulation 4).

“Relevant project” is defined in regulation 3 as one of four types of project relating to forestry which does not constitute development regulated by the legislation on town and country planning but which is likely to have substantial effects on the environment. In a new provision, a project which covers an area falling below certain thresholds specified in Schedule 2 to the Regulations is to be treated as not likely to have substantial effects on the environment. However, the Commissioners or the Scottish Ministers have power to treat such a project as a relevant project requiring consent where, in their opinion, exceptional circumstances make it likely that the project will have substantial effects on the environment.

A person who proposes to carry out a project may apply to the Commissioners for an opinion as to whether the project is a relevant project. If dissatisfied with that opinion, or if no opinion is given, he may apply to the Scottish Ministers for a direction on the issue. In determining that issue account must be taken of the environmental criteria set out in Schedule 3. A new provision enables the Commissioners or the Scottish Ministers to issue an opinion or direction without receiving an application. An opinion or direction that the project is not a relevant project will lapse if the project is not completed within five years (regulations 5 to 8).

The proposer of a project may also seek an opinion from the Commissioners as to the information that should be included in the environmental statement attached to an application for consent (see below), and if they fail to give an opinion may seek a direction from the Scottish Ministers (regulation 9).

Applications to the Commissioners for consent for a relevant project must be accompanied by an environmental statement which must contain the information required by Schedule 1 to the Regulations. The Commissioners may request further information and other bodies holding relevant information are required to make it available. There are requirements to publish the application and any further information and to invite representations. Where it appears that the project may be likely to have significant effects on the environment in another State of the European Economic Area, provision is made for the authorities of that State to be consulted before a decision is made. In making their decision, the Commissioners are required to have regard to the environmental statement and

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the direct and indirect effects on environmental factors specified in Schedule 4. Their decision must be notified in writing (regulations 10 to 16).

Where consent is refused the person proposing the project may appeal to the Scottish Ministers (regulation 17). There is a requirement that any consent granted by the Commissioners or the Scottish Ministers be subject to specified conditions (regulation 18). Where consent is granted an aggrieved person has a right of complaint to the Court of Session if they believe that the grant of consent was contrary to the Regulations (regulation 19).

The Commissioners are given powers to serve enforcement notices where relevant projects are carried out without consent or in breach of conditions. The person served with such a notice may appeal to the Scottish Ministers. Penalties are specified for breach of an enforcement notice. A power of entry and certain default powers are conferred on officers authorised by the Commissioners (regulations 20 to 23).

At each of their Conservancy offices in Scotland, the Forestry Commissioners are required to keep a register of opinions, directions and determinations for public inspection (regulation 24).

Transitional provisions apply, including treatment of a number of ongoing applications, appeals etc. under the 1998 Regulations as if they had been made under these Regulations (regulation 25).

A Regulatory Impact Appraisal has been prepared in relation to these Regulations. It has been placed in the Scottish Parliament information centre and copies may be obtained from Country Services Division, Forestry Commission, 231 Corstorphine Road, Edinburgh EH12 7AT (Telephone: 0131 314 6324).