

1988 No. 1207

FORESTRY

**The Environmental Assessment (Afforestation)
Regulations 1988**

Made - - - - - *12th July 1988*

*Coming into force
in accordance with
regulation 1(1)* *15th July 1988*

Whereas both Houses of Parliament have approved by resolution a draft of these Regulations;

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales, acting jointly, being Ministers designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the requirement for an assessment of the impact on the environment of projects likely to have significant effects on the environment, in exercise of the powers conferred upon them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Title, application and commencement

1.—(1) These Regulations, which apply throughout Great Britain, may be cited as the Environmental Assessment (Afforestation) Regulations 1988 and shall come into force on the third day after the day on which they are made.

(2) These Regulations apply in any case where an application for a grant or loan in respect of an afforestation project was received by the Commissioners on or after 15th July 1988.

Interpretation

2. In these Regulations—

“afforestation project” means a proposal for the initial planting of land with trees for forestry purposes;

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

“environmental information” means the environmental statement prepared by the applicant for a grant or loan in respect of an afforestation project, any representations made by any authority or body required by these Regulations to be consulted, and any representations duly made by any other body or person about the likely environmental effects of the afforestation project;

(a) S.I. 1988/785.
(b) 1972 c.68.
(c) 1967 c.10.

“environmental statement” means such a statement as is described in the Schedule;
“grant or loan” means a grant or loan under section 1 of the Forestry Act 1979(a);
“the Minister” means, in relation to England, the Minister of Agriculture, Fisheries and Food, in relation to Scotland, the Secretary of State for Scotland, and in relation to Wales, the Secretary of State for Wales.

Prohibition of grant or loan without consideration of environmental information

3. The Commissioners shall make no grant or loan for an afforestation project where in their opinion the project will be likely to have significant effects on the environment, and may lead to adverse ecological changes, by reason inter alia of its nature, size or location, unless they have first taken into consideration environmental information in respect of that project.

Opinion of Commissioners in advance of application for grant or loan

4.—(1) A person may, before applying for a grant or loan in respect of an afforestation project, make a written application to the Commissioners for their opinion in writing on whether environmental information would be required in relation to that project.

(2) An application pursuant to paragraph (1) above shall be accompanied by—

- (a) a map or plan sufficient to identify the land on which the proposed planting would be carried out, and to show the extent of the proposed planting;
- (b) a brief description of the nature of the proposed planting and of its possible effects on the environment; and
- (c) such further information or representations as the applicant may wish to provide.

(3) Where the Commissioners consider that they have not been provided with sufficient information to enable them to give an opinion they shall notify the applicant of the points on which they require further information.

(4) The Commissioners shall give the applicant written notification of the opinion they have formed on the question raised within 4 weeks beginning with the date of the request, or such longer period as they may agree with him in writing, and where their opinion is that consideration of environmental information would be required, they shall state their reasons for it.

(5) Where the Commissioners have not given their written opinion by the end of the period provided for by paragraph (4) above, it shall be presumed that in their opinion environmental information would not be required.

(6) Where the Commissioners express the opinion that environmental information would be required, the applicant may apply in writing to the Minister for a direction on the matter, following the procedure provided in regulation 6.

Procedure where an environmental statement is required

5.—(1) Where it appears to the Commissioners that an afforestation project in respect of which an application is made for a grant or loan is a project in respect of which environmental information is required, but no environmental statement has been submitted with the application, they shall within 4 weeks beginning with the date of receipt of the application, or such longer period as they may agree with the applicant in writing, notify the applicant in writing of the opinion they have formed, stating their reasons for it, and that no grant or loan can be considered for the project without consideration of environmental information.

(2) The applicant may within 4 weeks beginning with the date of the notification referred to in paragraph (1) above inform the Commissioners in writing—

- (a) that he accepts their view and proposes to provide an environmental statement;
or
- (b) that he proposes to apply in writing to the Minister for his direction on the matter as provided by regulation 6.

(a) 1979 c.21.

(3) If the applicant takes no action in accordance with paragraph (2) above within the period specified the grant or loan applied for shall be deemed to be refused at the end of that period.

(4) The Commissioners shall not determine any application for which environmental information is required otherwise than by refusing the grant or loan applied for unless—

- (a) they receive an environmental statement and regulation 8(1) is complied with; or
- (b) the Minister directs that consideration of environmental information is not required.

(5) Where the Commissioners receive an environmental statement relating to an application they shall, if regulation 8(1) has been complied with, proceed to deal with the application.

Applications for Ministers' directions

6.—(1) Every application to the Minister for a direction under regulation 4(6) shall be accompanied by, or by copies of—

- (a) the application to the Commissioners for their opinion;
- (b) the documents which accompanied that application, or were called for by the Commissioners under regulation 4(3);
- (c) the opinion of the Commissioners, with their reasons for it; and
- (d) any representations which the applicant wishes to make.

(2) Every application to the Minister for a direction under regulation 5(2)(b) shall be accompanied by, or by copies of—

- (a) the application for a grant or loan;
- (b) any documents which accompanied that application;
- (c) the opinion of the Commissioners, with their reasons for it; and
- (d) any representations which the applicant wishes to make.

(3) Where the Minister considers that the documents put before him in pursuance of paragraph (1) or (2) above do not provide him with sufficient information to enable him to give a direction he shall notify the applicant in writing of the points on which he requires further information, and may make a written request to the Commissioners for such information as they may be able to provide on the points raised.

(4) The Minister shall, within 4 weeks beginning with the date of receipt of the application, or such longer period as he may reasonably require, direct whether or not consideration of environmental information is required before a grant or loan may be made for the project.

(5) The Minister shall forthwith upon giving his direction send copies thereof to the applicant and the Commissioners, and where he directs that consideration of environmental information is required he shall state his reasons for making that direction.

Minister's power to give directions of his own motion

7. The Minister may of his own motion give a direction that consideration of environmental information is required in any case in which the Commissioners have decided to the contrary.

Publicity for environmental statement

8.—(1) Where environmental information is required under these Regulations by the Commissioners or by direction of the Minister the applicant shall—

- (a) by advertisement in at least two local newspapers nominated by the Commissioners give notice of the afforestation project, notifying members of the public that any person wishing to make representations regarding the project should make them in writing to the Commissioners at the address specified in the advertisement within a specified period being not less than 28 days from the date of the advertisement;

- (b) make available for inspection by members of the public at all reasonable times at an office of the Commissioners or at some other convenient place nominated by them (such times and place to be stated in the advertisement referred to in subparagraph (a) above), for a period of at least 21 days following the publication of the advertisement, the details of the project and of the environmental statement relating to it, and shall ensure that a reasonable number of copies of the statement are made available;
- (c) state in the advertisement referred to in subparagraph (a) above the address at which copies of the environmental statement may be obtained and, if a charge is to be made for a copy, the amount of the charge.

(2) Where the Commissioners receive an environmental statement relating to an application to which regulation 3 applies they shall consult—

- (a) the Nature Conservancy Council;
- (b) the Countryside Commission or the Countryside Commission for Scotland, as appropriate; and
- (c) any local authority, any other public authority and any statutory body which appears to them to have an interest in the afforestation project in question.

(3) Where under this regulation the Commissioners consult any authority or body about any environmental statement they shall give not less than 4 weeks' notice to such authority or body that such statement is to be taken into consideration, shall not consider the statement until after the expiration of the period of such notice, and shall, in considering the statement, take into account any representations received from such authority or body.

(4) The Commissioners shall consider the application and the environmental statement and any representations and comments made thereon by any person, body or authority, and shall communicate their decision as to whether or not to make a grant or loan for the project in writing to such person, body or authority and by means of public advertisements in the newspapers which they nominated for the purposes of the advertisements referred to in paragraph (1) above.

(5) Where an applicant for a grant or loan submits an environmental statement to the Commissioners he shall provide them with a sufficient number of copies of the statement or parts thereof to enable them to comply with paragraph (2) above plus one extra copy.

Provision of information

9. Where a person has applied, or to the Commissioners' knowledge proposes to apply, for a grant or loan in circumstances in which environmental information is required under these Regulations, the Commissioners shall—

- (a) inform the authorities and bodies listed in regulation 8(2) of the application, and request them to make available to the applicant any information in their possession which he or they may consider relevant to the preparation of his environmental statement; and
- (b) inform the applicant of what they have done under paragraph (a) above and that he shall supply such authorities and bodies with such further information about the afforestation project as they may reasonably request.

Further information and evidence relating to environmental statements

10.—(1) The Commissioners, when considering an application in relation to which an environmental statement has been provided, may in writing require the applicant to provide such further information as may be specified concerning any matter which is required to be, or may be, dealt with in the statement, and where in the opinion of the Commissioners—

- (a) the applicant could (having regard in particular to current knowledge and methods of assessment) provide further information about any matter mentioned in paragraph 3 of the Schedule, and
- (b) further information is reasonably required for the proper consideration of the likely environmental effects of the proposed project,

they shall notify the applicant in writing to that effect, and the applicant shall provide that further information.

(2) The Commissioners may in writing require an applicant to produce such evidence as they may reasonably call for to verify any information in his environmental statement.

Charges

11.—(1) A reasonable charge reflecting the costs of printing, copying and distribution may be made to the public for copies of an environmental statement made available to them under regulation 8 and for copies in excess of one copy for each authority or body consulted under that regulation.

(2) An authority or body providing information under regulation 9, having been requested to do so, may make a reasonable charge reflecting the costs of making available information which they had in their possession.

In Witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 12th July 1988.



John MacGregor
Minister of Agriculture, Fisheries and Food

12th July 1988

Sanderson of Bowden
Minister of State, Scottish Office

12th July 1988

Ian Grist
Parliamentary Under-Secretary of State, Welsh Office

SCHEDULE

Regulation 2

1. An environmental statement comprises a document or documents providing, for the purpose of assessing the likely impact of the proposed afforestation project upon the environment, the information specified in paragraph 2 below (referred to in this Schedule as "the specified information").

2. The specified information is—

- (a) a description of the afforestation project proposed, comprising information about the site of the project and the design and the extent of the planting proposed;
- (b) the data necessary to identify and assess the main effects which the project is likely to have on the environment;
- (c) a description of the likely significant effects of the project, direct and indirect, on the environment, explained by reference to its possible impact on—
 - human beings;
 - flora;
 - fauna;
 - soil;
 - water;
 - air;
 - climate;
 - the landscape;
 - the interaction between any of the foregoing;
 - material assets (including the architectural and archaeological heritage);
 - the cultural heritage;

- (d) where significant adverse effects are identified with respect to any of the foregoing, a description of the measures envisaged in order to avoid, reduce or remedy those effects; and
- (e) a summary in non-technical language of the information specified above.

3. An environmental statement may include, by way of explanation or amplification of any specified information, further information on any of the following matters:

- (a) the physical characteristics of the project, and the land-use requirements during the planting and subsequent stages;
- (b) the main characteristics of the production processes proposed, including the nature and quality of the materials to be used;
- (c) the estimated type and quantity of expected residues and emissions (including pollutants of water, air or soil, noise, vibration, light, heat and radiation) resulting from the project when planting is completed;
- (d) (in outline) the main alternatives (if any) studied by the applicant and an indication of the main reasons for his choice, taking into account the environmental effects;
- (e) the likely significant direct and indirect effects on the environment of the project which may result from—
 - (i) the use of natural resources;
 - (ii) the emission of pollutants, the creation of nuisances and the elimination of waste;
- (f) the forecasting methods used to assess any effects on the environment about which information is given under subparagraph (e); and
- (g) any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any specified information.

In subparagraph (e) "effects" includes secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects.

4. Where further information is included in an environmental statement pursuant to paragraph 3 a non-technical summary of that information shall be provided.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply throughout Great Britain, implement in relation to initial afforestation the Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, (O.J. No. L175, 5.7.85, p. 40).

The Regulations prohibit the Forestry Commissioners from making any grant or loan for an initial afforestation project where in their opinion the project will be likely to have significant effects on the environment, and may lead to adverse ecological changes, by reason of such factors as its nature, size or location, unless they have first taken into consideration information as to the project's environmental impact. Provision is made for the Commissioners to require an applicant for a grant or loan to provide an environmental statement in such circumstances and to seek representations from the public and from certain authorities before any decision is made on the application.

There are provisions for an applicant for a grant or loan to apply to the responsible Minister, in contentious cases, for a direction as to whether or not such information is required, and each such Minister has the power to direct of his own motion that such information is required in cases where the Forestry Commissioners have ruled otherwise.

Regulations 4 to 10 lay down the procedures required to be followed in the making and consideration of applications for grants or loans in these circumstances, and the Schedule to the Regulations specifies the contents of the environmental statement required from the applicant for grant or loan.