



An Agency within the Department of
**Agriculture, Environment
and Rural Affairs**
www.daera-ni.gov.uk

Department of Agriculture, Environment and Rural Affairs

Consultation on Amending the Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006 by transposing Directive 2014/52/EU

8 March 2017

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2 Exit from the European Union:

On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, Northern Ireland remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the UK Government and Northern Ireland will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once Northern Ireland has left the EU.

3 Freedom of Information Act 2000

The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to the consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below with respect to the confidentiality of consultations, as they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or treated as confidential.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:-

- The Department should only accept information from third parties in confidence if it is necessary to obtain information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- The Department should not agree to hold information received from third parties 'in confidence' which is not confidential in nature; and
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of response please contact:-

Information Commissioner's Office – Northern Ireland
 3rd Floor, 14 Cromac Place
 Gasworks
 Ormeau Road
 Belfast
 BT7 2JB
 Telephone: 02890 278757 / 0303 1231114
 Alternatively your request can be sent electronically to ni@ico.org.uk

4 Summary table

| | |
|---------------------------------------|---|
| Topic of this consultation | The proposed approach to implementing European Directive 2014/52/EU, by amending Directive 2011/92/EU, on the assessment of the effects of certain public and private forestry projects on the environment; |
| Scope of this consultation | Where transposition is optional, this consultation seeks your views on proposed changes to The Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006, as amended through the implementation of Directive 2014/52/EU. We will also inform you of the key changes imposed by the Directive where transposition is mandatory. |
| Geographical scope | These proposals apply to Forestry in Northern Ireland |
| Impact Assessment: | The 2014 Directive's changes aim to reduce the burden on applicants and public bodies by reducing the number of cases that go through the EIA process where the risks to the environment are considered low. |
| To | This is a public consultation and anyone with an interest in the proposals is welcome to respond. |
| Body responsible for the consultation | This consultation is being run by the Department of Agriculture, Environment and Rural Affairs (DAERA). |
| Duration | Consultation starts: 8 March 2017 Consultation ends: 5 April 2017 |
| Enquiries | During the consultation, if you have any enquiries or wish to receive a copy of the document, please contact Forest Service. email: forest.regulation@daera-ni.gov.uk Telephone: 028 6634 3019 |

| | |
|-------------------------------|--|
| <p>How to respond</p> | <p>Online using the link on the DAERA consultations website https://www.daera-ni.gov.uk/consultations or by returning Appendix A – Response Form to</p> <p>In writing to: (a) email: forest.regulation@daera-ni.gov.uk (b) post:</p> <p>Forest Service Grants & Regulations Function Inishkeen House Killyhevin Enniskillen BT74 4EJ</p> |
| <p>After the consultation</p> | <p>At the end of the consultation period we will summarise the responses and place the summary on the DAERA website.</p> <p>Responses received will be analysed and taken into account by the Department in its consideration of the proposals for amending the regulations. The consultation responses will be published. If you wish your response not to be published, please make that clear in your reply</p> |

5 Explanation of this consultation

5.1 Introduction

The EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive) forms part of European law and has been implemented into national legislation by the Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006. The EIA Directive has been amended by EU Directive 2014/52/EU (the 2014 Directive) and those amendments need to be incorporated into national legislation no later than 16 May 2017.

Environmental impact assessment (EIA) is a process. It aims to protect the environment and to help bring environmental considerations into the preparation of projects to reduce their impact on the environment. It seeks to ensure that proposals for development (referred to as 'projects' in the EIA Directive) that are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location are subject to a requirement for consent and an assessment of those effects before the project is allowed to proceed.

EU Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (the 2014 Directive) amended the EIA Directive simplifying the rules for assessing the potential effects of projects on the environment in line with the drive for smarter regulation and a reduction in unnecessary administrative burdens. It also improves the level of environmental protection, with a view to making business decisions on public and private investments more sound, more predictable and sustainable in the longer term.

The EIA Directive, as amended by the 2014 Directive, can be seen via this link <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0092&from=EN>

5.2 Abbreviations and definitions

| | |
|----------------------|--|
| 2014 Directive | EU Directive 2014/52/EU, which amends Directive 2011/92/EU |
| Competent experts | The new definition (in the 2014 Directive) is: persons who, by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement |
| DAERA | Department of Agriculture, Environment and Rural Affairs |
| EEA | European Economic Area |
| EIA | Environmental Impact Assessment |
| EIA Directive | EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment |
| Forestry Regulations | The Environmental Impact Assessment (Forestry) Regulations 2006 (SI 2006/518), as amended |
| NI | Northern Ireland |

5.3 What is the purpose of this consultation?

The purpose of this consultation is to invite views on the proposed changes to the EIA (Forestry) Regulations in those areas where the 2014 Directive allows Members States flexibility in deciding how to make the required changes.

Overall, our intention is to minimise any additional regulatory burden whilst ensuring our environment remains well-protected. In many cases, the 2014 Directive requires Members States to take particular action. Where this is the case, we have set out the changes that will be made but are not seeking views on implementation.

We welcome comments on how we propose to implement the changes through regulations.

5.4 Who will be interested in responding

We welcome views from anyone with an interest in the EIA (Forestry) Regulations. We think that this consultation will be of particular interest to: councils; environmental bodies; land owners and managers; developers; farmers; foresters; land and forestry agents.

6 Background to Directive 2014/52/EU

6.1 History

The EIA Directive first came into force in 1985. It has been amended several times since then, including in October 2012 when the Directive and its amendments were brought together into one document – the EIA Directive. Further amendments were introduced in 2014 by the 2014 Directive. It is these changes that now require modifications to our implementing regulations.

The overall objective of the EIA Directive is to ensure that projects which are likely to have a significant effect on the environment by virtue of, among other things, their nature, size or location are required to obtain consent under the appropriate EIA regulations. This consent may only be given after an assessment has been undertaken of the project's potential environmental impact.

The 2014 Directive amended the EIA Directive, the aim of which remains the same: to provide a high level of protection of the environment and help integration of environmental considerations into the preparation of projects with a view to reducing their impact on the environment.

The broad intention of the 2014 amendments is deregulatory – to simplify and clarify requirements, by focusing on environmental factors that are significantly impacted by development, rather than on any potential impact.

6.2 Implementation

The EIA Directive has been implemented through a number of regulations administered by the Department of Agriculture, Environment and Rural Affairs (DAERA). In Northern Ireland, these regulations govern projects relating to forestry, agriculture, water resources, land drainage, marine works and fish farming in marine waters.



In this consultation, 'applicants' are people, companies or organisations applying for consent for projects which require assessment under the EIA process. This may include farmers, land/forestry managers, land owners, land/forestry agents and councils.

The regulations considered in this consultation relate to The Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006 (SR 2006/518), as amended (the Forestry Regulations). These Regulations apply to afforestation (woodland creation), deforestation (conversion of woodland to a different land use but not development), forest roads and forest quarries (where materials are extracted to create forest roads). They apply to projects that exceed size thresholds, which vary according to the project type and the sites' sensitivities. They ensure forestry projects avoid or mitigate potential harm to the environment. Where EIA consent is required the Regulations also ensure key stakeholders, including the public, have an opportunity to comment.

6.3 The Environmental Impact Assessment process

Environmental Impact Assessment (EIA) is a process that aims to provide a high level of protection to the environment by bringing environmental considerations into the preparation of projects, with a view to reducing their impact on the environment. It seeks to ensure that proposals for projects which are likely to have a significant effect on the environment, for instance, by virtue of their nature, size or location are subject to a requirement for an assessment of those effects before the project is allowed to proceed.

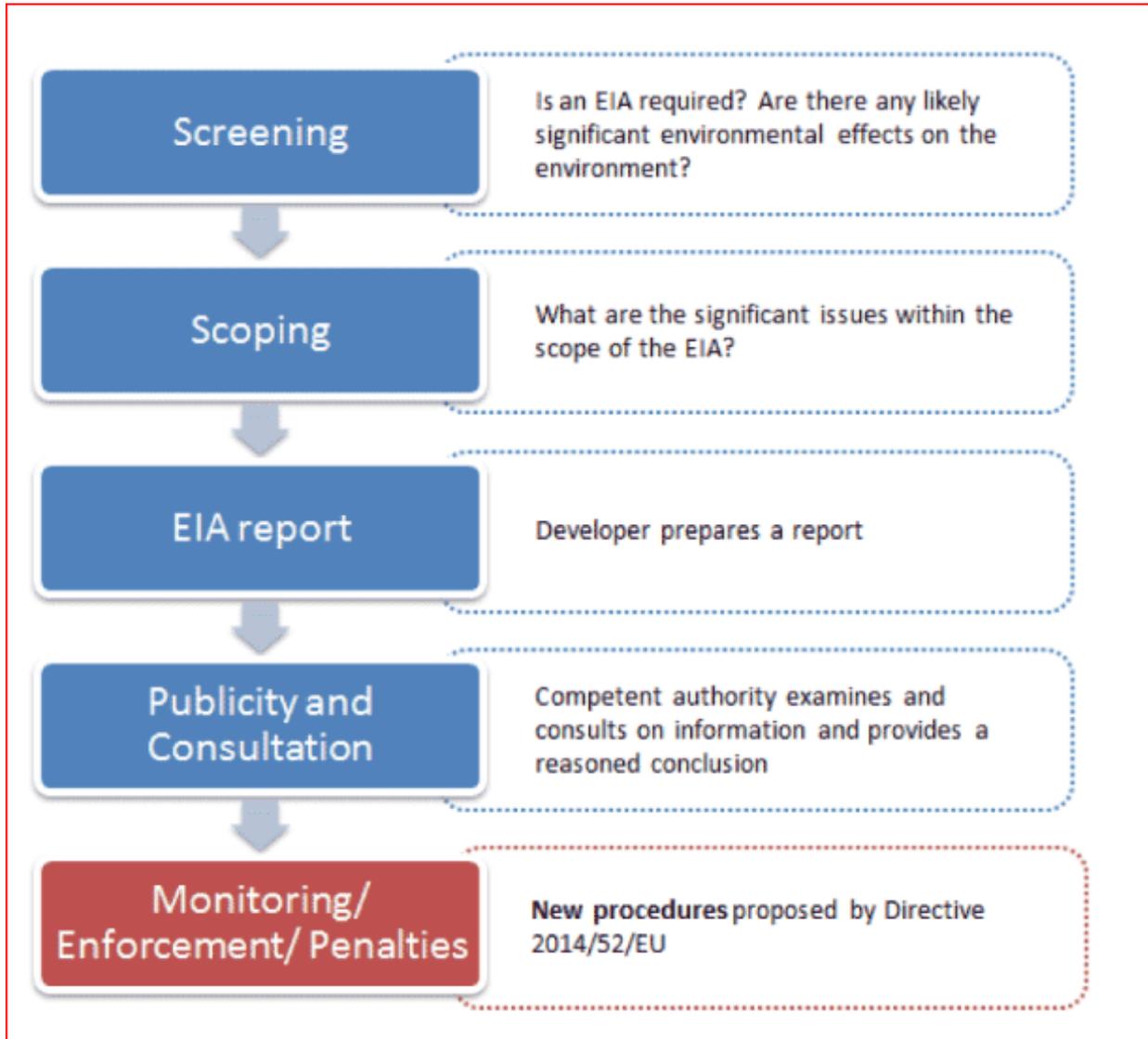
Some project types are always considered likely to have significant effects on the environment and must have an EIA in all cases. These project types are listed in Annex I of the EIA Directive and tend to be large in scale. They include power stations, motorway construction and oil refineries.

Other project types are only considered likely to have significant effects in some cases depending on their nature, size and location. These project types are listed in Annex II of the EIA Directive and include afforestation and deforestation for the purposes of conversion to another type of land use, forest road works and forest quarry works. Projects listed in Annex II are subject to an EIA only where it is considered they are likely to have significant effects on the environment.

The process for determining whether a project listed in Annex II is likely to have significant effects on the environment is usually referred to as 'screening'. Member States can decide whether a project listed in Annex II should be subject to EIA through a case-by-case examination and/or by setting thresholds or criteria.

Where an EIA report is required, the applicant must provide specified information to the competent authority (Forest Service). The information enables Forest Service to make an informed decision on whether the project should be given EIA consent to proceed. It also requires that public and other bodies are consulted and given an opportunity to participate in the decision making process.

Figure 1 The main steps of the EIA process



7 Proposals for transposition

7.1 A general description of the proposed changes

In transposing the amendments to the Directive, our view at the outset is that there is merit in retaining, as far as practical, the existing approach to environmental impact assessment as it is well understood by interested parties, local councils and others involved in the procedures. Our proposals for consultation therefore represent what we consider to be the minimum changes necessary to the existing regulations in order to bring them into line with the amended Directive. This will also minimise familiarisation costs and business uncertainty.

The main change to the Forestry Regulations, required by the amended Directive, is for applicants to provide more information upfront on their proposal's potential environmental impacts. This will inform regulators' decisions on whether EIA consent is required. While this may increase the costs to some applicants, due to the extra information required and the potential need for expert advice, it aims to give applicants the opportunity to address potentially significant impacts upfront in their scheme design so avoiding the greater cost and time associated with taking a project through the EIA process. Implementation of the common changes also presents an opportunity to review the screening thresholds for afforestation projects. This consultation seeks views on proposals to adjust the thresholds for such projects.

Table 1 A summary of the proposed changes to the EIA (Forestry) Regulations and questions covered by this consultation

| Reference to 2014 Directive | Topic covered by the Article | Consultation Questions |
|------------------------------------|--|-------------------------------|
| Article 1(2)g | New definition of EIA process | |
| Article 1(4) | Area thresholds in relation to the screening stage | * |
| Article 2(3) | Joint/Coordinated procedures | |
| Article 3 | Information to be assessed | |
| Article 4(4) | List of the information to be provided by the applicant for a screening determination to be made | |
| Article 4(6) | Timeframe for screening opinion. EIA should only consider likely significant effects | * |
| Article 5(3) | Use of competent experts | |
| Article 6(2) & 6(5) | Informing the public | * |
| Article 8a(2) | Stating reasons for refusing development consent | |
| Article 8a(1) | Information to be contained in consent decision | |
| Article 8a(4) | Monitoring of significant adverse effects | |
| Article 10a | Penalties for infringements of national provisions | |

8 Main Provisions

Proposed amendments and consultation questions are provided in this section with reference to the 2014 Directive.

8.1 (Article 1(1)(a) and 1(3) of the 2014 Directive – amendment to Article 1(2)(g) and 3 of the EIA Directive)

The 2014 Directive has introduced a new definition of the “environmental impact assessment”. It is defined as a process consisting of:

- the preparation of an environmental impact assessment report by the applicant, as referred to in Article 5(1) and (2);
- the carrying out of consultations as referred to in Article 6 and, where relevant, Article 7;
- the examination by the competent authority (Forest Service) of the information presented in the environmental impact assessment report and any supplementary information provided, where necessary, by the applicant in accordance with Article 5(3), and any relevant information received through the consultations under Articles 6 and 7;
- the reasoned conclusion by the competent authority (Forest Service) on the significant effects of the project on the environment, taking into account the results of the above examination and, where appropriate, its own supplementary examination;
- the integration of the reasoned conclusion by the competent authority (Forest Service) into any of the decisions referred to in Article 8a”.

Article 1(3) of the 2014 Directive has changed the matters that the environmental impact assessment should identify, describe and assess in an appropriate manner, in the light of each individual case the direct and indirect *significant* effects of a project. The list of factors to consider has been amended to:

- a) population and human health;
- b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and wild birds protected under Directive 2009/147/EC;
- c) land, soil, water, air and climate;
- d) material assets, cultural heritage and the landscape;
- e) the interaction between the factors referred to in points (a) to (d).

The EIA should also include, where relevant, the expected effects on the factors listed above, deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

We propose to copy out this new definition and changes in to the regulations.

8.2 Co-ordinated and joint procedures (Article 1(2)(a) of the 2014 Directive – amendment to Article 2(3) of the EIA Directive)

The 2014 Directive has introduced a new requirement into Article 2(3) of the EIA Directive. Where a project is subject to an assessment under the EIA Directive and also under the Habitats and/or Wild Birds Directives, the 2014 Directive requires that either a ‘coordinated procedure’ or a ‘joint procedure’ should be used. The coordinated procedure requires designating an authority, or authorities, to coordinate separate assessments. The joint procedure, on the other hand, requires Member States to try to provide for a single assessment of a project’s impacts on the environment.

We propose to include the provision for both co-ordinated and joint assessments.

8.3 Screening (Article 1(4) of the 2014 Directive – amends Article 4 of the EIA Directive)

‘Screening’ describes the process where the competent authority (Forest Service) decides if a proposed project is likely to have significant environmental effects and, therefore, if an EIA is required. The 2014 Directive has introduced a new detailed list of the information that the applicant provides to the competent authority (Forest Service) to help it screen the application. This will include a description of the aspects of the environment likely to be significantly affected by the project.

A change also introduced by the 2014 Directive is that applicants provide results of other assessments relating to the project’s effects on the environment at the screening stage. Currently these are provided later in the EIA process. This could include assessments under the Water Framework Directive (2000/60/EC), the Strategic Environmental Assessment Directive (2001/42/EC) and the Habitats Directive (92/43/EEC). The proposer/developer can also provide details of any features of the project designed to avoid or prevent significant adverse effects on the environment. Article 4(5) of the EIA Directive requires the competent authority (Forest Service) to make its screening decision on the basis of the information provided by the applicant, taking into account, where relevant, the results of preliminary verifications or assessments carried out pursuant to Union legislation other than the EIA Directive.

The 2014 Directive has introduced a requirement that the competent authorities should publish their screening decisions and explain the main reasons why an EIA is needed or not. When an EIA is not needed, the published decision must list any features of the project and/or action to be taken to avoid or prevent what might otherwise be negative effects on the environment.

Where an application is made before 17 May 2017, Article 3(1) of the 2014 Directive says that application should be screened under the provisions in the EIA Directive.

We propose to 'copy out' these new requirements.

8.4 Thresholds (Article 1(4) of the 2014 Directive – amendments to Articles 4(3), (4) and (5) of the EIA Directive)

The 2014 Directive amends the process that allows Member States discretion to set thresholds beneath which projects listed in Annex II are not required to undertake an EIA or the level to be met before an application needs to go through the screening stage of the EIA process. The amendments also allow for absolute thresholds to apply, i.e. if a threshold is exceeded

Article 4(3) of the EIA Directive requires the relevant selection criteria in Annex III to be taken into account where Annex II projects are assessed on either a case-by-case basis or where thresholds or criteria have been set by Member States. The selection criteria in Annex III have been revised and we propose to amend the Forestry Regulations.

The Forestry Regulations already include thresholds to help determine when a project is likely to have a significant impact on the environment. These thresholds act as guidelines: exceeding the threshold does not automatically mean a project requires an EIA report - a decision is made through the screening process. Similarly, projects below the threshold may require EIA consent. We will retain this flexibility for forestry projects which enables reasoned decisions to be made on whether a project requires consent.

8.5 Thresholds for Afforestation Projects

The amended Directive requires applicants to provide more information upfront on their proposal's potential environmental impacts. This may include identification of priority habitats which will inform regulators' decisions on whether EIA consent is required. While this may increase the costs to some applicants, due to the extra information required and the potential need for expert advice, it aims to give applicants the opportunity to address potentially significant impacts upfront in their scheme design so avoiding the greater cost and time associated with taking a project through the EIA process. Implementation of the common changes also presents an opportunity to review the screening thresholds for afforestation projects.

We would like to seek your views on proposed changes to the thresholds for afforestation projects. These include planting new woods and forests, direct seeding or natural regeneration and planting Christmas trees or short rotation coppice. Forest policy aims to create more woodland in the right place to benefit people in

Northern Ireland. To encourage more woodland creation, we believe there is potential to increase the threshold for afforestation projects on non sensitive areas. Most woodland planting comes under the Forestry Grant Scheme and must comply with The UK Forestry Standard (UKFS). Good forestry practice requirement reference 4 in Forests and biodiversity states *‘For new forest and woodland proposals, include an assessment of the potential impacts on priority habitats and species as part of the forest planning process.’* and reference 5 states *‘Avoid establishing new forests on soils with peat exceeding 50cm depth and on sites that would compromise the hydrology of adjacent bog habitats.’*¹ This reflects the requirements of the Birds Directive, the Habitats Directive and national legislation such as the Wildlife (Northern Ireland) Order which was amended by the Wildlife and Natural Environment (Northern Ireland) Act 2011. Priority habitats include rare habitats that are small in size such as lowland meadows, while priority species include breeding waders such as curlew and lapwing which can be found over more extensive areas. The requirements of the UKFS apply irrespective of any legislative threshold and will ensure that environmental protection is not compromised. In such cases, the applicant may be required to arrange for a site survey to be undertaken following accepted protocols.

It is not proposed to change the current afforestation threshold of 2 hectares in Areas of Outstanding Natural Beauty and no threshold will continue to be applied to other sensitive areas.

The current and proposed thresholds for afforestation projects in Northern Ireland are summarised in the table below:

¹ <https://www.forestry.gov.uk/ukfs/biodiversity>

Table 2: Summary of thresholds for Afforestation Projects

| | Current threshold | Proposed threshold |
|-----------------------------|---|---|
| Sensitive areas: | <p>2 hectares - Where the land is in a National Park, Area of Outstanding Natural Beauty</p> <p>0 hectares in all other sensitive areas, i.e: National Nature Reserves, Areas of Special Scientific Interest, World Heritage Sites, Scheduled Monuments, Special Area of Conservation (including candidate sites), and sites classified or proposed as a Special Protection Area.</p> | 2 hectares (no change) |
| Non-sensitive areas: | 5 hectares | <p>Option 1 – threshold remains at 5 hectares</p> <p>Option 2 – threshold increases from 5 hectares to 10 hectares</p> <p>Option 3 – threshold increases from 5 hectares to 20 hectares</p> |

8.5.1 Question 1 – The UK Forestry Standard states new woodland proposals must include an assessment of the potential impacts on priority habitats and species and the forest planning process will ensure that environmental protection is not compromised. What is your preferred option for the afforestation threshold in non sensitive areas?

8.6 Time period for making screening decisions (Article 1(4) of the 2014 Directive – amendment to Article 4 of the EIA Directive)

Article 8a(5) – requires decisions referred to in article 8a (1)-(3) to be taken within a reasonable period of time. The 2014 Directive has introduced a requirement that the competent authority (Forest Service) must make its screening decision as soon as possible and within 90 days from the date the developer provides all the information required. This period can be extended in exceptional circumstances with the authority explaining the reason for the extension.

Under the existing Forestry Regulations two different time periods can apply to EIA screening decisions. Where Forest Service receives an application for a screening decision they currently have to give their decision or agree an extension within 28 days. We propose a change to allow Forest Service up to 90 days to give a screening decision. The 90 day period should be seen as the maximum time required for the most complex projects where detailed analysis and wider consultation is required. This proposed change will also provide time to review the additional information applicants have to provide at the screening stage and to document decisions. Forest Service will still aim to work to the original 28 day time period where possible.

8.6.1 Question 2 - Do you agree with our proposal to allow a maximum of 90 days for making screening decisions on the most complex projects requiring detailed analysis and wider consultation? If not, please tell us what the maximum period should be and give your reason(s).

8.7 Scoping (Article 1(5) of the 2014 Directive – amending Article 5(1) and (2) of the EIA Directive)

After the screening stage, if a proposed project needs an Environmental Impact Assessment, it can go through the ‘scoping’ stage. This is voluntary and allows an applicant to request an opinion from the competent authority (Forest Service) to list the scope and level of detail of the information to be included in their environmental impact assessment report (sometimes referred to as an environmental statement).

Before issuing a scoping opinion Forest Service will consult with other defined authorities that may have an interest in the proposals. The scoping opinion given must account for information provided by the applicant on the project, such as its location, technical capacity and its likely impact on the environment.

The EIA Directive sets out the minimum information that has to be provided for a screening opinion and the scoping opinion request. The EIA Directive includes this in Annex IV together with a longer list of topics that should be covered if relevant. The

2014 Directive has introduced minimum requirements to Article 5(1) of the EIA Directive, so that it sets out what should be included in an environmental impact assessment report. This includes mitigation measures, a non-technical summary, and a description of reasonable alternatives (if the applicant has already studied these) – see *next section*.

We propose to copy out these new requirements in the regulations.

8.8 Consulting others in the EIA process (Article 1(6) of the 2014 Directive - amending Article 6 of the EIA Directive)

Forest Service is required to publish a notice of applications requiring an EIA, giving the public and other stakeholders opportunity to review and comment on the EIA. Feedback must be considered before issuing a consent decision. The 2014 Directive has introduced a requirement that information is made available electronically, in addition to more traditional methods such as bill posting. Competent authorities can add newspaper notices to the ways of consulting.

We have considered removing specific references to newspapers in the regulations in order to reduce the cost of advertising. However, following consideration of the possible implications, as part of our Equalities Impact Assessment (as older people are less likely to access information electronically), we propose to keep the requirement to use non-electronic methods for notices.

The 2014 Directive has introduced a requirement for a new minimum time for public consultations (on the environmental impact assessment report) of at least 30 days. This is an increase from 28 days.

We propose to copy out these new requirements.

8.8.1 Question 3 – Forest Service currently advertise EIA opinions in the Belfast Gazette and in at least 1 local newspaper. We think that removing the local newspaper notice may have a negative impact on some people and therefore we propose to continue using local newspaper advertisements. Do you agree with our proposal? If not, please give your reason(s)

8.9 Consent - Explaining Decisions and Monitoring of significant environmental effects (Article 1(9) of the 2014 Directive – inserts new provision Article 8a into the EIA Directive)

This new provision from the 2014 Directive sets out requirements for information to be included in a decision to grant development consent. Following consultation, where a competent authority (Forest Service) decides to grant consent for a project, the decision is given in writing. The decision includes: the reasoned conclusion; environmental conditions; and a description of any parts or actions in the project to reduce the risk of significant adverse effects on the environment. Where the decision is to refuse consent, the main reasons for the refusal are given.

A notice of a decision must also include any planned monitoring measures. We have some flexibility on the procedures for monitoring for significant adverse environmental effects. The monitoring, including how long it happens, should be proportionate to the nature, location and size of the project and the significance of its effects on the environment.

The authority will inform the public and the statutory consultation bodies about the decision and its content, including a summary of the results of the consultation. No change is proposed as Forest Service already provides a statement setting out the reason for granting consent and any associated conditions.

8.10 Competent experts (Article 5(3) of the 2014 Directive – amends Article 5(3) of the EIA Directive)

The 2014 Directive has introduced a requirement that the applicant must ensure that the environmental statement is prepared by competent experts. Also, the competent authority (Forest Service) must ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement. Forest Service will be able to rely on the assistance of statutory consultation bodies such as the Environment Agency and Historic Environment Division.

We propose to copy out these provisions.

We propose to adopt the following definition of ‘competent experts’: “persons who, by virtue of their qualifications or experience, have sufficient expertise to ensure the completeness and quality of the statement”.

8.11 Conflicts of interest (Article 1(9) of the 2014 Directive – inserts Article 9a into the EIA Directive)

The 2014 Directive has introduced a requirement that the competent authorities have to be objective and avoid conflicts of interest. Where the competent authority is also

the applicant, there must be appropriate separation between the people making the application and the people carrying out the role as competent authority.

We do not propose a change to the Forestry Regulations. This is because Forest Service as an agency within a Government Department is already subject to public law principles that require it to act in an objective manner and to avoid conflicts of interest. This is reflected in the organisational structure of the Forest Service which separate regulatory from operational activity to avoid conflicts of interest.

8.12 Penalties (Article 13 of the 2014 Directive – inserts Article 10a into the EIA Directive)

The 2014 Directive requires that we must have penalties for infringements of our EIA regulations. The penalties have to be effective, proportionate and dissuasive.

We do not propose any changes to the existing regulatory provisions.

9 Impact assessment

The 2014 Directive's changes aim to reduce the burden by cutting the number of cases that go through the EIA process. The benefits will mainly be seen in the bigger developments that usually need an environmental impact assessment report.

Equalities

In Northern Ireland Section 75 of the Northern Ireland Act 2008 places a statutory equality duty on public authorities.

While developing these proposals we assessed the impact of the changes to our EIA regulations, having regard to the public sector equality duty. As part of this assessment, we considered removing the requirement to use newspapers as a means of informing the public on the outcome of key decisions taken. We came to the conclusion that keeping the reference to newspapers would be particularly important to those members of the public without computer access.

Based on our initial assessment of the other proposals, we think there is likely to be no impact on vulnerable groups, but will keep this under review

10 What happens next

The closing date for this consultation is **5 April 2017**. Responses received by that date will be analysed and taken into account by the Department in its consideration of the proposals for amending the regulations.

The Department welcomes any views or comments on any aspect of its proposals to transpose Directive 2014/52/EU.

Please send your views and comments on the proposals set out in this document to the Department by 5 April 2017.

Comments may be made as follows:-

Online at: <https://www.daera-ni.gov.uk/consultations>

In writing to:-

Forest Service
Grants & Regulations Function
Inishkeen House
Killyhevlin
Enniskillen
BT74 4EJ

By E-mail forest.regulation@daera-ni.gov.uk

Further copies of this paper may be obtained from the above address on written request or by telephoning 028 6634 3019. The paper can also be accessed online at: <https://www.daera-ni.gov.uk/consultations>

This document may be available in alternative formats. Please contact us to discuss your requirements.

11 Appendix A – Response Form

If you prefer not to use the online response template please complete this response form and return it to us.

The deadline for your hard copy response is **4pm on 5 April 2017²** and you can return it to us

By post:

Forest Service
 Grants & Regulations Function
 Inishkeen House
 Killyhevin
 Enniskillen
 BT74 4EJ

Or email:

forest.regulation@daera-ni.gov.uk

| | | |
|--|--|--------------------------|
| Name | | |
| Company / Organisation Name | | |
| Please describe your Company / Organisation type | | |
| Please indicate your preference for publication of your response | | Please tick |
| | Under the name / company given: I consent to publication of all information in my response. | <input type="checkbox"/> |
| | Anonymously: I consent to publication of all information in my response. | <input type="checkbox"/> |

² The online response template will receive responses until 23:59 on 5 April 2017.

Question 1 - The UK Forestry Standard states new woodland proposals must include an assessment of the potential impacts on priority habitats and species and the forest planning process will ensure that environmental protection is not compromised. What is your preferred option for the afforestation threshold in non sensitive areas?

Response –

| | Please tick |
|--|--------------------------|
| 1. No change [retain the current 5 hectare threshold] | <input type="checkbox"/> |
| 2. Increase the threshold from 5 hectares to 10 hectares | <input type="checkbox"/> |
| 3. Increase the threshold from 5 hectares to 20 hectares | <input type="checkbox"/> |

Please state your reason(s):

Question 2 - Do you agree with our proposal to allow a maximum of 90 days for making screening decisions on the most complex projects requiring detailed analysis and wider consultation? If not, please tell us what the maximum period should be and give your reason(s).

Response -

| | Please tick |
|--------|--------------------------|
| 1. Yes | <input type="checkbox"/> |
| 2. No | <input type="checkbox"/> |

Or, please tell us what the maximum period should be and state your reason(s):

Question 3 – Forest Service currently advertise EIA opinions in the Belfast Gazette and in at least 1 local newspaper. We think that removing the local newspaper notice may have a negative impact on some people and therefore we propose to continue using local newspaper advertisements. Do you agree with our proposal? If not, please give your reason(s).

Response -

| | Please tick |
|--------|--------------------------|
| 1. Yes | <input type="checkbox"/> |
| 2. No | <input type="checkbox"/> |

Please state your reason(s):