

DETERMINING THE NEED FOR AN EIA

Purpose of Guidance Note

This Guidance Note is intended to help Conservancy staff to determine whether to call for an EIA for projects which fall under the scope of the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999. It may be issued both within and outwith the Forestry Commission.

General considerations

1. The Forestry Commission must screen applications for afforestation, deforestation, forest roads and quarries in order to determine whether or not EIA is required. This determination is referred to as a "screening opinion". In each case, the basic question to be asked is: 'would this particular development (ie project) be likely to have a significant effect(s) on the environment?' The following paragraphs indicate the considerations which should be taken into account in making that determination. They are based on the Scottish Executive Circular relating to EIA in relation to projects requiring planning permission etc and should be read accordingly.

2. As a starting point, staff should study Schedule 3 to the Environmental Impact Assessment (Forestry) (Scotland) Regulations 1999 (see Annex 1) which sets out the 'selection criteria' which must be taken into account in determining whether a development is likely to have a significant effect(s) on the environment. Not all of the criteria will be relevant in every case. It identifies three broad criteria which should be considered: the characteristics of the development (eg its size, use of natural resources, quantities of pollution and waste generated); the environmental sensitivity of the location; and, the characteristics of the potential impact (eg its magnitude and duration). In the light of these criteria, Scottish Ministers' view in relation to projects requiring planning permission etc is that, in general, EIA will be needed for three main types of developments:

- a. major developments which are of more than local importance (see paragraph 4);*
- b. developments which are proposed for particularly environmentally sensitive or vulnerable locations (see paragraphs 5-9); and*
- c. developments with unusually complex and potentially hazardous environmental effects (see paragraphs 10-11).*

3. The number of cases of such development will be a very small proportion of the total number of developments. It is emphasised that the basic test of the need for EIA in a particular case is the likelihood of significant effect on the environment. It should not be assumed, for example, that conformity with a Development (ie structure or local) Plan rules out the need for EIA. Nor is the amount of opposition or controversy to which a development gives rise relevant to its determination, unless

the substance of opponents' arguments reveals that there are likely to be significant effects on the environment.

Major developments of more than local importance

4. In some cases, the scale of a development can be sufficient for it to have wide-ranging environmental effects that would justify EIA.

Developments in environmentally sensitive locations

5. The relationship between a proposed development and its location is a crucial consideration. For any given development proposal, the more environmentally sensitive the location, the more likely it is that the effects will be significant and will therefore require EIA. Certain designated sites are defined in Schedule 2 of the Regulations as 'sensitive areas' and the thresholds must be used to determine the need for screening. These sensitive areas are:

- Sites of Special Scientific Interest
- Land to which Nature Conservation Orders apply
- International conservation sites
- National Scenic Areas
- Natural Heritage Areas
- World Heritage Sites
- Scheduled Monuments

6. Special considerations apply to Sites of Special Scientific Interest (SSSIs), especially those which are also international conservation sites. In practice, the likely environmental effects will often be such as to require EIA if the development is to be located in or close to such sites, including classified and potential Special Protection Areas (SPAs) under the Wild Birds Directive 79/404/EEC; designated and candidate Special Areas of Conservation (SACs) under the Habitats Directive 92/43/EEC; and Ramsar sites (wetlands of international importance). Whenever staff are uncertain about the significance of a development's likely effects on an SSSI, they should consult Scottish Natural Heritage. Other non-statutory bodies may also have relevant information.

7. For non SSSI sites it does not necessarily follow that every development in these areas will automatically require EIA. In each case, it will be necessary to judge whether the likely effects on the environment of that particular development will be significant in that particular location. Any views expressed by the consultation bodies should be taken into account, and staff should consult them in those cases where there is doubt about the significance of a development's likely effects on a sensitive area.

8. In certain cases other statutory and non-statutory designations (which are not included in the above definition of 'sensitive areas' but which are nonetheless environmentally sensitive) may also be relevant in determining whether EIA is required. Where relevant, Local Biodiversity Action Plans may be of assistance in determining the sensitivity of a location.

9. Another factor which may help staff to judge the sensitivity of a particular location, is whether any national or internationally agreed environmental standard (for example drinking water) are already being approached or exceeded. Where there are local standards for other aspects of the environment, consideration should be given as to whether the proposed development would affect these standards or levels.

Developments with unusually complex and potentially hazardous effects

10. A small number of developments may be likely to have significant effects on the environment because of the particular nature of their impact. Consideration should be given to developments which could have complex, long-term, or irreversible impacts, and where expert and detailed analysis of those impacts would be desirable and would be relevant to the issue of whether or not the development should be allowed. (Industrial development involving, emissions which are potentially hazardous to humans and nature may fall into this category. So, occasionally, may other types of development which are proposed for severely contaminated land where the development might lead to more hazardous contaminants escaping from the site than would otherwise be the case if the development did not take place. In general, however, this is unlikely to be relevant for forestry proposals.)

Indicative criteria and thresholds

11. Given the variability of forestry developments and the importance of location in determining whether significant effects on the environment are likely, it is not possible to formulate criteria or thresholds which will provide a universal test of whether or not EIA is required. The question must be considered on a case-by-case basis. To assist in this, the Annex to the Guidance Note sets out indicative thresholds and criteria.

12. It should not be presumed that developments falling below these indicative thresholds could never give rise to significant effects, especially where the development is in an environmentally sensitive location. Equally, developments which exceed the thresholds will not in every case require assessment. The fundamental test to be applied in each case is whether that particular type of development and its specific impacts are likely, in that particular location, to result in significant effect(s) on the environment. It follows that the thresholds should only be used in conjunction with the general guidance, and particularly in relation to environmentally sensitive locations.

Applying the guidance to individual development

13. In general, each application (or request for an opinion) should be considered for EIA on its own merits. The development should be judged on the basis of what is proposed by the developer.

14. However, in judging whether the effects of a development are likely to be significant, staff should always have regard to the possible cumulative effects with any existing or approved development. These are occasions where the existence of

other development may be particularly relevant in determining whether significant effects are likely, or even where applications for development should be considered jointly to determine whether or not EIA is required.

Multiple applications

15. For the purposes of determining whether EIA is required, a particular application should not be considered in isolation if, in reality, it is properly to be regarded as an integral part of an inevitably more substantial development. In such cases, the need for EIA (including the applicability of any indicative thresholds) must be considered in respect of the total development. This is not to say that all applications which form part of some wider scheme must be considered together. In this context, it will be important to establish whether each of the proposed developments could proceed independently and whether the aims of the Regulations and Directive are being frustrated by the submission of multiple planning applications.

Changes or extensions to existing or approved development

16. Development which comprises a change or extension to existing development requires EIA only if the change or extension is likely to have significant environmental effects. This should be considered in the light of the general guidance in this Note and the indicative thresholds in Annex 2. However, the significance of any effects must be considered in the context of the existing development. In some cases, repeated small extensions may be involved. Quantified thresholds cannot easily deal with this kind of 'incremental' development. In such instances, it should be borne in mind that the criteria/thresholds in the Annex are only indicative. An expansion of the same size as a previous expansion will not automatically lead to the same determination on the need for EIA because the environment may have altered since the question was last addressed.

17. It should be noted that a developer can be asked to provide an Environmental Statement only in respect of the specific development proposed, though the statement will need to address not only direct, but also indirect effects of the development. Any wider implications would be for the Commission to consider, although it is open to developers to assist the Commission by supplying any additional information relevant to this consideration.

ANNEX III OF EC DIRECTIVE 97/11/EC SCHEDULE 3
Projects having a significant effect on the environment: Selection criteria

1. Characteristics of projects

The characteristics of projects must be considered having regard, in particular, to:

- a) the size of the project;
- b) the cumulation with other projects;
- c) the production of waste;
- d) pollution and nuisance;
- e) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of projects

The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:

- a) the existing land use;
- b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- c) the absorption capacity of the natural environment, paying particular attention to the following areas:
 - i. wetlands;
 - ii. coastal zones;
 - iii. mountain and forest areas;
 - iv. nature reserves and parks;
 - v. areas classified or protected under Member States legislation; special protection areas designated by Member states pursuant to Directive 79/409/EEC on the conservation of wild birds and 92/43/EEC on the conservation of natural habitats and wild fauna;
 - vi. areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
 - vii. densely populated areas;
 - viii. landscapes of historical, cultural or archaeological significance.

3. Characteristics of the potential impact

The potential significant effects of the projects must be considered in relation to criteria set out under 1 and 2 above, and having regard in particular to:

- a) the extent of the impact (geographical area and size of the affected population);
- b) the transfrontier nature of the impact;
- c) the magnitude and complexity of the impact;
- d) the probability of the impact;
- e) the duration, frequency and reversibility of the impact

INDICATIVE THRESHOLDS AND CRITERIA FOR PROJECTS REQUIRING EIA

The criteria and thresholds in this Annex are only indicative. In determining whether significant effects are likely, the location of a development is of crucial importance. The more environmentally sensitive the location, the lower the level at which significant effects will be likely.

It follows, therefore, that the thresholds below should only be used in conjunction with the more general guidance in this Note and, in particular, the guidance on environmentally sensitive locations.

All relevant factors must be considered when deciding whether an EIA is needed. Size, alone, is not sufficient, because every case is different. The decision will depend on the scale and nature of the proposed project and the sensitivity of the site. However, an EIA will almost certainly be needed in the following circumstances:

- Any project in a National Nature Reserve or a Site of Special Scientific Interest where the work is listed as potentially damaging;
- Any planting, seeding or natural regeneration covering more than 100 hectares in a National Park, National Scenic Area, Area of Outstanding Natural Beauty or equivalent area;
- Any forestry track more than 10 km long in a National Park, National Scenic Area, Area of Outstanding Natural Beauty or equivalent area; and
- Any forestry quarry covering more than 2 hectares in a National Park, National Scenic Area, Area of Outstanding Natural Beauty or equivalent area;
- Any deforestation exceeding 50 hectares where the proposals do not form part of a restructuring plan intended to bring plantations up to the standards required by the UK Forestry Standard.

Other forestry projects will also require EIA, depending on the scale, nature and location of the project. For example, a forestry track more than 1 km long in a National Park, National Scenic Area, Area of Outstanding Natural Beauty or equivalent area, or more than 10 km long in other areas, may well require EIA.

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Interpretation of “forest road works”

18. The Regulations define “forest road works” as “the formation, alteration or maintenance of private ways on land used or to be used for the purposes of forestry”. These Regulations implement the EU Directive, which states that the *construction* of roads or any change or extension to a relevant project is potentially subject to EIA.

19. Lawyers drafting the Regulations used the phrase “formation, alteration or maintenance” to cover this situation. In practical terms, however, the Forestry Commission’s ‘opinion’ on a project is only required when the works envisaged represent ‘construction’ (ie a new way or an extension to an existing way) but this could include *major* works to an existing way.

**Forestry Commission
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