

Final response to EIA joint technical consultation – forestry

<https://consult.defra.gov.uk/housing-and-planning/environmental-impact-assessment-eia-changes/>

submitted via Defra's online portal 31.1.17

Question 1. Coordinated and joint procedures. Do you agree with these proposals?

Natural Resources Wales (NRW) has two main roles in EIA forestry as an advisor (statutory consultee) and regulator (competent authority). In addition we may also be an applicant ourselves. Whilst in principle NRW agrees with these proposals we believe that there should be more consideration given to the interaction and co-ordination between EIA and Habitats Regulation Assessment requirements for plans and projects. For example there should be clear guidance for applicants about the arrangements for cross-border applications available from both from English and Welsh responsible authorities. Time limits for co-ordinated and joint procedures should be similarly aligned if possible.

Question 2. Screening. Do you need more information on this and if so what would you need from us to help you comply with these new requirements?

NRW supports the proposals and continues to work on improving guidance for applicants. A common approach to the supply of information provided by applicants and competent authority decision making at screening across the regulations is welcomed. Applicants should be required at notification / screening to provide details of project design where features are protected from significant impact by avoidance or preventative measures. Applicants and decision makers would then focus effort on the full assessment of those projects likely to have a significant impact on the environment.

Question 5. Thresholds for afforestation projects in Wales.

Please give your views on increasing the thresholds in non-sensitive areas in Wales to one of two levels:

- (a) increase the afforestation threshold from 5ha to 20 ha**
- (b) increase the afforestation threshold from 5ha to 50 ha.**

- NRW supports changes that are in line with Better Regulation Delivery Office [amalgamated and now known as Regulation Delivery] principles, can continue to safeguard the environment and provide encouragement for more and better new woodland creation proposals. NRW is more supportive of the lower 20ha proposal. We are concerned that a very high threshold is likely to result in more challenges to decisions displacing effort from informing good project design and location through dialogue with applicants to defending decisions already made.
- Wales' current 'woodland opportunities map' is a combination of map layers built up of opportunity, constraint and information. As such no change is proposed to the definition of a 'sensitive' area or 'non-sensitive' area nor the information available spatially to support it.
- FC England has found from its analysis that the threshold size of a woodland creation project is not the only factor that determines at screening whether or not EIA consent will be required, and that site specific impacts are important too. For example cumulative impacts through different activities (perhaps activities

consented through different EIA regulations) can lead to significant semi-natural habitat loss. We urge consideration of if and how the Thresholds Criteria Table may be applied equally to other EIA Regulations in Wales and the better sharing of information about applications across Competent Authorities – especially in relation to managing the risk of cumulative impact over the long-term. The consideration of the long-term is a key requirement of the Well-Being of Future Generations (Wales) Act 2015.

- NRW would propose that the same threshold is set across England and Wales to ensure a clear and consistent approach to the purpose of the regulations in safeguarding the environment but also to encourage a basic level playing field for investment in new woodland creation in either country.
- The vast majority of new woodland creation proposals in Wales are submitted as under the ‘Glastir’ scheme and all projects are required to submit for a screening opinion regardless of size or location. Only an increased stimulation of cost-effective new woodland creation proposals without need for financial support would reduce the need for project screening by area threshold.
- NRW see merit in the approach taken to England’s recommendations for ‘sensitive’, ‘non-sensitive’ and ‘low risk’ project thresholds together with the evidence and methodology to support the proposals. We consider that this approach supports the minimums of the UK Forestry Standard and provides clear guidance for applicants.
- The terms ‘sensitive’ and ‘non-sensitive’ are mis-leading as the definition of a non-sensitive area under Wales’ proposals include many features that have potential for significant impact on the environment as a result of a new woodland creation project proposal. If Wales is to utilise a similar approach to England’s ‘sensitive’, ‘non-sensitive’ and ‘low risk’ project thresholds then we ask if there is any scope for clearer terminology within the regulations.
- There is potential for cumulative impact of multiple adjacent projects falling under the ‘non-sensitive’ threshold that may be proposed / created in close proximity. Whilst there are provisions proposed for notification of proposals and ‘exceptional circumstances’ the mechanisms to mitigate the risk needs to be tested and refined. This is of more concern with an increased area threshold.
- Making a decision based on area thresholds alone is not sufficient to safeguard the environment – a focus on the design and type of woodland that is created may be a more enabling approach. It is acknowledged that further work will be required to determine supported woodland types but that there is good evidence available to inform recommendations. A mechanism to bind woodland created in ‘non-sensitive’ or ‘low risk’ areas falling under the area thresholds to UK Forestry Standard minimums would be recommended. Those who want to create woodland that do not meet these standards would therefore fall in scope for a screening opinion. This would help reflect the Welsh specific legislation aimed at achieving the Sustainable Management of Natural Resources and the multiple natural resource benefits arising from woodland creation well matched to site.

In addition:

- Larger woods require infrastructure to manage and if created at establishment roads, tracks and quarries may be qualifying EIA projects whilst the woodland being created may not. 1ha is a low threshold for most forest infrastructure (a 25m wide felling footprint would be just 400m in length). There is an additional regulatory oversight for projects which require planning consent via Town and

Country Planning (General Permitted Development) Order which may provide scope for a reduced burden on applicants and regulators. Additionally a threshold based approach may be useful if extended to this activity. The regulations also apply to road/tracks maintenance but with no clear rationale as maintenance is not a 'change of land use' regardless of whether in an established forest or new woodland creation. Published good practice is available to safeguard the environment when undertaking road and track maintenance.

- We would support a zero threshold for projects involving deforestation in line with the UK and Welsh forestry policy of a strong presumption against the permanent removal of woodland. Where there are management plans agreed with landowners for woodland removal to meet the conservation objectives of protected sites such as SSSI then this is unlikely to add a significant burden beyond a scoping notification.

Question 6. Time limits for screening decisions.

Do you agree with our proposals on changing the time for making screening decisions?

Increasing the information to be provided by applicants requesting a screening will increase the burden on the competent authority. We welcome an increased flexibility for more complex cases to 90 days but, as proposed, consider that the current limit of 28 days for applications requesting a screening should be sufficient for the majority of submissions.

In the majority of screening decision cases it is the quality of the information provided at screening which is key. Where insufficient information is supplied extensions are agreed with the applicant to duly make a well supported submission.

NRW are currently investigating the possibility of using Forest Management Plans to tie in both the consideration and issue of Felling Licences and EIA together. 90 days would tie in almost exactly with the period of issuing a felling licence (3 months by statute), so the two operations (EIA screening and Felling Licence administration) could proceed together. In practice the preparation and scrutiny of Forest Management Plans may take longer than 90 days dependent on location, size and complexity.

Time limits for co-ordinated and joint procedures should be similarly aligned if possible.

In addition it would be helpful to explicitly include reference to time limits for consultees submissions and re-affirmation of statutory consultee roles and responsibilities in any accompanying guidance for both England and Wales.

Question 7. Consulting others.

Do you agree that we should continue to use non-electronic methods for notices for alerting the public to consultation?

NRW welcomes that due consideration has been given to the Equalities Impact Assessment findings and supports the proposals especially to improve the consistency between regulations.

Question 9. Competence of experts.**Do you agree with our proposals?**

NRW is supportive of a better definition of the competence of experts or 'earned recognition'. Further guidance and clarification of relevant experience or relevant technical expertise is required especially if there may be differences between screening and assessment stages. What constitutes relevant experience or technical qualification must be clear to applicant, competent authority, statutory advisors and others who may be consulted including the public. Whilst the focus has to be on sound environmental protection there is potential to substantially increase applicant costs should projects require services to be bought in as part of evidence for a proposal to satisfy the definition where none would have been required previously. Customers have made us aware that for some qualifying applications this may act as a disincentive for new woodland creation especially where commercial return on investment is likely to be low.

Question 16. In relation to common land do you agree with the proposed changes?

In Wales, common land is not exempt from the EIA Agriculture Regulations. There may be an opportunity to treat common land in Wales the same across all the EIA Regulations by either:

- (a)** Exempting common land from the EIA Agriculture Regulations, in order to be consistent with other EIA Regulations in Wales and England. In this scenario, the applicant would need to be clear of his/her responsibility in applying for consent for any 'restricted works on common land (Section 38 Commons Act 2006). OR by
- (b)** Ensuring that common land projects are not exempt from any of the EIA Regulations.

Question 17 Welsh language.**Do you think that the policy approach proposed has implications for the Welsh language.**

We feel that the proposal would meet Welsh Government policy. NRW follows the Welsh Language Board policy on use of Welsh in the workplace.

Question 18. Impact Assessment.**Views and evidence of direct costs to business of the changed proposals to EIA regulations are welcome**

We have encouraged forest sector businesses to submit any relevant evidence on direct costs to businesses. Customers have advised that costs could be substantially increased by the decision to require more information at scoping including the need for greater collaboration with stakeholders at this stage. Whilst we are not aware that any additional costs arising from these proposals would breach the threshold for consideration we are concerned that any additional financial burdens can have a critical impact on small forest sector businesses and enterprise based primarily in rural locations. We are aware that additional financial burdens or delay in decision making can have a negative impact on potential investment for new woodland creation. For example see our submission under question 9 (use of competent experts).