

2021 No. 44

FORESTRY

**The Forestry and Land Management (Scotland) Act 2018
(Consequential, Saving and Transitional Provisions) Regulations
2021**

<i>Made</i> - - - -	<i>26th January 2021</i>
<i>Laid before the Scottish Parliament</i>	<i>28th January 2021</i>
<i>Coming into force</i> - -	<i>18th March 2021</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25(3), 77 and 85(2) and (7) of the Forestry and Land Management (Scotland) Act 2018(a), and all other powers enabling them to do so.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Forestry and Land Management (Scotland) Act 2018 (Consequential, Saving and Transitional Provisions) Regulations 2021 and come into force on 18 March 2021.

(2) In these Regulations, “the 2017 Regulations” means the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017(b).

PART 2

Consequential amendments to secondary legislation

Amendment to the Conservation (Natural Habitats, &c.) Regulations 1994

2.—(1) The Conservation (Natural Habitats, &c.) Regulations 1994(c) are amended as follows.

(2) In regulation 3(2) (duties relating to compliance with the Directives), for “the Forestry Act 1967” substitute “the Forestry and Land Management (Scotland) Act 2018”.

(a) 2018 asp 8.

(b) S.S.I. 2017/113, amended by S.S.I. 2019/130 and S.S.I. 2020/466.

(c) S.I. 1994/2716, relevantly amended by S.S.I. 2012/228.

- (3) In regulation 3A (duties in relation to wild bird habitat)—
- (a) in paragraph (2), omit “the Forestry Commissioners,”,
 - (b) in paragraph (4), for “sections 3, 7, 8A, 9, 10, 17A, 39, 40 and 46 of the Forestry Act 1967” substitute “the Forestry and Land Management (Scotland) Act 2018”.
- (4) In regulation 3B (review and guidance), in paragraph (3), omit “the Forestry Commissioners,”.

Amendment to the Nature Conservation (Designation of Relevant Regulatory Authorities) (Scotland) Order 2004

3.—(1) The Nature Conservation (Designation of Relevant Regulatory Authorities) (Scotland) Order 2004(a) is amended as follows.

(2) In the schedule (relevant regulatory authorities), omit “The Forestry Commissioners continued in existence by section 1(1) of the Forestry Act 1967”.

Amendment to the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005

4.—(1) The Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005(b) are amended as follows.

(2) In schedule 2 (general environmental requirements)—

- (a) in Part I (the standards of good farming practice including good animal husbandry), in paragraph 6, for—
 - (i) “authorisation” substitute “permission”,
 - (ii) “Forestry Commission” substitute “Scottish Ministers under section 27 of the Forestry and Land Management (Scotland) Act 2018”,
- (b) in Part II (environmental legislation), in paragraph 14 (forestry management), for “The Forestry Act 1967” substitute “The Forestry and Land Management (Scotland) Act 2018”.

Amendment to the Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010

5.—(1) The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010(c) are amended as follows.

(2) In regulation 4 (procedure and representations), in paragraph (1)(c), for “Forestry Commissioners” substitute “Scottish Ministers”.

(3) In regulation 6 (action after confirmation of a tree preservation order), in paragraph (2)(a), for “Forestry Commissioners” substitute “Scottish Ministers”.

(4) In regulation 7 (action where a tree preservation order is not confirmed), in paragraph (b)(i), for “Forestry Commissioners” substitute “Scottish Ministers”.

(5) In regulation 8 (trees in conservation areas), in paragraph (1)—

- (a) in sub-paragraph (a), for “a felling license granted by The Forestry Commissions under the Forestry Act 1967” substitute “a felling permission granted by the Scottish Ministers under the Forestry and Land Management (Scotland) Act 2018”,
- (b) omit sub-paragraph (e).

(a) S.S.I. 2004/474.
(b) S.S.I. 2005/225.
(c) S.S.I. 2010/434.

Amendment to the Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011

6.—(1) The Disclosure (Persons engaged in the Investigation and Reporting of Crime or Sudden Deaths) (Scotland) Regulations 2011(a) are amended as follows.

(2) In the schedule, under the heading “Ministers”, omit “Forestry Commission (Scotland)”.

Amendment to the Water Environment (Relevant Enactments and Designation of Responsible Authorities and Functions) (Scotland) Order 2011

7.—(1) The Water Environment (Relevant Enactments and Designation of Responsible Authorities and Functions) (Scotland) Order 2011(b) is amended as follows.

(2) In schedule 1, at the end, insert “The Forestry and Land Management (Scotland) Act 2018”.

(3) In schedule 2, in the table, omit the row relating to the Forestry Commissioners.

Amendment to the Flood Risk Management (Designated Responsible Authorities) (Scotland) Order 2013

8.—(1) The Flood Risk Management (Designated Responsible Authorities) (Scotland) Order 2013(c) is amended as follows.

(2) In article 2 (designated responsible authorities), omit paragraph (b).

Amendment to the Plant Health (Forestry) (Phytophthora ramorum Management Zone) (Scotland) Order 2014

9.—(1) The Plant Health Forestry (Phytophthora ramorum Management Zone) (Scotland) Order 2014(d) is amended as follows.

(2) For “Commissioners”, in each place it occurs in the Order, substitute “Scottish Ministers”.

(3) In article 2(1) (interpretation), omit the definition of “Commissioners”.

(4) In schedule 2 (management zone), in Part 1—

(a) in entry 6, for “the Forestry Commission owned land”, substitute “the land owned by Scottish Ministers”,

(b) in entry 8, for “Forestry Commission”, in each place it occurs, substitute “Scottish Ministers”.

Amendment to the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017

10.—(1) The 2017 Regulations are amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “applicant” substitute—

““applicant” means a person applying for EIA consent under regulation 6(1) and includes, for the purposes of screening opinions, scoping opinions, and regulation 17, a prospective applicant.”,

(b) in the definition of “application website”, for “Commissioners” substitute “Scottish Ministers”,

(c) omit the definition of “the Commissioners”,

(a) S.S.I. 2011/146.

(b) S.S.I. 2011/368, relevantly amended by S.S.I. 2015/323 and S.S.I. 2016/19.

(c) S.S.I. 2013/314.

(d) S.S.I. 2014/122.

- (d) in the definition of “EIA consent”, omit “or, as the case may be under regulations 30(5)(a) or (b)”,
 - (e) in the definition of “register”—
 - (i) for “Commissioners” substitute “Scottish Ministers”,
 - (ii) omit paragraphs (c), (e) and (g),
 - (f) omit the definition of “scoping direction”,
 - (g) in the definition of “scoping opinion”, for “Commissioners” substitute “Scottish Ministers”,
 - (h) omit the definition of “screening direction”,
 - (i) in the definition of “screening opinion”, for “Commissioners” substitute “Scottish Ministers”.
- (3) In regulation 3 (prohibitions relating to EIA forestry projects), in paragraph (2), for “Commissioners” substitute “Scottish Ministers”.
- (4) In regulation 5 (environmental impact assessment), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (5) In regulation 6 (application for EIA consent)—
- (a) in paragraph (1), for “Commissioners” substitute “Scottish Ministers”,
 - (b) in paragraph (4) omit—
 - (i) “or a scoping direction is made”,
 - (ii) “or scoping direction”,
 - (c) in paragraph (7), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (6) In regulation 7 (determination of applications for EIA consent), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (7) In regulation 8 (EIA forestry project)—
- (a) in paragraph (1), omit “and to paragraph 4(11) of schedule 4”,
 - (b) in paragraph (2)—
 - (i) in sub-paragraphs (a) and (b), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (ii) in sub-paragraph (b) at the end insert “ or”,
 - (iii) omit sub-paragraph (c),
 - (iv) in sub-paragraph (d), for “(a), (b) or (c)” substitute “(a) or (b)”.
- (8) In regulation 9 (exemptions), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (9) In regulation 11 (general provisions relating to screening)—
- (a) in paragraph (1)—
 - (i) omit “the Commissioners, or as the case may be,”,
 - (ii) in sub-paragraph (b), omit “or 14(1)(a)”,
 - (b) in paragraph (2) for “Commissioners must adopt their opinion or, as the case may be, the Scottish Ministers must make their direction” substitute “Scottish Ministers must adopt their opinion”,
 - (c) in paragraph (3)—
 - (i) for “Commissioners adopt a screening opinion or the Scottish Ministers make a screening direction” substitute “Scottish Ministers adopt a screening opinion”,
 - (ii) in sub-paragraph (a), omit “or screening direction”,
 - (iii) in sub-paragraph (b), omit “or the screening direction”,

- (d) in paragraph (4), for “Commissioners” substitute “Scottish Ministers”,
 - (e) omit paragraphs (5), (6) and (7),
 - (f) in paragraph (8), omit “the Commissioners or, as the case may be,”.
- (10) In regulation 12 (requests for screening opinion of the Commissioners)—
- (a) for the cross-heading, substitute—

“Requests for screening opinions”,

- (b) in paragraph (1), for “Commissioners” substitute “Scottish Ministers”.
- (11) In regulation 13 (screening opinions – time period for decision)—
- (a) in paragraph (1)—
 - (i) for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (ii) omit “, unless a screening direction is made by the Scottish Ministers,”,
 - (b) in paragraphs (2), (4), and (7), for “Commissioners” in each place it occurs substitute “Scottish Ministers”,
 - (c) in paragraph (3)—
 - (i) for “Commissioners”, substitute “Scottish Ministers”,
 - (ii) for “the Commissioners”, substitute “they”,
 - (d) omit paragraphs (5) and (6).
- (12) Omit regulation 14 (requests for screening directions by the Scottish Ministers).
- (13) In regulation 15 (requests for scoping opinions of the Commissioners)—
- (a) for the cross-heading, substitute—

“Requests for scoping opinions”,

- (b) for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (c) omit paragraphs (8) and (9),
 - (d) in paragraph (11), for “neither they nor the Scottish Ministers are” substitute “they are not”.
- (14) Omit regulation 16 (requests for scoping directions by the Scottish Ministers).
- (15) In regulation 17 (procedure to facilitate preparation of EIA reports)—
- (a) in paragraphs (1), (3), (5), (6) and (7) for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (b) in paragraph (4)—
 - (i) omit “the Commissioners and”,
 - (ii) omit “the Commissioners or” in each place it occurs,
 - (iii) for “have in their” substitute “has in its”.
- (16) In regulation 18 (publication of EIA report), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (17) In regulation 19 (consultation where EIA report received by the Commissioners)—
- (a) in the cross-heading, omit “by the Commissioners”,
 - (b) in paragraphs (1) and (2), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (18) In regulation 21 (additional information and evidence relating to EIA reports)—
- (a) for paragraph (1) substitute—
 - “(1) This regulation applies where the Scottish Ministers are dealing with an EIA application.”,

- (b) in paragraph (2), omit “the Commissioners or, as the case may be,” in both places it occurs,
 - (c) for paragraph (3), substitute—
 - “(3) The applicant must provide supplementary information within such reasonable period as the Scottish Ministers may specify and if the applicant does not provide the supplementary information within such a period the Scottish Ministers may treat the EIA application as withdrawn.”,
 - (d) in paragraph (4), omit “Commissioners or, as the case may be, the”.
- (19) In regulation 22 (publication of additional information), omit “the Commissioners or, as the case may be,”.
- (20) In regulation 23 (availability of opinions, directions etc. for inspection)—
- (a) for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (b) omit paragraphs (2)(b), (e) and (g).
- (21) In regulation 24 (decision notice), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”.
- (22) In regulation 25 (monitoring measures)—
- (a) in paragraph (1)—
 - (i) for “Commissioners”, where it first occurs, substitute “Scottish Ministers”,
 - (ii) for “Commissioners or the Scottish Ministers, as the case may be,” substitute “Scottish Ministers”,
 - (b) in paragraphs (2) and (4), for “Commissioners”, in both places it occurs, substitute “Scottish Ministers”,
 - (c) in paragraph (3), omit “the Commissioners or”.
- (23) In regulation 26 (duties to inform the applicant and public of final decisions)—
- (a) in paragraph (1), for “Commissioners”, in each place it occurs, substitute “Scottish Ministers”,
 - (b) omit paragraph (2).
- (24) In Part 9, in the title, omit “APPEALS AND”.
- (25) Omit regulation 30 (appeals against the decision of the Commissioners).
- (26) In regulation 31 (application to the Court of Session by person aggrieved), in paragraph (1)(a), omit “the Commissioners or, as the case may be,”.
- (27) In regulation 32 (Electronic communications – general), in paragraph (1)(b), omit “, directions”.
- (28) In regulation 34 (withdrawal of consent to use of electronic communications), in—
- (a) paragraph (a), omit “to the Commissioners or, as the case may be,”,
 - (b) paragraph (b), omit “with the Commissioners or, as the case may be,”.
- (29) In regulation 35 (service of notices etc.), in paragraph (1), omit “by the Commissioners or, as the case may be,”.
- (30) In regulation 36 (competent authority – avoidance of conflict of interest)—
- (a) in paragraph (1), omit “Commissioners or, as the case may be, the”,
 - (b) in paragraph (2), for “Commissioners”, in both places it occurs, substitute “Scottish Ministers”,
 - (c) omit paragraph (3).
- (31) In regulation 37 (co-ordination of assessments), in paragraph (1), for “Commissioners (or the Scottish Ministers, as the case may be)” substitute “Scottish Ministers”.
- (32) In regulation 38 (offence – false or misleading statements), in paragraph (4), omit “the Commissioners,”.

(33) In regulation 39 (offences – non-compliance with enforcement notices), in paragraph (6), omit “the Commissioners,”.

(34) In regulation 41 (revocation and savings), after paragraph (3) insert—

“(4) Where paragraph (2) applies, the 1999 Regulations are to be read, where appropriate, as if references to “the Forestry Commissioners” or “the Commissioners” were references to “the Scottish Ministers”.

(5) For the purpose of this regulation, “the Commissioners” means the Forestry Commissioners constituted under the Forestry Acts 1919 to 1945 and continued in existence by section 1 of the Forestry Act 1967(a).”.

(35) In schedule 1 (thresholds for the identification of projects likely to have significant effects on the environment), in paragraph 6 (exceptional circumstances in relation to forestry projects near to or adjoining other projects)—

(a) in sub-paragraph (1), for “Commissioners (or as the case may be, by the Scottish Ministers)” substitute “Scottish Ministers”,

(b) in sub-paragraph (1)(a), omit “the Commissioners or, as the case may be,”,

(c) in sub-paragraph (2)(b), omit “by the Commissioners or, as the case may be,”.

(36) In schedule 4 (enforcement powers)—

(a) in paragraph 1 (interpretation of schedule 4), in the definition of “authorised person”, for “Commissioners” substitute “Scottish Ministers”,

(b) in paragraph 2 (powers of entry), in sub-paragraphs (1) and (3)(b), for “Commissioners” substitute “Scottish Ministers”,

(c) in paragraph 3 (enforcement notices)—

(i) for “Commissioners” in each place it occurs substitute “Scottish Ministers”,

(ii) omit sub-paragraph (4),

(iii) in sub-paragraph (5) omit “(in addition to the requirements of sub-paragraph (4)),”,

(d) omit paragraph 4 (appeals against enforcement notices).

PART 3

Other amendments to secondary legislation

Amendment to the Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019

11.—(1) The Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019(b) are amended as follows.

(2) In regulation 19 (saving: acquisition of land by agreement commenced before appointed day)—

(a) in paragraph (2)(a), for “section 39(a) of the 1967 Act” substitute “section 39 of the 1967 Act(c)”,

(b) in paragraph (3), for “schedule 4(b) of the 1967 Act” substitute “schedule 4 of the 1967 Act(d)”.

(a) 1967 c.10.

(b) S.S.I. 2019/47.

(c) Section 39 was amended by S.I. 1999/1747 and S.I. 2013/755. Section 39(5) was repealed subject to savings specified in section 14(3) of the Requirements of Writing (Scotland) Act 1995, (c.7), schedule 5, paragraph 1.

(d) Paragraph 2 of schedule 4 was amended by S.I. 1999/1747.

(3) In regulation 20 (saving: compulsory purchase proceedings commenced before the appointed day)—

- (a) in paragraph (2)(a), for “sections 39 and 40(c) of the 1967 Act” substitute “sections 39 and 40 of the 1967 Act(a)”,
- (b) in paragraph (3), for “schedule 5(d) of the 1967 Act” substitute “schedule 5 of the 1967 Act(b)”.

Amendment to the Felling (Scotland) Regulations 2019

12.—(1) The Felling (Scotland) Regulations 2019(c) are amended as follows.

(2) In regulation 4 (felling applications: additional information and powers of entry)—

- (a) for paragraphs 1(b) and (c) substitute—
 - “(b) consult such persons and make such other inquiries as they may consider necessary or relevant for the purposes of making a decision on an application for felling permission.”,
- (b) for paragraphs 2(b) and (c) substitute—
 - “(b) take onto the felling area such other persons or such equipment as they consider necessary for the purposes of making a decision on an application for felling permission.”.

PART 4

Saving and transitional provisions

Saving Provision - The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017

13.—(1) The amendments made by these Regulations, insofar as they relate to appeals under regulation 30 and paragraph 4 of schedule 4 of the 2017 Regulations, do not apply in relation to—

- (a) an application for EIA consent made in accordance with the 2017 Regulations prior to 18 March 2021, or
- (b) an enforcement notice served under the 2017 Regulations prior to 18 March 2021.

(2) Where paragraph (1) applies, the provisions referred to in paragraph (3) continue to have effect as regards such appeals subject to the modifications in paragraph (3).

(3) The modifications are—

- (a) regulation 30 of the 2017 Regulations is to be read as if—
 - (i) in the heading, the reference to “Commissioners” were a reference to “Scottish Ministers”,
 - (ii) in paragraph (1)—
 - (aa) “appeal to the Scottish Ministers” were substituted with “make an appeal”,
 - (bb) the reference to “Commissioners” were a reference to “Scottish Ministers”,
 - (iii) paragraph (4) were omitted,

(a) Section 40 was amended by the Local Government etc. (Scotland) Act 1994 (c.39), schedule 13, paragraph 69, the Postal Services Act 2011 (c.5), schedule 12(3), paragraph 86, S.I. 1999/1747, S.I. 2001/1149, and S.I. 2013/755.
(b) Schedule 5 was amended by the Title Conditions (Scotland) Act 2003 (asp 9), section 110 and S.I. 1999/1747.
(c) S.S.I. 2019/49.

- (iv) for paragraph (5) there were substituted—
 - “(5) Following consideration of the material provided under paragraph (3), the Scottish Ministers may—
 - (a) determine the appeal by upholding it, or
 - (b) refer the appeal to be determined by a person appointed by them for that purpose.”,
 - (v) in paragraph (6), “(4)” were substituted with “(3)”,
 - (vi) in paragraph (7), after “the Scottish Ministers” there were inserted “or the appointed person (as the case may be)”,
 - (vii) in paragraph (8)—
 - (aa) “; and” were omitted,
 - (bb) sub-paragraph (b) were omitted,
 - (viii) after regulation 30, there were inserted—

“Appeals determined by an appointed person

- 30A.**—(1) Where the Scottish Ministers refer an appeal for determination under regulation 30(5), they must send to the appointed person—
- (a) all material provided to them by the applicant under regulation 30(3),
 - (b) a copy of any other material that was before them when they made the decision which is the subject of the appeal,
 - (c) a note of response to the appeal, setting out all submissions and matters that they consider should be taken into account in determining the appeal, and
 - (d) any other documents, materials and evidence that they consider should be taken into account in determining the appeal.
- (2) The Scottish Ministers must, at the same time as sending the material referred to in paragraph (1) to the appointed person—
- (a) notify the applicant that they have referred the appeal to the appointed person, and
 - (b) send a copy of the material referred to in paragraph 1(b) to (d) to the applicant.
- (3) The appointed person must not determine the appeal without first giving the applicant the opportunity to consider and respond to the material provided to the applicant by the Scottish Ministers under paragraph 2(b).
- (4) In determining the appeal the appointed person may decide to—
- (a) uphold the appeal and refer the matter back to the Scottish Ministers for reconsideration and a new decision, or
 - (b) refuse the appeal.
- (5) A decision made under paragraph (4)(b) is not subject to a right of appeal under these Regulations.”,
- (b) paragraph 4 of schedule 4 of the 2017 Regulations is to be read as if—
- (i) sub-paragraph (4) were omitted,
 - (ii) in sub-paragraph (5), “under sub-paragraph (4)” were omitted,
 - (iii) for sub-paragraph (6), there were substituted—
 - “(6) Subject to sub-paragraph (9), following consideration of the material provided under sub-paragraph (3), the Scottish Ministers may—
 - (a) determine the appeal by upholding it, or
 - (b) refer the appeal to be determined by a person appointed by them for that purpose.”,
 - (iv) in sub-paragraph (7), after “the Scottish Ministers” there were inserted “or the appointed person (as the case may be)”,

- (v) in sub-paragraph (8)—
 - (aa) in head (a), “; and” were omitted,
 - (bb) head (b) were omitted,
- (vi) after paragraph 4, there were inserted—

“Appeals against enforcement notices determined by an appointed person

5.—(1) Where the Scottish Ministers refer an appeal for determination under paragraph 4(6), they must send to the appointed person—

- (a) all material provided to them by the applicant under paragraph 4(3),
- (b) a copy of any other material that was before them when they made the decision to issue the enforcement notice which is the subject of the appeal,
- (c) a note of response to the appeal, setting out all submissions and matters that they consider should be taken into account in determining the appeal, and
- (d) any other documents, materials and evidence that they consider should be taken into account in determining the appeal.

(2) The Scottish Ministers must, at the same time as sending the material referred to in sub-paragraph (1) to the appointed person—

- (a) notify the applicant that they have referred the appeal to the appointed person, and
- (b) send a copy of the material referred to in sub-paragraph (1)(b) to (d) to the applicant.

(3) The appointed person must not determine the appeal without first giving the applicant the opportunity to consider and respond to the material provided to the applicant by the Scottish Ministers under paragraph (2)(b).

(4) In determining the appeal the appointed person may decide to—

- (a) uphold the appeal and refer the matter back to the Scottish Ministers for reconsideration and a new decision, or
- (b) refuse the appeal.

(5) A decision made under sub-paragraph (4)(b) is not subject to a right of appeal under these Regulations.”.

Transitional Provision- Requests for screening opinions and directions under the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 made prior to 18 March 2021

14. A request to the Forestry Commissioners for a screening opinion under regulation 12 of the 2017 Regulations made prior to 18 March 2021 which remains outstanding on that date is to be treated as if it were a request for a screening opinion made to the Scottish Ministers under regulation 12 of the 2017 Regulations, as that provision is amended by these Regulations.

15. A request to the Scottish Ministers for a screening direction under regulation 14 of the 2017 Regulations made prior to 18 March 2021 which remains outstanding on that date is to be treated as if it were a request for a screening opinion under regulation 12 of the 2017 Regulations, as that provision is amended by these Regulations.

Transitional Provision - Requests for scoping opinions and directions under the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 made prior to 18 March 2021

16. A request to the Forestry Commissioners for a scoping opinion under regulation 15 of the 2017 Regulations made prior to 18 March 2021 which remains outstanding on that date is to be treated as if it were a request for a scoping opinion made to the Scottish Ministers under regulation 15 of the 2017 Regulations, as that provision is amended by these Regulations.

17. A request to the Scottish Ministers for a scoping direction under regulation 16 of the 2017 Regulations made prior to 18 March 2021 which remains outstanding after that date is to be treated as if it were a request for a scoping opinion under regulation 15 of the 2017 Regulations, as that provision is amended by these Regulations.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
26th January 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by sections 25(3), 77 and 85(2) and (7) of the Forestry and Land Management (Scotland) Act 2018 (“the 2018 Act”). The 2018 Act confers a range of functions on the Scottish Ministers in relation to forestry and the management of forested land and other land in Scotland. Section 81 of the 2018 Act also provides that the functions of the Forestry Commissioners which were exercisable immediately before 1 April 2019, will no longer be exercisable in or as regards Scotland after that date.

These Regulations make amendments to secondary legislation relating to forestry and the management of forested and other land in Scotland. The amendments primarily make consequential amendments as a result of the transfer of functions from the Forestry Commissioners to the Scottish Ministers.

Regulations 2 to 9 make minor consequential amendments to various pieces of secondary legislation, updating, for example, references to “Forestry Commissioners” to reflect the transfer of forestry functions to the Scottish Ministers.

Regulation 10 amends the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 (“the 2017 Regulations”). Consequential changes are made throughout, updating what are now out of date references to “the Forestry Commissioners” and processes which are no longer relevant as a consequence of the transfer of functions to the Scottish Ministers by virtue of section 81 of the 2018 Act. The consequential amendments bring the Forestry EIA regime into line with other Scottish EIA regimes as set out in, for example, the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017.

Regulations 11 and 12 correct minor and technical errors in the Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019 and the Felling (Scotland) Regulations 2019.

Regulation 13 preserves the provisions of the 2017 Regulations, subject to relevant modifications, which allow for appeals to be made against certain decisions relating to EIA consent and enforcement notices. The amendments made to the 2017 Regulations, insofar as they relate to appeals under regulation 30 or paragraph 4 of schedule 4 of those Regulations, do not apply in relation to an application for EIA consent made, or an enforcement notice served, prior to the coming into force of these Regulations.

Regulations 14 to 17 make transitional provision as regards requests for screening opinions, screening directions, scoping opinions and scoping directions made prior to 18 March 2021. The effect is that such requests are to be treated as if they were requests made under the relevant provisions of the 2017 Regulations as those provisions are amended by these Regulations.

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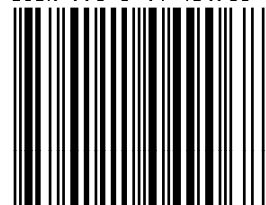
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