



Rialtas na hÉireann
Government of Ireland

Screening for Appropriate Assessment

Proposed draft Planning and Development (Amendment) (No. X) Regulations 2022 relating to the continued exemption, in accordance with section 4(4A) of the Planning and Development Act, of the replacement of broadleaf high forest by conifer species in areas less than 10 hectares.

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1. Introduction

This determination on Screening for Appropriate Assessment (AA) has been made by the Ecological Assessment Unit (EAU) of the Department of Housing, Local Government and Heritage (DHLGH) in accordance with Regulation 42A(8) of the European Communities (Birds and Natural Habitats) Regulations 2011-2021 (‘the 2011 Regulations’).¹

On 4th July 2022, in accordance with the requirements of Regulation 42A(3) of the 2011 Regulations, the Minister for Housing, Local Government and Heritage (‘the Minister’) furnished the EAU with the proposed draft Planning and Development (Amendment) (No. X) Regulations 2022 relating to the continued exemption, in accordance with section 4(4A) of the Planning and Development Act, of the replacement of broadleaf high forest (forest composed of more than 80% canopy cover of broadleaved trees) by conifer species in areas less than 10 hectares. Hereafter referred to the “proposed draft regulations” - see Appendix A to this determination.

The EAU have evaluated and analysed the information contained in the documents referred to above and carried out a Screening for AA of the proposed draft regulations, in view of best scientific knowledge and in view of the conservation objectives of the European sites.

¹ As inserted by Regulation 7 of the European Union (Birds and Natural Habitats) (Amendment).

2. Background

Pursuant to Regulation 42A(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), a Screening for AA is required to be carried out on the proposed draft regulations. AA is a process required under Article 6(3) of the EU Habitats Directive. Article 6(3) is transposed in Ireland by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), as amended, and by Part XAB of the Planning and Development Act, 2000, as amended.

All plans and projects which are not directly connected with or necessary to the management of a European Site, but which either individually or in combination with other plans or projects, are likely to have a significant effect on a “European Site”, require an AA of these effects to determine if they will adversely affect the integrity of the site(s). The proposed draft regulations are considered to fall under the requirements of AA as applied to all plans and projects.

The Screening for AA process scrutinises the plan or project to determine if there is potential for likely significant effects either individually or in combination with other plans or projects, on a European Site. European Sites are part of the Natura 2000 network and include those designated as Special Areas of Conservation (SAC), Candidate SACs (cSACs) or Special Protection Areas (SPA). This Screening for AA Report describes the outcome of this analysis in respect of the proposed draft regulations.

3. Legislation and Guidance

This section provides details on the adopted methodology with sources of guidance and information gathered to inform the preparation of the report.

3.1. Guidance and Data Sources

- AA of Plans and Projects in Ireland - Guidance for Planning Authorities (Department of Environment, Heritage and Local Government, 2010 revision);
- AA under Article 6 of the Habitats Directive; Guidance for Planning Authorities. Circular NPW 1/10 and PSSP 2/10;
- Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites: Methodical Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission Environment Directorate-General, 2021);
- Communication from the Commission on the precautionary principle. European Commission (2000);
- Guidance Document on Article 6(4) of the Habitats Directive 92/43/EEC (European Commission, 2007);
- Guidelines for Good Practice AA of Plans under Article 6(3) Habitats Directive (International Workshop on Assessment of Plans under the Habitats Directive, 2011);
- Managing Natura 2000 Sites: The Provision of Article 6 of the Habitats Directive 92/43/EEC (European Commission Environment Directorate-General, 2018); [hereafter referred to as MN 2018]; and
- Office of the Planning Regulator Practice Note PN01 - AA Screening for Development Management (OPR, 2021).

3.2. Assessment Methodology

This report is based on review of desktop data. Sources of information utilised for this report and accessed during November 2022 include the following:

- National Parks & Wildlife Service (NPWS) Designations Viewer²; and,
- National Biodiversity Data Centre (NBDC) Maps³.

3.3. Legislative Background

According to the EU Habitats Directive (92/43/EEC) and the EU Birds Directive (79/409/EEC), Member States are required to establish a Natura 2000 network of sites of highest biodiversity importance for rare and threatened habitats and species across the EU.

In Ireland, the Natura 2000 network of European sites comprises SACs, candidate SACs and SPAs.

SACs are selected for the conservation of Annex I habitats (including priority types which are at risk of extinction in the Member State) and Annex II species (other than birds). SPAs are selected for the conservation of Annex I bird species and all migratory birds and their habitats. The Annex habitats and species, for which each site is selected, are the Qualifying Interests (QI) for SACs and Special Conservation Interests (SCI) for SPAs of each site. Site Specific Conservation Objectives (SSCOs) for each site are defined for these QI and SCI.

A key requirement of the Habitats Directive is that the effects of any plan or project, which is not directly connected with or necessary to the management of a European Site, but which alone, or in combination with, other plans or projects, are likely to have a significant effect on a European Site, should be assessed before any decision is made to allow that a plan or project can proceed. The obligation to undertake a Screening for AA, and if necessary, an AA, derives from Article 6(3) of the Habitats Directive and both involve a number of steps and tests that need to be applied in sequential order.

Article 6(3) is concerned with the strict protection of sites, while Article 6(4) is the procedure for allowing derogation from this strict protection in certain restricted circumstances.

² National Parks & Wildlife Service Designation Viewer. Accessed at ArcGIS Web Application 17/11/2022

³ National Biodiversity Data Centre Maps. Accessed at Maps - Biodiversity Maps (biodiversityireland.ie) 17/11/2022

Article 6(3) of the Habitats Directive states:

“Any plan or project not directly connected with, or necessary to, the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans and projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only having ascertained that it will not adversely affect the integrity of the site concerned and if appropriate, after having obtained the opinion of the general public”.

Article 6(4) states:

“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”

The competent authority is required to carry out a Screening for AA, and if necessary, an AA as required by Article 6(3) of the Habitats Directive. If the competent authority determines that the plan or project will adversely affect the integrity of a European site, it may only authorise that plan or project by following the Article 6(4) procedure.

The Article 6(3) and 6(4) procedures are outlined as follows:

Stage 1 - Screening for Appropriate Assessment – to assess, in view of best scientific knowledge, if the plan or project, individually or in combination with another plan or project is likely to have a significant effect on the Natura 2000 site.

Stage 2 - Appropriate Assessment – This is required if it cannot be excluded, on the basis of objective information, that the plan or project, individually or in combination with other plans or projects, will have a significant effect on a Natura 2000 site. The AA must include a final determination by the competent authority as to whether or not a proposed plan or project would adversely affect the integrity of a Natura 2000 site. In order to reach a final determination, the competent authority must undertake examination, analysis and evaluation, followed by findings, conclusions and a final determination. The appropriate assessment must contain complete, precise and definitive findings and conclusions, and may not have lacunae or gaps.

Stage 3 – Assessment of alternative solutions - the process which examines alternative ways of achieving the objectives of the plan or project that avoid adverse impacts on the integrity of the Natura 2000 site.

Stage 4 - Assessment where no alternative solutions exist and where adverse impacts remain - an assessment of compensatory measures where, in the light of an assessment of imperative reasons of overriding public interest (IROPI), it is deemed that the plan or project should proceed.

Under Regulation 42A(1) of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), the Ecological Assessment Unit is the competent authority in relation to Screening for AA of plans and projects (such as the proposed draft regulations) which the Minister proposes to undertake or adopt.

Overview and Purpose of proposed draft regulations

The subject of this Screening for AA is the proposed draft Planning and Development (Amendment) (No. X) Regulations 2022 (relating to the continued exemption, in accordance with section 4(4A) of the Planning and Development Act, of the replacement of broadleaf high forest by conifer species in areas less than 10 hectares where an environmental impact assessment and/or an appropriate assessment is required, in cases where the development is licenced or approved by the Minister for Agriculture, Food and the Marine).

The proposed draft regulations require the insertion of new Article 8H into the Regulations:

The following Article is to be inserted after Article 8G:

“8H. In areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of the replacement of broadleaf high forest by conifer species in areas less than 10 hectares shall be exempted development for the purposes of the Act.”

4. Overview

Under the Planning and Development Act 2000, all development, unless specifically exempted under the 2000 Act or the Planning and Development Regulations 2001 (the 2001 Regulations), requires planning permission. Section 4(1)(i) of the 2000 Act provides that development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species, is exempted development for the purposes of the 2000 Act.

An exemption at section 4 of the 2000 Act for thinning, felling or replanting of trees but specifically excluding the replacement of broadleaf high forest by conifer species from the scope of the exemption has been in place since the 2000 Act was enacted. However, since 21st September 2011, section 4(4) of the 2000 Act provides that development shall not be exempted development if an environmental impact assessment (EIA) or an AA of the development is required.

Notwithstanding this restriction on exempted development, section 4(4A) of the 2000 Act allows the Minister to make regulations prescribing development or any class of development that is authorised, or required to be authorised under another statute, and as respects which an EIA or an AA is required, to be exempted development.

In exercise of this power under section 4(4A) of the 2000 Act of the 2001 Regulations (mirroring the exemption at section 4(1)(i) of the 2000 Act) retains the exemption for development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of the thinning, felling or replanting of trees, forests or woodlands, or works ancillary thereto even where EIA and/or AA is required, on the basis that such environmental impact assessment will be carried out pursuant to the licencing processes under the Forestry Act 2014.

The purpose of the amendment to article 8F of the Planning and Development Regulations 2001, provided for in S.I. 45 of 2020 was to include a specific reference to licensing/approval provisions under section 6 of the Forestry Act 2014 (No. 31 of 2014).

Section 4(2) of the 2000 Act allows the Minister to exempt any class of development in certain circumstances by way of regulations. In this context, Article 6 of, and Schedule 2 to, the 2001 Regulations set out classes of development which are exempt from planning permission requirements and includes at Class 16, Part 3 of Schedule 2 “Replacement of broadleaf high forest by conifer species”, where the area involved is less than 10 hectares. This exemption was not affected by amendments made under S.I. 45 of 2020.

The Class 16 exemption is subject to general restrictions under Article 9 of the 2001 Regulations. Furthermore, Class 16 development loses its exempted development status and requires planning permission if an EIA or an AA is required in accordance with Section 4(4) of the 2000 Act.

With regard to EIA requirements, Article 93 and Schedule 5, Part 2 of the 2001 Regulations provide that replacement of broadleaf high forest by conifer species, where the area involved would be greater than 10 hectares must be subject to EIA, while development below that threshold may require EIA if it is considered that it would be likely to have significant effects on the environment.

Any replacement of broadleaf high forest by conifer species which would be likely to have significant effects on a European Site (a Special Area of Conservation (SAC) or a Special Protected Area (SPA), or candidate area, designated under the Habitats Directive) requires an AA and therefore planning permission.

Requirements for the granting of a licence under the Forestry Regulations is a matter for the Minister for Agriculture, Food and the Marine.

5. Purpose

The proposed draft regulations (made under Section 4(4A) of the Planning and Development Act) will insert a new Article (Article 8H) into the Planning and Development Regulations to re-exempt the replacement of broadleaf high forest by conifer species in areas less than 10 hectares.

The new Article 8H will provide that:

‘In areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of the replacement of broadleaf high forest by conifer species in areas less than 10 hectares shall be exempted development for the purposes of the Act.’

This will make it clear that the replacement of broadleaf high forest by conifer species is not exempt for areas above 10 hectares. The exemption only applies:

- to areas less than 10 hectares;
- to areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), and
- to development that is licenced or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014).

DAFM will act as the single consent authority for any project for the replacement of broadleaf high forest with conifer species less than 10 hectares in size in accordance with section 6 of the Forestry Act 2014, which provides for EIA and AA processes.

The Forestry Act, 2014 as amended, provides for the necessary environmental assessment obligations.

DAFM has advised that sections 11(d)(iv) and 11(e) of the Forestry Act 2014 require the Minister for Agriculture, Food and the Marine, before licensing or approving a project under section 6 of the Act, to consider whether the subject matter of the function being performed requires the carrying out of one or more of the following:

- A screening for an Environmental Impact Assessment;
- The submission of an Environmental Impact Assessment Report;
- An Environmental Impact Assessment;
- His or her functions under the Habitats Regulations, including –
 - a Screening for an Appropriate Assessment,
 - the submission of a Natura Impact Statement, and,
 - the carrying out of an Appropriate Assessment, within the meaning of those Regulations, and where there is such a requirement to ensure that it is carried out.

This will ensure that Screening for AA for development consisting of the replacement of broadleaf high forest with conifer species less than 10 hectares in size is continued, albeit, under a single rather than dual regime.

6. Identification of European Sites within the Potential Zone of Influence of proposed draft regulations

The process of Screening for AA focuses on any interaction between the Site Specific Conservation Objectives and the effects of implementing the proposed draft regulations.

The proposed draft regulations have a national scale of application but lack geographic specificity. The nature of the regulations is to exempt in areas other than a city, a town or other specified areas, the replacement of broadleaf high forest by conifer species under 10 hectares, even in cases where an EIA or AA is required.

Consent for such development will now fall solely under the remit of the forestry consent system under the Forestry Act 2014, as amended, which also incorporates the necessary environmental assessment obligations.

Since the proposed draft regulations lack geographic specificity and are limited in scale and detail, the discussion of the likelihood of any significant effects has been taken at a high-level.

Site Specific Conservation Objectives can be accessed on www.npws.ie and have been considered as part of the screening process but for the purposes of brevity these have not been reproduced.

Consideration of Potential Likely Significant Effects on Natura 2000 Sites

[Guidance from Ireland](#) and the [European Commission](#) has suggested that the following criteria relating to the nature of the proposal may be used in helping to determine if a proposal is likely to have significant effects. These include:

- size and scale;
- disturbance;
- land-take;
- distance from the Natura 2000 site or key features of the site;
- resource requirements (water abstraction etc.);
- emissions (disposal to land, water or air);
- excavation requirements; (potential loss of area);
- transportation requirements;
- duration of construction, operation, decommissioning, etc.;
- other.

Irish guidance (DEHLG, 2010) gives examples of effects that are likely to be significant include the following:

- any impact on an Annex I habitat;
- causing reduction in the area of the habitat or Natura 2000 site;
- causing direct or indirect damage to the physical quality of the environment (e.g., water quality and supply, soil compaction) in the Natura 2000 site;
- causing serious or ongoing disturbance to species or habitats for which the Natura 2000 site is selected (e.g., increased noise, illumination and human activity); causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site;
- causing direct or indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site; and,
- interfering with mitigation measures put in place for other plans or projects.

These criteria are particularly suited to screening individual projects, as detail on the receiving environment will be available for analyses.

However, in the current case of the proposed draft regulations, it is not possible to predict if such impacts will occur due to the lack of geographic specificity about the locations and nature of the development types that are referred to.

7. Consideration of In-Combination Effects

Article 6(3) of the Habitats Directive requires that in-combination effects with other plans or projects are also considered. As set out in the Commission's 2018 Notice (EC, 2019), significance will vary depending on factors such as magnitude of impact, type, extent, duration, intensity, timing, probability, cumulative effects and the vulnerability of the habitats and species concerned. The significance of any identified combined effects of the proposed draft Regulations and other past, present or reasonably foreseeable future plans or projects must be evaluated.

In that context, plans or projects which are completed, approved but uncompleted, or proposed have been considered. EC (2019) specifically advises that "as regards other proposed plans or projects, on grounds of legal certainty it would seem appropriate to restrict the in-combination provision to those which have been actually proposed, i.e. for which an application for approval or consent has been introduced".

There are considered many reasons why the proposed draft Planning and Development (Amendment) (No. X) Regulations 2022 would not be likely to have a significant effect on a European site. In this case these include:

- a) Effects on any particular European site cannot be identified, because the proposed draft regulations are too general, for example, it is not possible to identify where, when or how the proposed draft regulations may be implemented, or where effects may occur, or which sites, if any, may be affected.
- b) The proposed draft regulations could have no conceivable effect on a European site, because there is no geographic or specific link or pathway between the implementation of the regulations and any QIs or SCIs, and therefore would not otherwise undermine the Site Specific Conservation Objectives for any site(s);
- c) A useful 'test' as to whether a plan or project should be screened out at this stage is to ask the question: "Is the project provided for / proposed or assessed as part of another plan or programme, by another competent authority, and would it be likely to proceed under the other plan or programme irrespective of whether this plan is adopted?" If the answer is "yes", it will normally be appropriate to screen the plan or project out at this stage. In this case the proposed draft regulations devolve consent for such development solely to the remit of the forestry consent system under the Forestry Act 2014, as amended, which also incorporates the necessary environmental assessment obligations.

8. Conclusions

Following an analysis of the current version of the proposed draft regulations, including in particular, the nature of the changes that could occur and their potential relationship with European sites, as well as considering other plans and projects, and applying the precautionary principle, it is the EAU's view that there is no possibility that the proposed draft regulations would be likely to have any significant effects on any European sites.

The principal reasons for this conclusion include:

- It is not possible to predict if such impacts will occur due to the lack of geographic specificity about the locations; and,
- As the competent licensing authority, the Department of Agriculture, Food and the Marine in accordance with the Forestry Act 2014 will assess/screen for AA any individual applications exempted under these Regulations.

The EAU therefore determines⁴, in accordance with Regulation 42A(8) of the 2011 Regulations, that an Appropriate Assessment of the proposed draft regulations is not required because it can be excluded, on the basis of objective scientific information following a Screening for AA, that the proposed draft regulations individually or in combination with other plans or projects will have a significant effect on a European site or sites.

⁴ Ryan Wilson-Parr (Head of Ecological Assessment, Department of Housing, Local Government and Heritage) 8th November 2022

Appendices

A:

Proposed draft Planning and Development (Amendment) (No. X)
Regulations 2022

npws.ie

