

STRATEGIC ENVIRONMENTAL ASSESSMENT SCREENING REPORT

Proposed Planning and Development (Amendment) 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.)

To inform a determination under Article 9 of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations, 2004 (S.I. 435 of 2004), as amended.

21 September 2022

**European Union and International Planning Regulation Unit
Department of Housing, Local Government and Heritage
An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta**

1.0 Introduction

Strategic Environmental Assessment (SEA), in accordance with the European Union SEA Directive (2001/42/EC), is a process for evaluating, at the earliest appropriate stage, the environmental quality and consequences of plan or programme initiatives by statutory bodies. The purpose is to ensure that the environmental consequences of plans and programmes are assessed during their preparation and prior to adoption. The SEA process also gives interested parties an opportunity to comment on the environmental impacts of the proposed plan or programme and to be kept informed during the decision making process.

This report considers the proposed insertion of Article 8H) into the Planning and Development Regulations 2001, as amended, in the context of the potential requirement to carry out a full SEA and therefore considers whether the proposed legislation, would or would not be likely to have significant effects on the environment (please refer to the enclosed proposed legislation dated June 2022). The competent authority (in this case, the Minister for Housing, Local Government and Heritage (“MHLGH”) proposes to approve new legislation and, in so doing, the competent authority must decide whether the proposed legislation would or would not be likely to have significant effects on the environment and that, in so doing, the competent authority will take account of relevant criteria set out in Schedule 1 of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations, 2004 (S.I. 435 of 2004), as amended. The analysis of the proposed legislation in the context of the criteria in Schedule 1 of S.I. 435 of 2004 is presented in Section 4 of this Report.

This Report, as well as submissions/ observations from the environmental authorities, will be taken into consideration before finalisation of the SEA screening process and the publication of an SEA determination by the Minister, pursuant to S.I. 435 of 2004, as amended.

2.0 Overview and purpose of the proposed Planning and Development (Amendment) Regulations 2022 (providing for 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.)

Currently, Class 16 in Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended, with reference to Article 6(3) of the same Regulations, provides 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), the replacement of broadleaf high forest by coniferous species under 10 hectares is exempt development.

This exemption is lost, under Section 4(4) of the Planning and Development Act, if an environmental impact or an appropriate assessment of the development is required. This ensures that any proposed development requiring Environmental Impact Assessment (EIA) or Appropriate Assessment (AA) is subject to independent scrutiny. Section 4(4A) of the Planning and Development Act, allows the Minister to effectively 're-exempt' a class of development that requires EIA or AA, if that class of development is subject to EIA or AA pursuant to a different (i.e. non-planning) consent system, which also carries out EIA or AA.

Currently, there is a dual consent system in place for the replacement of broadleaf high forest by coniferous species (in areas less than 10 hectares) where an environmental impact assessment and/or an appropriate assessment may be required. The development requires both planning permission and a licence from the Department of Agriculture, Food and the Marine (DAFM).

DAFM has requested that the replacement of broadleaf high forest with coniferous species in areas less than 10 hectares (in areas other than a city, a town or other specified areas) remains exempted development and does not lose this status under Section 4(4) of the Planning and Development Act, as provided for under Section 4(4A). This would remove the dual consent, so that only DAFM's licencing process would be required and planning permission would not.

Therefore, it is proposed to make Regulations under Section 4(4A) of the Planning and Development Act to insert a new Article (8H) to amend the Planning and Development Regulations 2001, as amended, in order to re-exempt the replacement of broadleaf high forest by coniferous species in areas less than 10 hectares as follows:

The following Article is inserted after Article 8G:

"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 provide clarification that the replacement of broadleaf high forest by coniferous 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 would act as the single consent authority for any project for the replacement of broadleaf high forest with coniferous species less than 10 hectares in size, in accordance with section 6 of the Forestry Act 2014, which provides for EIA and AA processes.

DAFM has advised that sections 11(d) 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 (EIA);*
- *The submission of an environmental impact statement (EIS);*
- *An environmental impact assessment (EIA);*
- *His or her functions under the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. 477 of 2011), including -*
 - *a screening for an appropriate assessment (AA),*
 - *the submission of a Natura Impact Statement (NIS), and*
 - *the carrying out of an appropriate assessment (AA),*

within the meaning of those Regulations,

and where there is such a requirement to ensure that it is carried out.

Therefore, the Forestry Act, 2014 as amended, currently provides for the necessary environmental assessment obligations. This will ensure that screening for EIA, where necessary on a case-by-case basis, under Article 4(3) and Annex III of the Directive for development consisting of the replacement of broadleaf high forest with coniferous species less than 10 hectares in size is continued under a single - rather than dual - regime. It should be noted that the replacement of forestry differs from afforestation or deforestation as defined in the EIA Directive (Annex II) and replacement and afforestation are listed as separate activities within Article 28 (1)(r) of the Planning and Development Regulations 2001, as amended.

3.0 Procedural Requirements for Screening for SEA

The European Directive (2001/42/EC) on the Assessment of the Effects of Certain Plans and Programmes on the Environment (the SEA Directive), was transposed into national legislation in Ireland by the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. 435/2004) and the Planning and Development (Strategic Environmental Assessment) Regulations 2004 (S.I. 436/2004), as amended.

The SEA Directive requires that certain plans and programmes, prepared by statutory bodies, which are likely to have a significant impact on the environment, be subject to the SEA process.

Applying Article 9(1) of S.I. 435 of 2004, as amended by S.I. 200 of 2011, verifies the statutory requirement for SEA:

“an environmental assessment shall be carried out for all plans and programmes

*(a which are prepared for agriculture, **forestry**, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism and town and country planning or **land use**, and which set the framework for future development consent of projects listed in Annexes I and II to the Environmental Impact Assessment Directive, or*

(b) which are not directly connected with or necessary to the management of a European site but, either individually or in combination with other plans, are likely to have a significant effect on any such site.”

The proposed legislation falls under the categories of “forestry” and “land use”. The implications of the proposed legislation will be that there shall be no requirement to obtain separate planning consent for conversion of an existing forestry from one type of tree cover to another within the threshold of 10 hectares or less, but there will be a single consent process by way of license from DAFM. It is noted that there is no change in land use in such circumstances. Furthermore, the legislation concerns only areas of forestry that are less than 10 hectares. Therefore, a development application of this type does not necessarily meet the threshold for it to undergo Environmental Impact Assessment under either Annexes I or II of the EIA Directive and, therefore, it is regarded that the statutory requirement for SEA (as described in Article 9(1) above) does not apply in this case.

Article 3(3) of the SEA Directive states:

“Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.”

It could be regarded that the proposed legislation is a “minor modification” in the context of removing a dual consent process but still retaining the need to obtain consent by way of DAFM licence and to screen for EIA and AA as part of that process.

Article 3(3) of the Directive is transposed into Irish law by Article 9(2) of S.I.435 of 2004, as amended, as follows:

“A plan or programme referred to in sub-article (1) which determines the use of a small area at local level or a minor modification to a plan or programme referred to in sub-article (1) shall require an environmental assessment only where the competent authority determines that it is likely to have significant effects on the environment and, for this purpose, the competent authority shall make any necessary determination.”

It would be reasonable to take the position that the proposed legislation, would have the effect that it “determines the use of a small area at local level” and, therefore, a full SEA may not be required if it is determined that it will not be likely to have significant effects on the environment.

The European Commission SEA Guidance advises:

“The key criterion for the application of the Directive, however, is not the size of area covered but whether the plan or programme would be likely to have significant environmental effects. A plan or programme which Member States determine likely to have significant environmental effects should undergo environmental assessment even if it determines only the use of a small area at local level. A similar point was made in Case C-392/96, Commission v Ireland, where the ECJ ruled that by setting thresholds on the basis of the size of projects alone, ‘to the exclusion of their nature and location’, the Member State exceeded the limits of its discretion. Projects could have significant effects on the environment by reason of their nature or location”¹.

As stated in that judgement: “Therefore, the limits of that discretion [of Member States to set thresholds] lie in the obligation set out in Article 2(1) of the Directive, under which projects likely to have significant effects on the environment — by virtue *inter alia* of their nature, size or location — are to be subject to an impact assessment”².

As stated above, the proposed modification of the legislation removes the dual consent process but retains the requirement for environmental assessment to ensure the screening for significant environmental effects, regardless of the threshold of 10 hectares that is proposed.

Following the completion of the period of consultation with the environmental authorities, the Minister (MHLGH) will then complete the screening of the proposed legislation for the need to undertake SEA.

The SEA screening process itself requires a consideration of the criteria in Schedule 1 of S.I. 435 of 2004, as amended. The record of this consideration is contained within this SEA Screening Report as far it applies to the current text of the proposed legislation. Following the completion of the Screening Report after the conclusion of the four-week period, the Minister will issue a (screening) determination and make it available to the public for inspection during office hours and on the Department’s website and also notify the environmental authorities which were notified previously.

S.I. 435 of 2004 contains a mandatory requirement to consult the relevant environmental authorities as part of the SEA screening process. In this regard, Article 9(5) of S.I. 435 of 2004 states that the following bodies must be given notice:

- Environmental Protection Agency;
- Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (whose functions were transferred from the Minister for Environment, Heritage and Local Government to Minister for Culture, Heritage and the Gaeltacht by S.I. 192 of 2011 and whose functions were subsequently transferred to the Minister for Housing, Local Government and Heritage by S.I. 302 of 2021 and are administered by the Development Applications Unit in the Heritage Division);
- Minister for Environment, Climate and Communications (formerly Minister of Communications, Climate Change and the Environment); and
- Minister for Agriculture, Food and the Marine.

¹ European Commission (2003) *Implementation of Directive 2001/42 on the Assessment of Effects of Certain Plans and Programmes on the Environment*. Paragraph 3.35.

(https://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf)

² Case C-392/96. Commission of the European Communities v Ireland (Environment — Directive 85/337/EEC — Assessment of the effects of certain public or private projects — Setting of thresholds).

4.0 Consideration of the SEA screening criteria in Schedule 1 of S.I. 435 of 2004

This Screening Report includes a consideration of the criteria set out in Schedule 1 of S.I. 435 of 2004, as amended. These qualitative criteria are used to assist in the determination as to whether the proposed legislation is likely to have significant effects on the environment.

Criteria 1. The characteristics of the plan or programme, or modification to a plan or programme, having regard, in particular, to

— the degree to which the plan or programme, or modification to a plan or programme, sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources.

The proposed legislation does not have any geographic specificity associated with it although it removes exemptions for existing broadleaf high forestry areas within 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).

— the degree to which the plan or programme, or modification to a plan or programme, influences other plans including those in a hierarchy.

The proposed legislation exempts conversion of existing broadleaf high forestry areas under 10 hectares to coniferous forestry areas from the planning consent system, subject to exclusions as outlined above. The DAFM has stated that the Proposal implements the DAFM's Felling and Reforestation Policy (2017) [Felling-and-Reforestation-Policy.pdf \(teagasc.ie\)](#) and Underplanting Scheme (Ash Dieback) (2020) [Reconstitution-and-Underplanting-Scheme.pdf \(teagasc.ie\)](#) from a higher level. The proposed legislation has a narrow scope of application and, therefore, the degree to which other plans are influenced is limited and it can be considered a minor modification. It does not remove the requirement for AA or EIA screening or the carrying out of AA or EIA processes which already exists under the licensing process by the DAFM.

— the relevance of the plan or programme, or modification to a plan or programme, for the integration of environmental considerations in particular with a view to promoting sustainable development

As stated above, the proposed legislation retains the requirement for AA or EIA screening or the carrying out of AA or EIA processes which already exists under the licensing process by the DAFM. It does not remove the obligations to ensure compliance. Therefore, environmental considerations are fully integrated as a part of the existing licensing regime. By removing the dual consent process, the proposed legislation promotes streamlining of environmental assessment and integration of environmental considerations in one regime.

— environmental problems relevant to the plan or programme, or modification to a plan or programme,

The lack of geographic specificity in the proposed legislation means that it is not possible to determine what environmental problems may exist in locations where these types of changes to forestry areas may be proposed. However, it is reasonable to state that there would be no environmental problems directly relevant to the proposed legislation.

— *the relevance of the plan or programme, or modification to a plan or programme, for the implementation of European Union legislation on the environment (e.g. plans and programmes linked to waste management or water protection).*

The proposed minor modification of existing legislation has no direct relevance. The lack of geographic specificity in the proposed modification means that it is not possible to determine what relevance to the implementation of European Union legislation, if any, may exist in locations where these types of changes to forestry areas may be proposed (e.g. possible relevance to protection or status of waterbodies or habitats for groundwater dependent terrestrial ecosystems and their species).

Criteria 2: Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

— *the probability, duration, frequency and reversibility of the effects,*

And

— *the cumulative nature of the effects,*

The proposed modification to existing legislation lacks geographic specificity and therefore it is not possible to predict either the effects or the area(s) likely to be affected. While it is recognised that these types of development are more likely to be located in rural areas due to the exclusion of forestry areas in cities and towns, in particular, it is mainly applicable only to existing small forestry areas of broadleaf high forest species and the legislation is not sufficiently specific to characterise the effects and the area likely to be affected in this regard. The consideration of cumulative nature of the effects is not possible to predict but can be considered at the project level by way of the application process to DAFM which is retained as the sole consent process. This is required under Schedule 3 (1)(b) of the Forestry Regulations (S.I. 191 of 2017) which include “cumulation with other existing and approved projects” in criteria to determine if a sub-threshold project should be subject to an environmental impact assessment (EIA).

— *the transboundary nature of the effects,*

The proposed legislation is not likely to have any transboundary effects due to the small scale and nature of these types of development and also the retention of the requirements for EIA and AA, where applicable.

— *the risks to human health or the environment (e.g. due to accidents),*

No significant additional risk to human health or the environment is likely as it applies to forestry replacement activities within existing forestry sites with existing risks and due the retention of the requirements for EIA, where applicable.

— *the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),*

The proposed legislation lacks geographic specificity and therefore it is not possible to predict either the effects or the area likely to be affected. While it is recognised that these types of development are

more likely to be located in rural areas due to the exclusion of forestry areas in cities and towns in particular, it is mainly applicable only to existing small forestry areas of broadleaf high forest species and the legislation is not sufficiently specific to characterise the effects and the area likely to be affected in this regard.

— *the value and vulnerability of the area likely to be affected due to:*

(a) special natural characteristics or cultural heritage,

(b) exceeded environmental quality standards or limit values,

(c) intensive land-use,

— *the effects on areas or landscapes which have a recognised national, European Union or international protection status.*

The proposed modification of existing legislation has a national scale of application but lacks geographic specificity. Therefore, it is not possible to predict either the effects or the area likely to be affected. 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, except in cases where an EIA or AA is required to be screened/fully carried out, as stated in sections 11(d) and 11(e) of the Forestry Act 2014 prior to the Minister for Agriculture, Food and the Marine licensing or approving a project under section 6 of the Act. While it is recognised that these types of development are more likely to be located in outside of urban areas and due to this exclusion, it is mainly applicable only to existing small forestry areas of broadleaf high forest species and the legislation is not sufficiently specific to characterise the effects and the area likely to be affected in this regard.

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.

With respect to landscapes which have a recognised national, European Union or international protection status, Section 19(2) of the Forestry Act (2014) provides that the felling of trees is not exempt from licensing in such protected landscapes.

The process of screening for AA focuses on any interaction between the conservation objectives and the effects of implementing the proposed regulations. 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.

5.0 Conclusions

The purpose of this Report is to present the results of the SEA screening of the proposed legislation providing for the continued exemption, in accordance with section 4(4A) of the Planning and Development Act, of the replacement of broadleaf high forest by coniferous 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 objective of screening is to determine if the proposed legislation is likely to have

significant effects on the environment. It was regarded that the proposed legislation required screening, since the implication of it being implemented “*determines the use of a small area at local level or a minor modification to a plan or programme*” as per Article 9(2) of S.I. 435 of 2004. The screening process therefore applied the criteria in Schedule 1 of S.I. 435 of 2004 to determine if the proposed legislation would be likely to have significant effects on the environment.

The outcome and recommendation of this SEA Screening Report is that the proposed legislation is not likely to have any significant effects on the environment and does not require further assessment in the form of an SEA. The principal reasons for this conclusion were:

- 1) The proposed legislation is considered to be a minor modification as it primarily removes the current dual consent procedure for conversion of forestry areas from one type to another in limited circumstances (see Section 2.0) without removing the necessity to both ensure screening for AA and EIA and to obtain consent by way of a forestry license application process through a more streamlined procedure.
- 2) It does not involve any changes in land use or exceedance of any thresholds for Annexes I and II of the EIA Directive.
- 3) The lack of geographic specificity at this stage in the planning hierarchy means that the environmental effects cannot be predicted and are more appropriately addressed by local planning policies.

You are, therefore, invited to note that a submission or observation on behalf of one of the statutory environmental authorities identified by S.I. 435 of 2004, as amended, in relation to whether the proposed legislation would or would not be likely to have significant effects on the environment, may be made to DHLGH (EU and International Planning Regulation Unit) no later than 4 weeks from the date of the attached notice (under Article 9(2)) by the 19 October 2022.

This Report, as well as submissions/ observations from the statutory environmental authorities, will be taken into consideration before finalisation of the SEA screening process and the publication of an SEA determination by the Minister.