

**The Scottish  
Government's  
compliance with the  
duty to make forestry  
EIA documents  
available for  
inspection.**

Case Reference: IESS.24.015

February 2025

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## 1. Executive summary

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1.1 Scottish Forestry is the Scottish Government agency responsible for forestry policy, support and regulations. Scottish Forestry administers the Environmental Impact Assessment (EIA) process for a variety of forestry projects including afforestation, deforestation and the construction and maintenance of forestry access roads and quarries. The EIA process is a tool used to evaluate any significant effects of a project on the environment, to determine if it can go ahead and to identify any mitigation that is required to reduce any identified impact.

1.2 In administering the forestry EIA process, Scottish Forestry has a statutory duty to make copies of documents relating to the EIA process available for inspection by interested parties, including the public.

1.3 Environmental Standards Scotland (ESS) received a representation alleging Scottish Forestry was not compliant with this duty. During consideration of the representation, ESS engaged with Scottish Forestry over the availability of the relevant forestry EIA documents. ESS found that Scottish Forestry was not compliant with its statutory duty to make relevant forestry EIA documents available for inspection. This was due to the limited information that was made available, which in turn restricted the overall accessibility to interested parties in accessing the relevant forestry EIA documents.

1.4 Following identification of this failure to comply, ESS made recommendations for improvement which Scottish Forestry accepted and agreed to implement.

1.5 In ESS' view, the implementation of these remedial actions will allow interested parties to effectively access and inspect the relevant forestry EIA documents and bring Scottish Forestry into compliance with its statutory duty.

1.6 ESS accordingly considers that informal resolution has been achieved and will monitor Scottish Forestry's delivery of the agreed remedial actions and provide public updates on progress.

## 2. The representation

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2.1 ESS received a representation from a Non-Governmental Organisation (NGO) alleging that Scottish Forestry was failing to comply with its statutory duty to make forestry EIA documents available for inspection.

2.2 Regulation 23(1) of the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 ('the 2017 Regulations') requires Scottish Ministers to make copies of forestry EIA documents available for inspection on a website (or by other electronic means) and at an office where they can be inspected at all reasonable hours. Regulation 23(2) of the 2017 Regulations sets out the specific documents that must be made available for inspection by Scottish Ministers. A consolidated copy of these regulations and a summary of the documents that must be made available for inspection are provided in Annex 1.

2.3 Before approaching ESS, the NGO submitted a complaint to Scottish Forestry raising concerns regarding its compliance with Regulation 23 of the 2017 Regulations. Scottish Forestry did not uphold this complaint, responding that it was meeting its duty under Regulation 23 on the basis that, despite the relevant forestry EIA documents not being available on a website, they could be requested and provided by email and therefore were available for inspection 'by other electronic means'. In their submission to ESS, the NGO considered that Scottish Forestry was in breach of its statutory duty for the following reasons:

- providing a document upon request does not meet the requirement to make documents 'available for inspection'
- the overarching rights of access to information afforded by the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 would render Regulation 23 of the 2017 Regulations redundant
- Scottish Forestry's approach was misaligned with the intent of the founding European Directive (2019/92/EU on the assessment of the effects of certain public and private projects on the environment as amended by Directive 2014/52/EU) which requires central points of access that allow easy and effective access

2.4 The outcome sought in the representation was for Scottish Forestry to publish as soon as possible all documents required by Regulation 23(2) of the 2017 Regulations.

2.5 Due to the following factors, ESS considered the case to be within its remit:

- the representation related to a public authority – Scottish Forestry as the responsible agency of the Scottish Government
- the representation related to environmental law – the 2017 Regulations
- the alleged failure (as set out in the representation) constituted a failure to comply with environmental law.

2.6 ESS also determined that the issue met its 'significance criteria' as the representation suggested long standing non-compliance with a statutory legal duty which could undermine public confidence.

### 3. ESS' consideration

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3.1 The ability to inspect forestry EIA documents allows interested parties (including members of the public) to access key environmental information. This is important for ensuring effective participation, providing the opportunity for interested parties to inform decision-making and empowering them to become involved in matters which could affect the quality of their daily lives. Access to environmental information also allows for greater transparency and accountability of public authorities.

3.2 This is specifically recognised in the Aarhus Convention<sup>1</sup> which sets out that 'in the field of the environment, improved access to information and public participation in decision-making enhances the quality and the implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express its concerns and enables public authorities to take account of such concerns'.

3.3 In response to the NGO's concerns over the level of documentation being published by Scottish Forestry, Scottish Forestry explained that despite the relevant documents not being available for inspection on a website, they could be requested and provided by email. Scottish Forestry considered it was therefore compliant with its statutory duty as the required documents were made available for inspection by 'other electronic means', as permitted by Regulation 23(1)(a) of the 2017 Regulations.

3.4 In ESS' view, providing relevant forestry EIA documents on request by email can legitimately be used to satisfy the duty to make them available for inspection through other electronic means, **provided** the ability to access the relevant documents is not restricted or too onerous for the requester. In this connection, ESS considers that interested parties must be able to effectively search for information and for it to be made available in a suitable format, language and level of technical detail. In short, the system for identifying and providing the relevant forestry EIA documents must afford effective and easy access to interested parties. This view has been informed

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<sup>1</sup> United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998 (<https://unece.org/DAM/env/pp/documents/cep43e.pdf>)

by the reasoning of a recent High Court judgement<sup>2</sup> over what methods of access to environmental information qualify as publicly available and easily accessible.

3.5 In ESS' view, the information published on Scottish Forestry's website relating to forestry EIA documentation was not fully comprehensive. The information was incomplete and only available for a time-limited and very short period (ranging from four to six weeks dependent on the type of document).

3.6 Consequently, the incomplete nature of information provided by Scottish Forestry significantly restricted interested parties awareness of (and ability to identify) documents that may be of interest to them which, in turn hindered the overall accessibility to such an extent that it did not allow for inspection of relevant forestry EIA documents. ESS accordingly considered that Scottish Forestry's approach was not compliant with the requirements of Regulation 23 of the 2017 Regulations.

3.7 In ESS' view, the failings identified were within Scottish Forestry's ability to rectify and there was no immediate risk of significant harm to the environment or human health. In light of this, ESS invited Scottish Forestry to resolve matters informally.

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<sup>2</sup> Surrey Searches and others vs. Northumbrian Water and others in the High Court of Justice, Business and Property Courts of England and Wales (28 June 2024)

## 4. Informal resolution

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4.1 Informal resolution is the process of agreeing effective remedial actions with the relevant public authority to resolve identified issues, without the use of formal enforcement measures. ESS considers that informal resolution is often more expedient, cost-effective and results in better environmental outcomes.

4.2 Following ESS' invitation, Scottish Forestry agreed to work with ESS to take the necessary actions to achieve compliance. To this end, Scottish Forestry confirmed that the following actions would be implemented:

1. Scottish Forestry will publish a new public register website which will allow for the direct inspection of forestry EIA documents that are created following the website's launch. The new website will be operational by the end of August 2025 at the latest. EIA forestry documents will be added to the new website in a phased approach, with screening opinions (which represent the majority of forestry EIA documents) being made available by the end of August 2025. Other document types will be added iteratively with all being available on the new website by the end of 2026
2. As an interim measure, prior to the publication of the new public register website, Scottish Forestry will:
  - a. for forestry projects that require EIA consent, make all relevant forestry EIA documents available for inspection on a dedicated webpage
  - b. publish a comprehensive list of all legacy forestry projects (regardless of whether EIA consent required or not) with associated information to allow interested parties to make informed requests for relevant forestry EIA documents to be made available for inspection. Scottish Forestry has committed to completing any requests for these documents to be made available for inspection within 20 working days of the initial request

4.3 ESS is satisfied that the actions agreed (with respect to the implementation of a new website and the interim measures) are proportionate and realistic. The vast majority of cases (99.7% of forestry projects subject to EIA from 2019 to Dec 2024) have not proceeded beyond the screening stage. Therefore, the publication of screening opinions on Scottish Forestry's new website by August 2025 is expected



to capture the majority of relevant forestry EIA documents, with the remainder available by the end of 2026. Additionally, the interim steps put in place by Scottish Forestry will allow interested parties to search the full extent of forestry EIA documents that may be of interest to them.

4.4 In short, ESS considers that the agreed remedial actions will allow interested parties effective access to, and allow inspection of, the relevant forestry EIA documents and therefore deliver compliance with the requirements of Regulation 23 of the 2017 Regulations.

4.5 ESS can confirm that, at the time of publication of this report, action two has been completed by Scottish Forestry.

## 5. Conclusion

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5.1 Public Register requirements exist to enable effective public participation in decisions which could affect the quality of their daily lives. Access to environmental information also allows for greater transparency and accountability of the actions taken by public authorities.

5.2 The limited information that was made available by Scottish Forestry significantly restricted interested parties effective access to, and inspection of, the required information, which meant that Scottish Forestry was non-compliant with environmental law.

5.3 As a result of the actions taken by Scottish Forestry, and those which will be implemented, ESS considers that informal resolution has been achieved in that:

- they constitute a proportionate and realistic method of ensuring compliance with the requirements of Regulation 23 of the 2017 Regulations
- there will be greater public awareness of potentially impactful activities on the environment
- the public will be able to inform decision-making and are empowered to participate in matters which could affect them.

5.4 ESS will monitor Scottish Forestry's delivery of the agreed remedial actions and provide public updates on progress following passage of the key dates for delivery of them.

5.5 To date, ESS has received a number of representations concerning public authorities' compliance with their duties to maintain public registers of environmental information. In light of the similarities of ESS' findings in this connection and the importance of public registers in facilitating effective access to environmental information, ESS intends to undertake a broader assessment of how Scottish public authorities implement their legal obligations in this area. This work will commence in summer 2025.

## Annex 1

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The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 as amended by the Forestry and Land Management (Scotland) Act 2018 (Consequential, Saving and Transitional Provisions) Regulations 2021.

### **Reg. 23. — Availability of opinions, directions etc. for inspection**

(1) Where any document mentioned in paragraph (2) is received, issued or adopted by the Scottish Ministers, the Scottish Ministers must make copies of that document available for inspection—

- (a) on a website (or by other electronic means); and
- (b) at all reasonable hours at an office of the Scottish Ministers where the register may be inspected.

(2) The documents are any—

- (a) request under regulation 15(1);
- (b) <sup>3</sup>
- (c) direction given under regulation 9;
- (d) screening opinion;
- (e) <sup>3</sup>
- (f) scoping opinion;
- (g) <sup>3</sup>
- (h) EIA report and any additional information;
- (i) reports or advice issued to the Scottish Ministers at the time when notice is given under regulation 18(1); and
- (j) statement of reasons accompanying any of the above.

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<sup>3</sup> Revoked by Forestry and Land Management (Scotland) Act 2018 (Consequential, Saving and Transitional Provisions) Regulations 2021

**Forestry EIA documents that must be made available for inspection:**

<b>Document Type</b> <b>(Legislative Requirement)</b>	<b>Summary</b>
<p>Request for a scoping opinion (Reg 23(2)(a))</p>	<p>These requests are normally submitted by applicants as EIA scoping reports and request that Scottish Forestry determine the issues that must be covered as part of the consent application and EIA report.</p> <p>These requests are submitted by applicants after Scottish Forestry has issued a screening opinion indicating that EIA consent is required.</p>
<p>Direction given by Scottish Ministers under regulation 9 (Reg 23(2)(c))</p>	<p>Scottish Ministers can direct that the 2017 Regulations do not apply for a forestry project where, in their opinion, compliance with the regulations would have an adverse effect on the purpose of it.</p> <p>To date, no such directions have been given.</p>
<p>Screening opinion (Reg 23(2)(d))</p>	<p>These documents set out Scottish Forestry's position on whether EIA consent is required for a project following assessment of the information submitted by applicants.</p> <p>Screening opinions issued by Scottish Forestry include a statement of reasons (as required by (j) below) setting out how the decision has been reached.</p> <p>Screening opinions are the most produced forestry EIA document.</p>
<p>Scoping opinion (Reg 23(2)(f))</p>	<p>These documents set out the issues that Scottish Forestry consider must be covered as part of a consent application and EIA report following</p>

Document Type (Legislative Requirement)	Summary
	<p>assessment of an applicant's request for a scoping opinion.</p> <p>Scoping opinions issued by Scottish Forestry include a statement of reasons (as required by (j) below) setting out how the decision has been reached.</p>
<p>EIA report and any additional information (Reg 23(2)(h))</p>	<p>These documents set out the assessment of any significant effects of the project on the environment and mitigation that is required to reduce any identified impact. These documents are submitted by the applicant when seeking consent from Scottish Forestry.</p>
<p>Reports or advice issued to the Scottish Ministers at the time when notice is given under regulation 18(1) (Reg 23(2)(i))</p>	<p>Any reports or advice that are issued to Scottish Forestry following the publication of an advert by the applicant when the EIA report is accepted for consideration.</p>
<p>Statement of reasons accompanying any of the above (Reg 23(2)(j))</p>	<p>A statement setting out the rationale for how any decision has been reached by Scottish Forestry for any of the above documents.</p>

## CONTACT

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Environmental Standards Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh  
Scotland  
EH12 5HD

E-mail: [enquiries@environmentalstandards.scot](mailto:enquiries@environmentalstandards.scot)

Telephone: 0808 1964000

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