

# **The regulatory environment for large scale afforestation in England**

**Produced for:**

**ICF and CONFOR North of England conference  
Hexham**

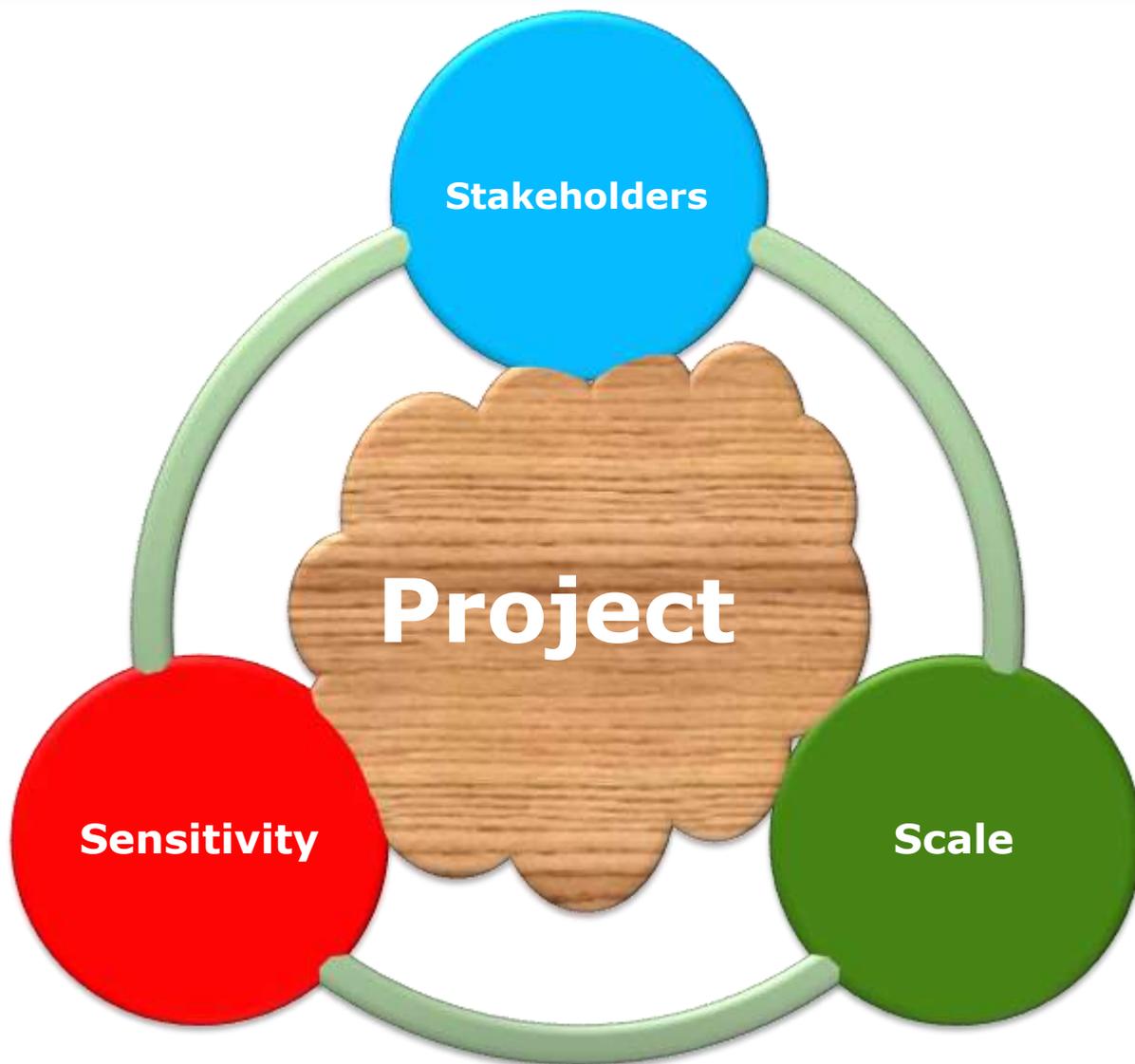
**October 18<sup>th</sup>, 2017**

**Presented by:**

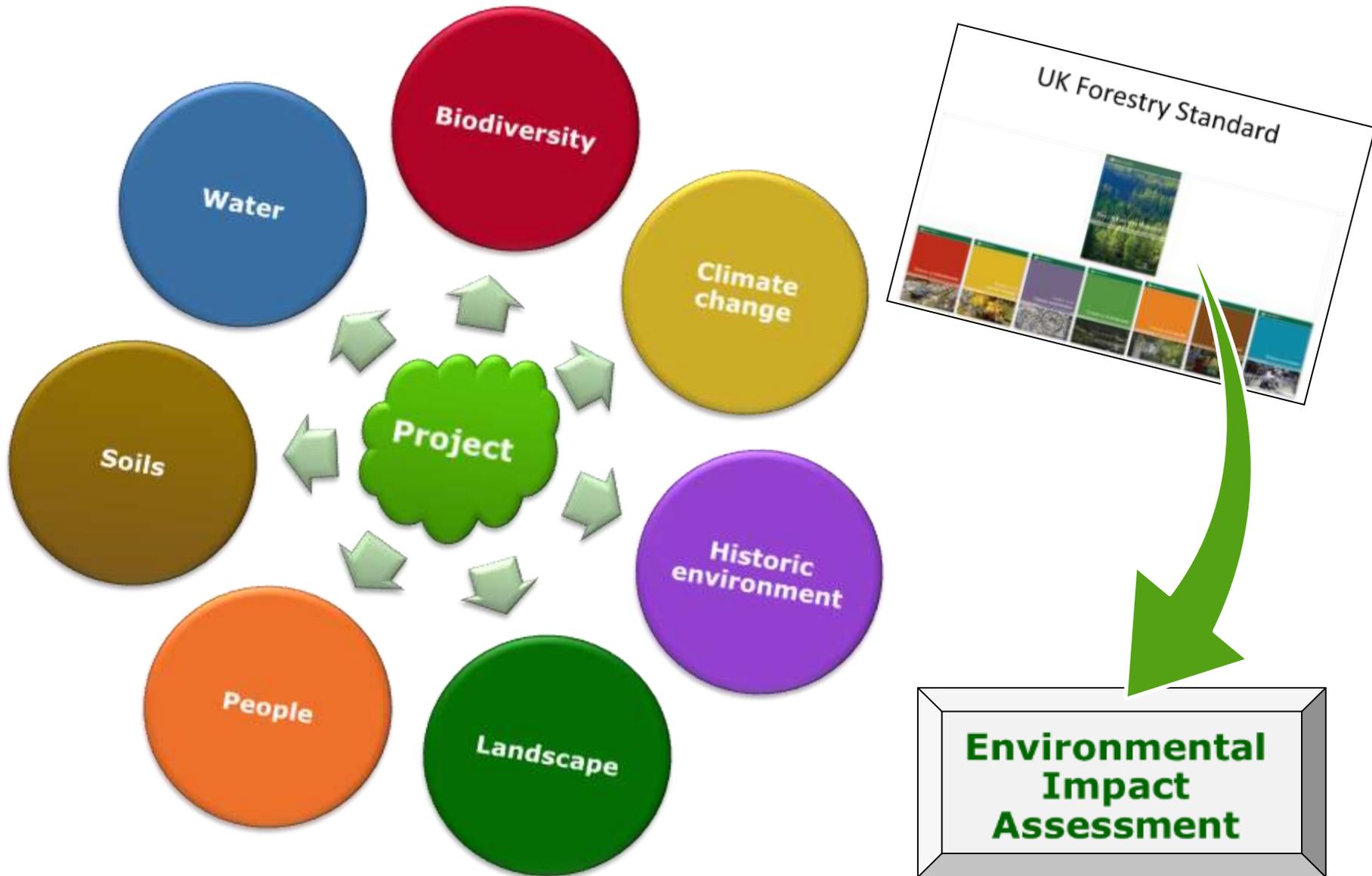
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# What, where and who?



# Challenges



## Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

Comes from EU Council Directive 97/11/EC

- Implemented into UK law in 1999
- **Forestry Commission** England is '*Relevant Authority*'

EIA Regs amended in 2014 by EU Council Directive 2014/52/EU

- Mandatory changes were made
- To be implemented into UK law by May 16<sup>th</sup>, 2017

Plus:

- DEFRA public consultation on other [voluntary changes](#) to EIA
- Consultation held December 2016 to January 2017

## Key consultation questions affecting forestry:

### 1. Clearer EIA guidance for applicants seeking EIA opinions? (62 responses)

Majority already understood process and/or asked for additional guidance

**Decision:** Further guidance and information produced for forestry projects

### 2. Threshold changes for afforestation projects in ENGLAND

Increase from 5ha to (i)20ha, (ii)50ha or (iii)100ha?(415 responses)

390 said no change or reduce (part of RSPB campaign)

**Decision:** New thresholds at 2ha-5ha (**Notification**) and 5ha-50ha (**Low Risk**)

### 3. Time period for Screening

Increase from 28 days to 90 days? (63 responses)

40 agreed with the proposed change

**Decision:** Retain "28 days", and [new] 28 or 42 days for Low Risk area projects

Government response to consultation has been drafted but not yet been released or published – General election / new ministers

## Mandatory amendments:

### 1. More environmental information for assessment

Projects must now:

- Collect the available environmental information,
- Design a project to avoid identified 'potential impacts',
- Provide evidence showing project avoids, mitigates or compensates, and,
- Seek local, and [when required] statutory stakeholder engagement.
  - **Outcome:** Better evidenced proposals - more quickly assessed.

### 2. Environmental Statement (ES) – Consultation period

Only for Environmental Statements (ES) required for Relevant Projects.

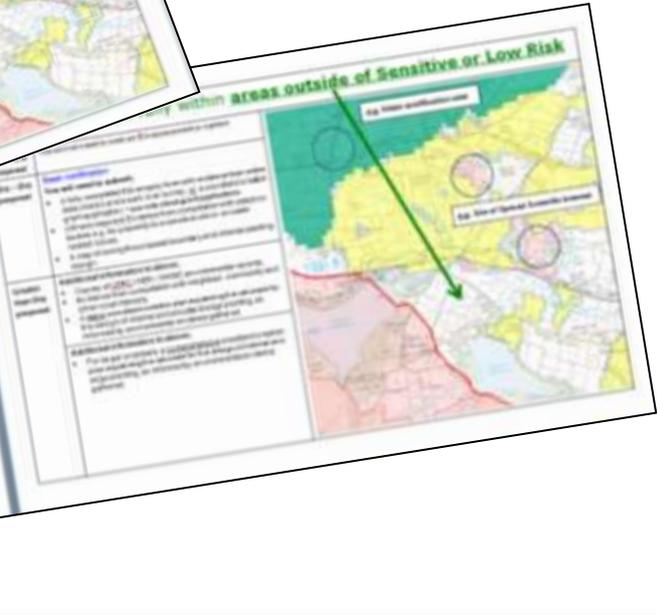
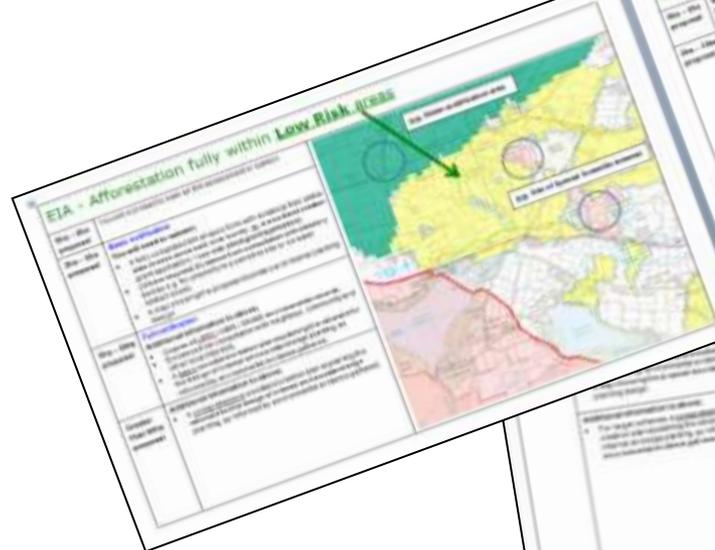
- ES consultation period extended from 28 days to 30 days.
  - **Outcome:** Parity across EU for timescales on ES consultation.

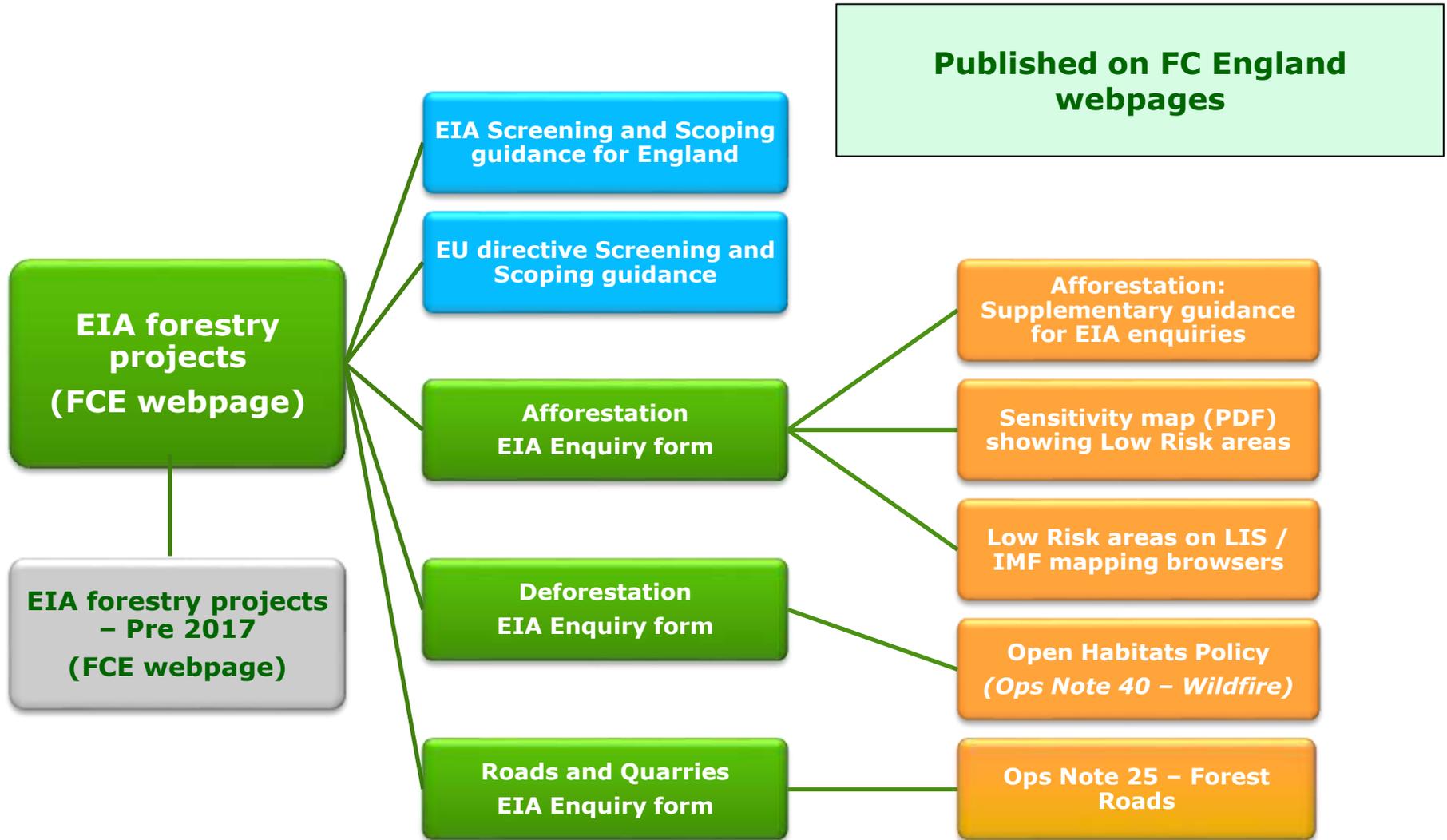
**Plus,**

**Voluntary amendments from DEFRA Consultation**

**May 16<sup>th</sup>, 2017** - All amendments were implemented (England and Wales)

**New and additional guidance and EIA Enquiry form developed**





# EIA – revised thresholds

Project Size (Ha)	Land Type - Sensitivity	EIA requirements
<b>0ha – 2ha</b>	<b>A <u>Sensitive</u> area</b> but not a National Park or AONB	Apply for EIA Opinion – Full EIA Screening
	Everywhere else	No EIA opinion required
<b>2ha – 5ha</b>	<b>Any <u>Sensitive</u> area</b>	Apply for EIA Opinion – Full EIA Screening
	Outside of a Sensitive area,	<b>[Prior] Basic Notification</b>
<b>5ha – 50ha</b>	<u>Only</u> in a <b>Low Risk Area</b>	<b>[Prior] Full Notification</b>
	Everywhere else	Apply for EIA Opinion – Full EIA Screening
<b>&gt;50ha</b>	Everywhere else	Apply for EIA Opinion – Full EIA Screening

Afforestation threshold changes apply to projects in England outside of a Sensitive areas

Different **Area (ha) or Sensitivity** combinations

- require different levels of project information
- have different assessment timescales

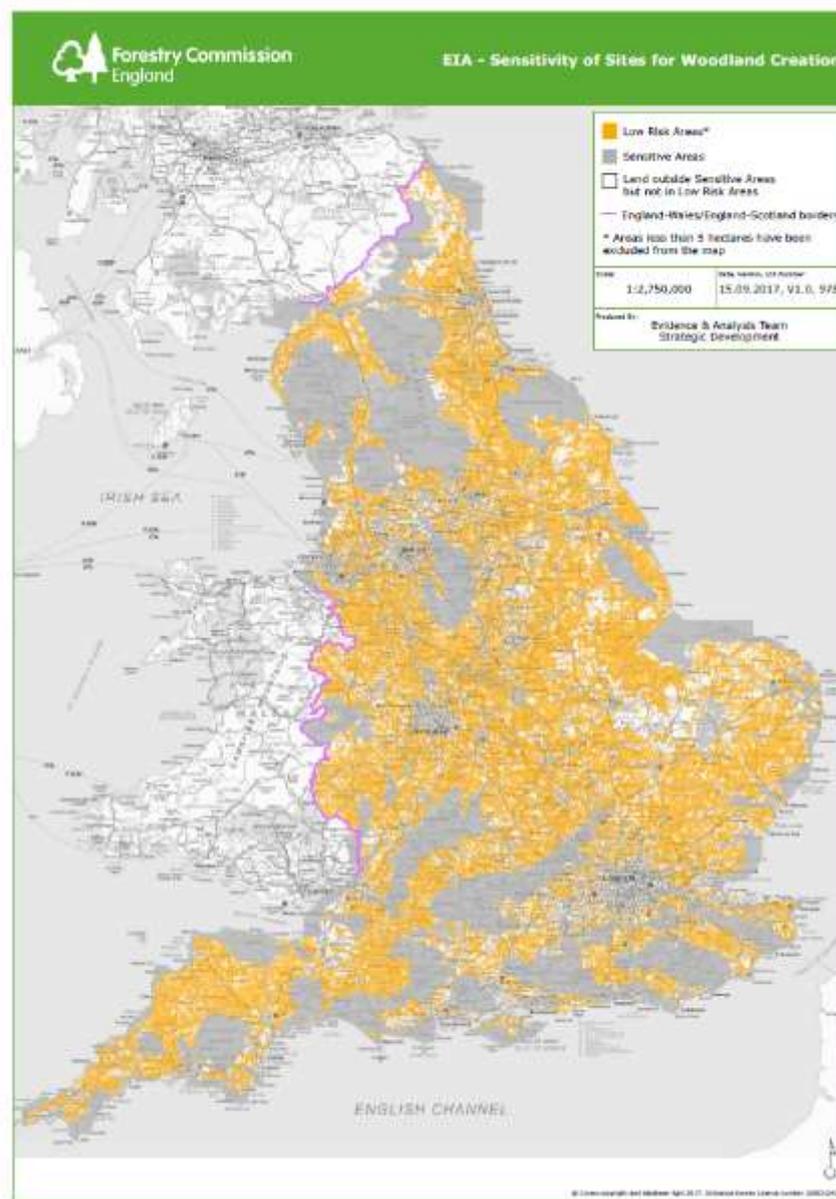
## 'Low Risk' excludes 'Sensitive areas' [shown in grey]

- European sites (under the Habitats and Species regs)
- Areas of Outstanding Natural Beauty
- Local Nature Reserve (from local authorities)
- National Nature Reserves
- National Parks
- Ramsar sites
- Scheduled Monuments
- Sites of Special Scientific Interest
- The Broads
- World Heritage Sites

## 'Low Risk' also excludes;

- RSPB Important Bird Areas (IBA)
- Acid Vulnerable Catchments
- Common land
- Higher Level Stewardship (HLS) agreements
- Best / Most versatile agricultural land (Classes 1-3a)
- Priority habitat (from the Priority Habitat Inventory)
- Registered battlefields
- Registered parks and gardens
- Deep peat

NB: Low Risk includes land in ELS



**Notification:** a new term for some EIA decision making

**Assessment:** A **Risk Based** process used to determine a Notification

EIA Assessment	Project Scale	EIA decision period	Outcome
<b>Basic Notification</b>	2ha – 5ha	28 days	<p><b><u>Assumed consent:</u></b> If no EIA decision is provided within timescale the Project can progress without EIA decision</p>
<b>Full Notification</b>	5ha- 50ha in Low Risk only	42 days (includes 28 day Public Register period)	
<b>Full Screening</b>	All other projects	28 days	Project cannot progress until FC gives its EIA Opinion

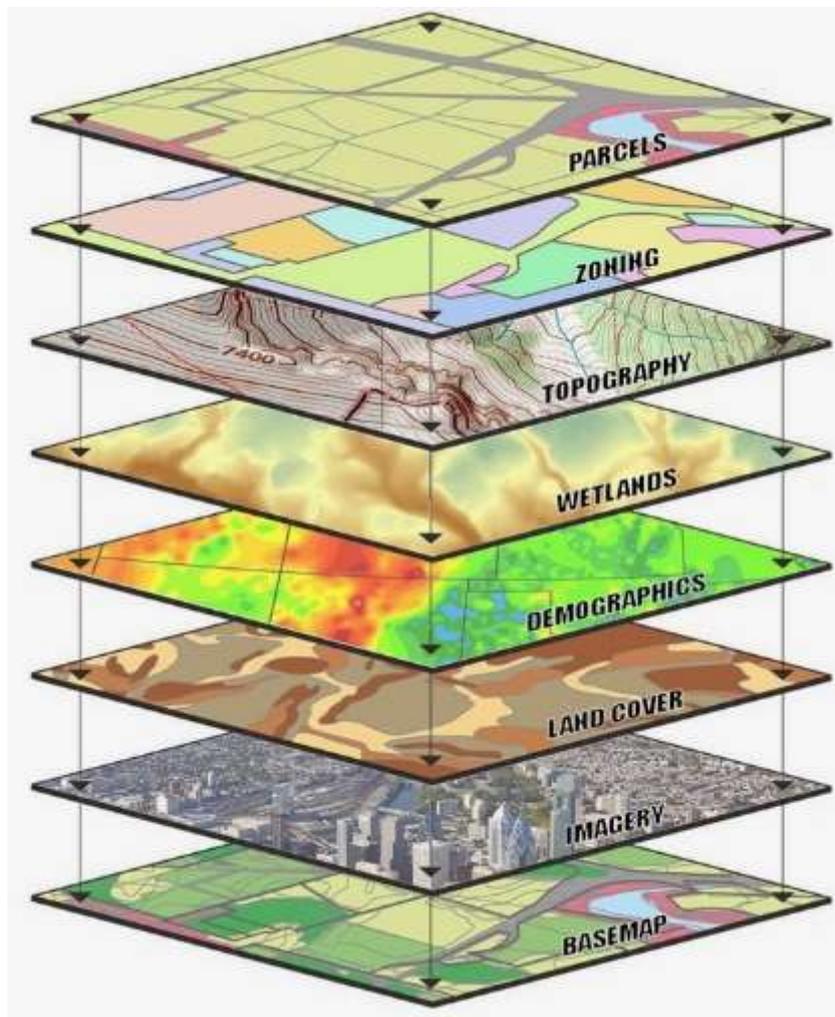
Applications for FC grant aid:

- A grant application starts an EIA determination process;
- However, Application process will '*delay*' final EIA decision until a grant offer is made

# EIA determinations

**For afforestation:** Information requirements for decision making

Information requirements	Basic Notification Assessment 2ha-5ha	Full Notification Assessment 5ha-50Ha	EIA Opinion Full Screening All other projects
<b>EIA Enquiry form</b>			
Information about the proposer/ agent and basic description of the project	✓	✓	✓
<b>Map / maps of the project area</b>	✓	✓	✓
<b>LERCs and HER search Other local environmental information</b>	(✓)	✓	✓
<b>Land cover(s) field survey</b>	(✓)	✓	✓
<b>Neighbours / Local stakeholders views</b>	(✓)	✓	✓
<b>Statutory stakeholders views</b> Evidence of agreement / consent provided. Proposals meet with statutory body guidance or advice	(✓)	(✓)	✓
<b>Woodland Creation Plan</b> Demonstrating UKFS compliance, including assessment of local environmental effects, design, mitigation methodology		✓*	✓
	<b>28 Days</b>	<b>42 Days</b>	<b>28 Days</b>
<b>Timescales:</b>	Assumed consent if Notification Assessment is not completed	Assumed consent if Notification Assessment is not completed (28 day Public Register period)	Full screening and Opinion
* Pre-screening for 'Low Risk' reduces the burden of information within the woodland creation plan when compared to applications for Screening			



## More information is available;

- Field survey
- Previous owners land records
- Online record searches
- Aerial images
- Maps and online mapping data
- Local record centres
- Statutory bodies
- Stakeholder engagement
- Neighbours
- Incentives targeting

**Woodland Creation Planning Grant  
available now**

## Schedule 2 of EIA (Forestry) Regs 1999

- Defines **Sensitive** locations – where projects are likely to have significant impact
- Sets thresholds – a presumption of '**Significance**' in areas outside of Sensitive
- Considers '**coalescence**' of existing '**similar**' projects – adjoining the proposal area

## Schedule 3 of EIA (Forestry) Regs 1999

The FC (as Relevant Authority) must evaluate '**significant effect**' with regard to:

- **Characteristics of the project**
  - Size, cumulation of projects, use of natural resources, waste, pollution, nuisance
- **Location of the project**
  - Existing land use, abundance / quality / regenerative capacity of natural resources, absorption capacity of natural environment - wetland, coastal, mountain and forest areas, protected areas, recorded features of importance or interest, community needs
- **Characteristics of the potential impact** (in respect of the two points above);
  - The extent of the impact (geographical and social)
  - The magnitude and complexity of the impact
  - The probability of an impact
  - The duration, frequency and reversibility of the impact
  - The Growth Duty [new] - the need to consider the economic benefit of a project alongside the environmental risks

# A 'Relevant Project'?

A **Relevant Project** under EIA forestry regulations is either:

- Afforestation,
- Deforestation,
- Forest roads or forest quarries, **and**

Is captured by a pre-determined project threshold, **and**



**Most projects are  
screened out at  
this stage**

***Is likely*** to have a significant effect on the environment (I.E. will need FC consent), **and**

Is not planning development related!

**Only 'Relevant Projects' require EIA Consent**

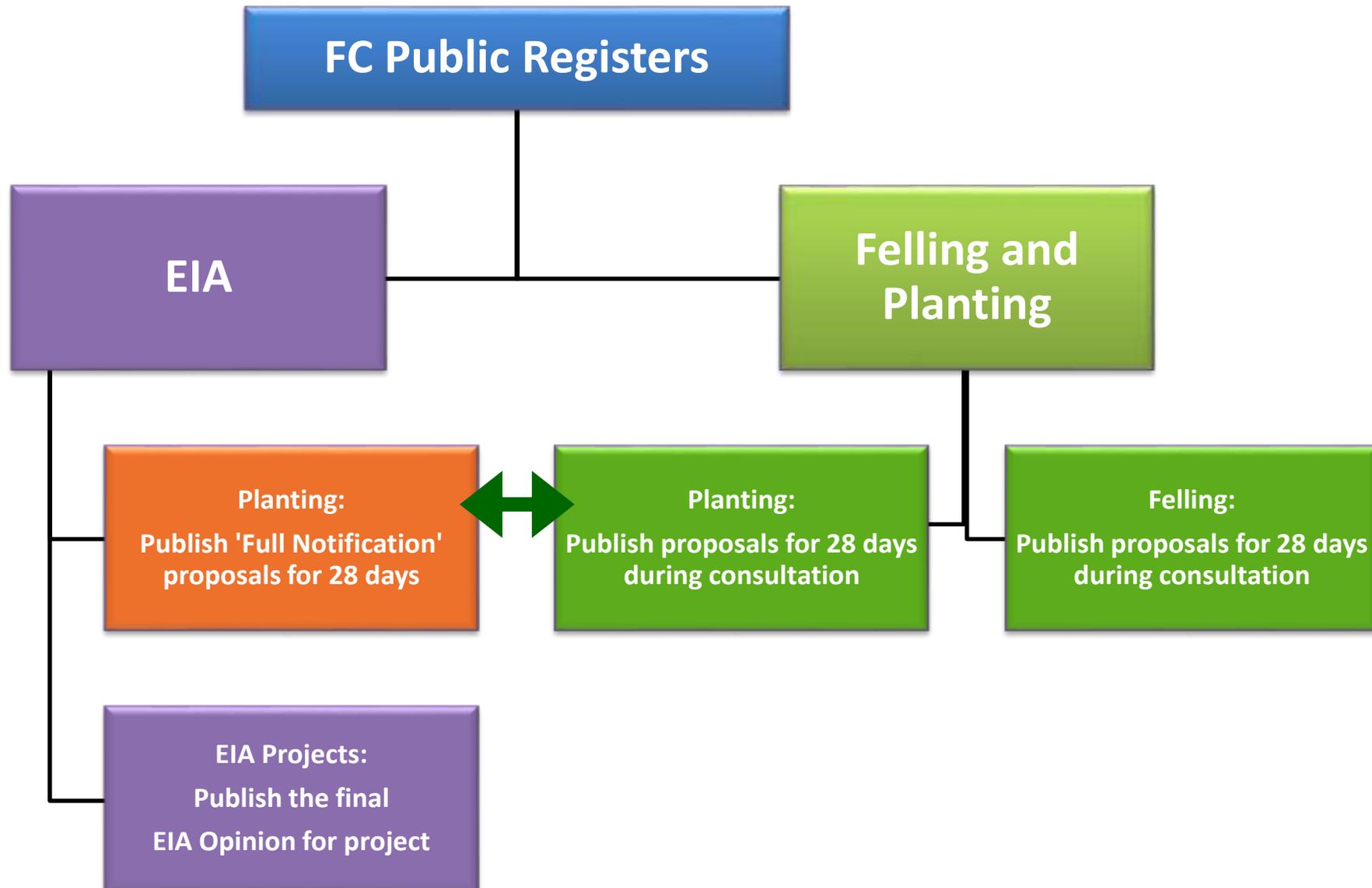
- These projects will require an Environmental Statement

Planning an afforestation project will identify;

- areas and/or issues of environmental importance, and
- key stakeholders to engage with.

Other Consents, Licences or permissions may be needed:

- Statutory bodies;
  - Historic England – Scheduled monuments consent
  - Natural England – SSSI consent / Priority Habitats assessment
- Planning authorities – Planning permission e.g. for infrastructure
- Water authorities;
  - Environment Agency – Permitting 'main river' corridor / riparian zone planting / planting on / near flood defences etc.
  - Local Authority / Inland Drainage Board – Non-main river permissions and protecting drinking water supplies
- Common land – Secretary of State consent
- Open Access land – Local Access Forum approval



Identifying future training / support requirements;

- Do users of EIA understand new the information requirements?
- Are users of EIA confident to ask for the additional information when generating a project proposal?
- Do users of EIA understand the timescales involved in giving an Opinion? - Notification (assumed consent) v. Screening / Scoping
- Do users of EIA recognise the role of stakeholder engagement in preparing afforestation proposals?

**Feedback on guidance, forms, signposting gratefully received**

