



Planning (Hazardous Substances) (Scotland) Act 1997

1997 CHAPTER 10

General

30 Application of this Act to planning authorities.

- (1) This Act shall have effect, subject to such exceptions and modifications as may be prescribed, in relation to granting hazardous substances consent for planning authorities.
- (2) Subject to section 10, regulations made by virtue of subsection (1) may in particular provide for securing—
 - (a) that any application by a planning authority for hazardous substances consent shall be made to the Secretary of State;
 - (b) that any order or notice authorised to be made, issued or served under this Act by a planning authority shall instead be made, issued or served by the Secretary of State.

[^{F1}30A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) The provisions are—
 - (a) section 6(3),
 - (b) section 21,
 - (c) section 25,
 - (d) section 34,
 - (e) section 35(2).]

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

Textual Amendments

- F1** S. 30A inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 90(3)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(a)

[^{F2}30B Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act; but the Court of Session may, on the application of a public authority or office-holder responsible for the enforcement of anything required to be done, or prohibited, by or under this Act, declare unlawful any act or omission so done or suffered.
- (2) A planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—
 - (a) entering land,
 - (b) initiating proceedings,
 - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
 - (a) service of a notice,
 - (b) the making of an order (other than a court order).

Textual Amendments

- F2** Ss. 30B, 30C inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 94(5)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(b)

30C Reference to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.]

Textual Amendments

- F2** Ss. 30B, 30C inserted (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), **ss. 94(5)**, 121(4) (with s. 111); S.S.I. 2006/268, art. 3(b)

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

[^{F3}30D Crown application: transitional

- (1) This section applies if at any time during the establishment period a hazardous substance was present on, over or under Crown land.
- (2) The appropriate authority must make a claim in the prescribed form before the end of the transitional period.
- (3) The claim must contain the prescribed information as to—
 - (a) the presence of the substance during the establishment period; and
 - (b) how and where the substance was kept and used.
- (4) Unless subsection (5) or (7) applies, the hazardous substances authority is deemed to have granted the hazardous substances consent claimed in pursuance of subsection (2).
- (5) This subsection applies if the hazardous substances authority think that a claim does not comply with subsection (3).
- (6) If subsection (5) applies, the hazardous substances authority must, before the end of the period of two weeks starting with the date they received the claim—
 - (a) notify the claimant that they think the claim is invalid; and
 - (b) give their reasons.
- (7) This subsection applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity.
- (8) Hazardous substances consent which is deemed to be granted under this section is subject—
 - (a) to the condition that the maximum aggregate quantity of the substance that may be present for the purposes of this subsection at any one time must not exceed the established quantity; and
 - (b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of consent.
- (9) A substance is present for the purposes of subsection 8(a) if—
 - (a) it is on, over or under land to which the claim for consent relates;
 - (b) it is on, over or under land which is within 500 metres of it and is controlled by the Crown; or
 - (c) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it,and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of paragraphs (a) to (c) must be counted only once.
- (10) The establishment period is the period of 12 months ending on the day before the date of commencement of section 90(3) of the Planning and Compulsory Purchase Act 2004.
- (11) The transitional period is the period of six months starting on the date of commencement of that section.
- (12) The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period.]

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

Textual Amendments

F3 S. 30D inserted (12.6.2006) by [The Planning and Compulsory Purchase Act 2004 \(Transitional Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/269\)](#), arts. 1(1), **5(4)**

31 Exercise of powers in relation to Crown land.

^{F4}(1)

^{F4}(2)

(3) In this section—

“Crown land” means land in which there is a Crown interest, and

^{F5}“Crown interest” means any of the following—

- (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates,
- (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department,
- (c) such other interest as the Scottish Ministers specify by order.]

(4) A person who is entitled to occupy Crown land by virtue of a contract in writing shall be treated for the purposes of subsection (1) as having an interest in land.

(5) For the purposes of this section “the appropriate authority”, in relation to any land—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners,
- (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land ^{F6}or the relevant person], and

^{F7}(ba) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Scottish Ministers,]

- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.

^{F8}(5A) In subsection (5), “relevant person”, in relation to any land to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that land.]

(6) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

^{F9}(7) References to Her Majesty’s private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862 (c. 37).

(8) An order made for the purposes of paragraph (c) of the definition of Crown interest in subsection (3) must be made by statutory instrument.

(9) But no such order may be made unless a draft of it has been laid before and approved by resolution of the Scottish Parliament.]

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

Textual Amendments

- F4** S. 31(1)(2) repealed (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 8\(2\), Sch. 9](#) (with s. 111); [S.S.I. 2006/101, art. 2, sch.](#); [S.S.I. 2006/268, art. 3\(e\)\(f\)](#)
- F5** Words in s. 31(3) substituted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 8\(3\)](#) (with s. 111); [S.S.I. 2006/101, art. 2, sch.](#); [S.S.I. 2006/268, art. 3\(f\)](#)
- F6** Words in s. 31(5)(b) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\), art. 1\(2\), Sch. 5 para. 27\(a\)](#)
- F7** S. 31(5)(ba) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 8\(4\)](#) (with s. 111); [S.S.I. 2006/101, art. 2, sch.](#); [S.S.I. 2006/268, art. 3\(f\)](#)
- F8** S. 31(5A) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\), art. 1\(2\), Sch. 5 para. 27\(b\)](#)
- F9** S. 31(7)-(9) inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 8\(5\)](#) (with s. 111); [S.S.I. 2006/101, art. 2, sch.](#); [S.S.I. 2006/268, art. 3\(f\)](#)

^{F10}32 Application for hazardous substances consent in anticipation of disposal of Crown land.

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Textual Amendments

- F10** S. 32 repealed (12.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 12, Sch. 9](#) (with s. 111); [S.S.I. 2006/268, art. 3\(f\)\(e\)](#)

[^{F11}32A Applications for hazardous substances consent by Crown

- (1) This section applies to an application for hazardous substances consent made by or on behalf of the Crown.
- (2) The Scottish Ministers may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment (including any enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament).]

Textual Amendments

- F11** S. 32A inserted (20.3.2006 for specified purposes, 12.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 121\(4\), Sch. 5 para. 13](#) (with s. 111); [S.S.I. 2006/101, art. 2, sch.](#); [S.S.I. 2006/268, art. 3\(f\)](#)

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

33 Rights of entry.

- (1) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of surveying it in connection with—
 - (a) any application for hazardous substances consent, or
 - (b) any proposal to issue a hazardous substances contravention notice.
- (2) Any person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 21.
- (3) Any person who is an officer of the Valuation Office or a person duly authorised in writing by the Secretary of State or by a planning authority may at any reasonable time enter upon any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of that land or any other land made by virtue of section 14 or 17.
- (4) Any person duly authorised in writing by the Secretary of State or a planning authority may at any reasonable time enter any land in respect of which a hazardous substances contravention notice has been served for the purpose of ascertaining whether the notice has been complied with.
- (5) Subject to sections 34 and 35, any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

34 Power to issue warrants.

- (1) If in relation to rights of entry exercised under section 33, the sheriff is satisfied—
 - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in that section, and
 - (b) that—
 - (i) admission to the land has been refused, or a refusal is reasonably apprehended, or
 - (ii) the case is one of urgency,he may issue a warrant authorising any person duly authorised in writing to enter the land.
- (2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
 - (a) within one month from the date of the issue of the warrant, and
 - (b) at a reasonable hour, unless the case is one of urgency.

35 Rights of entry: supplementary provisions.

- (1) A person authorised to enter any land in pursuance of a right of entry conferred under or by virtue of section 33 or 34 (referred to in this section as “a right of entry”)—
 - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering,

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- (b) may take with him such other persons as may be necessary, and
 - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any damage is caused to land or moveable property in the exercise of a right of entry, compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 86 of the principal Act shall apply in relation to compensation under this subsection as it applies in relation to compensation under Part IV of the principal Act.
- (4) If any person who enters any land in exercise of a right of entry discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (5) Subsection (4) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (6) A person who is guilty of an offence under subsection (4) shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.
- (7) The authority of the [^{F12}Scottish Ministers] shall be required for the carrying out of works in exercise of a power conferred under section 33(5) if—
- (a) the land in question is held by statutory undertakers, and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.

^{F13}(8)

Textual Amendments

F12 Words in s. 35(7) substituted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 129; S.I. 1999/3178, art. 3

F13 S. 35(8) repealed (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 129, Pt. IV; S.I. 1998/3178, art. 3

[^{F14}35A Rights of entry: Crown land

- (1) Section 33 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of—
- (a) a person appearing to the person seeking entry to the land to be entitled to give it, or
 - (b) the appropriate authority.

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General. (See end of Document for details)

- (4) In subsection (5), the words “and 35” must be ignored.
- (5) Section 35 does not apply to anything done by virtue of this section.
- (6) “Appropriate authority” must be construed in accordance with section 31(5).]

Textual Amendments

F14 S. 35A inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 16** (with s. 111); S.S.I. 2006/268, art. 3(f)

36 Application of certain general provisions of principal Act.

[^{F15}(1)] The following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act—

- section 85 (power to make provision for determination of claims),
- section 265 (local inquiries),
- [^{F16}section 265A (planning inquiries to be held in public subject to certain exceptions),]
- section 266 (orders as to expenses of parties where no local inquiry held),
- section 267 (procedure on certain appeals and applications),
- section 271 (service of notices),
- [^{F17}section 271A(1) to (2) (service of notices on the Crown),]
- section 272 (power to require information as to interests in land),
- [^{F18}section 272A(1) to (4) (information as to interests in Crown land),]
- section 273 (offences by corporations), and
- section 276 (Act not excluded by special enactments).

[^{F19}(2)] In the application of section 265A of the principal Act for the purposes of this Act, the provisions mentioned in subsection (1) of the section shall be construed as including any inquiry held by virtue of this section.]

Textual Amendments

- F15** S. 36(1): s. 36 renumbered as s. 36(1) (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 22(2)** (with s. 111); S.S.I. 2006/268, art. 3(f)
- F16** Words in s. 36 inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 22(1)(a)** (with s. 111); S.S.I. 2006/268, art. 3(f)
- F17** Words in s. 36 inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 22(1)(b)** (with s. 111); S.S.I. 2006/268, art. 3(f)
- F18** Words in s. 36 inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 22(1)(c)** (with s. 111); S.S.I. 2006/268, art. 3(f)
- F19** S. 36(2) added (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 22(2)** (with s. 111); S.S.I. 2006/268, art. 3(f)

37 Financial provisions.

- (1) Where—

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- (a) compensation is payable by a planning authority under this Act in consequence of any decision or order given or made under sections 1 to 29 (except sections 9, 20 and 22 to 25) or the Schedule, and
 - (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,
- the Minister responsible for the administration of that service may pay that authority a contribution of such amount as he may with the consent of the Treasury determine.
- (2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a planning authority in or in connection with the performance of any of their functions under sections 1 to 29 (except sections 9, 20 and 25), 34 and 35.
 - (3) In the application of subsection (2) to a local authority, “planning authority” means a planning authority other than that local authority.
 - (4) Subsections (3) and (4) of section 261 of the principal Act (borrowing by authorities for purposes of the principal Act) shall apply for the purposes of this Act as they apply for the purposes of that Act.
 - (5) There shall be paid out of money provided by Parliament any expenses of the Secretary of State or any government department under this Act.
 - (6) Any sums received by the Secretary of State under any provision of this Act shall be paid into the Consolidated Fund.

Changes to legislation:

There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: General.