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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 181**

**The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015**

**PART 3**

Applications

**Notice to owner by applicants**

**5.—**(1) Before submitting an application under regulation 6, 7 or 8 an applicant must give notice in the form set out in Schedule 3 to any person (other than the applicant) who at the beginning of the period of 21 days ending on the date of submission of the application (“the relevant period”) is the owner of any land to which the application relates.

(2) The applicant must complete a certificate certifying, as the case may be—

- (a) that at the beginning of the relevant period no person (other than the applicant) was the owner of any of the land to which the application relates;
- (b) that the applicant has given notice to every person (other than the applicant) who at the beginning of the relevant period was the owner of any land to which the application relates; or
- (c) that—
  - (i) the applicant has given notice to every person (other than the applicant) whose name and address was known to the applicant who was at the beginning of the relevant period the owner of any land to which the application relates; and
  - (ii) the applicant is unable to give notice to every owner.

(3) A certificate completed under—

- (a) paragraph (2)(b) or (c) must set out the name of every person to whom notice was given and the address at and date on which notice was given; and
- (b) paragraph (2)(c) must also certify that the applicant has taken reasonable steps (specifying them) to ascertain the names and addresses of those owners to whom the applicant has been unable to give notice.

**Applications for hazardous substances consent**

**6.—**(1) Subject to regulation 7, an application to a planning authority for hazardous substances consent is to be made in accordance with this regulation.

(2) The application must contain—

- (a) the name and address of the applicant;
- (b) the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;

- (c) the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
- (d) details of—
- (i) the person in control of the land to which the application relates;
  - (ii) each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each relevant substance to be present on, over or under the land to which the application relates;
  - (iii) the main activities carried out or proposed to be carried out on, over or under the land to which the application relates;
  - (iv) how and where each relevant substance is to be kept and used;
  - (v) how each relevant substance is proposed to be transported to and from the land to which the application relates;
  - (vi) the vicinity of the land to which the application relates, where such details are relevant to the risks or consequences of a major accident;
  - (vii) the measures taken or proposed to be taken to limit the consequences of a major accident; and
- (e) where applicable, a statement that the proposal is a project, or part of a project, that is subject to a national or transboundary environmental impact assessment or to [F1a requirement to provide information by virtue of regulation 20 of the 2015 Regulations].
- (3) The application must be accompanied by—
- (a) a site map;
  - (b) a substance location plan;
  - (c) the certificate completed in accordance with regulation 5(2) (notice to owner by applicant); and
  - (d) the fee payable under regulation 55.
- (4) The site map required by paragraph (3)(a) is a map reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers.
- (5) The substance location plan required by paragraph (3)(b) is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies—
- (a) any area of the land intended to be used for the storage of a relevant substance;
  - (b) where a relevant substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the relevant substance will be present; and
  - (c) access points to and from the land.

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#### Textual Amendments

- F1** Words in [reg. 6\(2\)\(e\)](#) substituted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), [regs. 1, 4\(3\)](#) (as amended by [S.S.I. 2020/310](#), [regs. 1, 2\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))

### **Applications for removal of conditions**

7.—(1) An application to a planning authority for hazardous substances consent under section 11 of the principal Act (applications for removal of conditions attached to a hazardous substances consent) is to be made in accordance with this regulation.

- (2) The application must contain—
- (a) the name and address of the applicant;
  - (b) the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;
  - (c) the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
  - (d) a description of each condition previously imposed on the relevant consent which—
    - (i) should no longer be imposed on the consent; or
    - (ii) should be imposed in a modified form;
  - (e) for any condition to which paragraph (d)(i) applies, the reasons why it should no longer be imposed;
  - (f) for any condition to which paragraph (d)(ii) applies—
    - (i) a description of the proposed modification; and
    - (ii) the reasons why the condition should be imposed in a modified form; and
  - (g) information about any relevant changes in circumstances since the relevant consent was granted.
- (3) The application must be accompanied by—
- (a) a copy of the relevant consent;
  - (b) where any condition which is the subject of the application restricts the location of a hazardous substance, a change of location plan;
  - (c) the certificate completed in accordance with regulation 5(2) (notice to owner by applicant); and
  - (d) the fee payable under regulation 55.
- (4) For the purposes of paragraph (3)(b) a change of location plan is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies—
- (a) the location of each hazardous substance to which the application relates, at the date of the application; and
  - (b) the proposed location of the hazardous substance.

### **Applications for continuation of hazardous substances consent where there has been a change in the person in control of part of the land**

8.—(1) An application to a planning authority under section 15(1) of the principal Act (continuation of a hazardous substances consent where there has been a change in the person in control of part of the land to which the consent relates) is to be made in accordance with this regulation.

- (2) The application must contain—
- (a) the name and address of the applicant;

- (b) the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;
  - (c) the postal address of the land to which the relevant consent relates or, if the land in question has no postal address, a description of the location of the land;
  - (d) a description of the use of each area of the land identified in the accompanying change of control plan;
  - (e) a description of any relevant changes in circumstances since the relevant consent was granted; and
  - (f) the date on which the change in the person in control of part of the land to which the relevant consent relates is to take place, where known.
- (3) The application must be accompanied by—
- (a) a copy of the relevant consent;
  - (b) a change of control plan;
  - (c) the certificate completed in accordance with regulation 5(2) (notice to owner by applicant); and
  - (d) the fee payable under regulation 55.

(4) The change of control plan referred to in paragraph (3)(b) is a plan of the land to which the relevant consent relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the land which is to be under separate control after the proposed change in the person in control.

### **Neighbour notification by planning authorities**

9.—(1) Where an application under regulation 6, 7 or 8, as the case may be, has been made the planning authority must give notice in accordance with this regulation.

(2) Notice is to be given where there are premises situated on the neighbouring land to which the notice can be sent to the owner, lessee or occupier of such premises, by sending a notice addressed to “the Owner, Lessee or Occupier” to such premises.

- (3) The notice must—
- (a) state the date on which the notice is sent;
  - (b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name of that agent;
  - (c) include the reference number given to the application by the planning authority;
  - (d) include a description of the proposal to which the application relates;
  - (e) include the postal address of the land to which the application relates, or if the land in question has no postal address, a description of the location of the land;
  - (f) state where and when the application and any map or plan relating to it may be inspected;
  - (g) state that representations (including comments or questions) may be made to the planning authority and contain details of how representations should be made and the date by which any representations must be made (being a date not earlier than 21 days after the date on which the notice is sent);
  - (h) where applicable, state that the proposal is a project, or part of a project, that is subject to a national or transboundary environmental impact assessment or to [F<sup>2</sup>a requirement to provide information by virtue of regulation 20 of the 2015 Regulations];
  - (i) state that the application may be granted (either unconditionally or subject to conditions) or refused; and

- (j) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land.
- (4) In this regulation, “neighbouring land” means—
- (a) land (other than land forming part of a road) which, or part of which, is conterminous with or within 20 metres of the boundary of the land to which the application relates; and
  - (b) where storage or use of hazardous substances is to take place within a building, every other separately owned or separately occupied unit within that building,
- and “land” includes any building on the land.

#### Textual Amendments

- F2** Words in [reg. 9\(3\)\(h\)](#) substituted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), [regs. 1, 4\(4\)](#) (as amended by [S.S.I. 2020/310](#), [regs. 1, 2\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Publication of receipt of application by planning authorities

**10.** When an application under regulation 6, 7 or 8, as the case may be, has been made the planning authority must publish a notice in the form set out in Schedule 4 in a newspaper circulating in the locality in which the land to which the application relates is situated.

#### Validation date

**11.** An application under regulation 6, 7 or 8 is to be taken to have been made on the date on which the last of the information, plans, other documents or fee required to be contained in or accompany the application in accordance with those regulations is received by the planning authority.

#### Acknowledgment of applications

- 12.—**(1) When a planning authority receives—
- (a) an application under regulation 6, 7 or 8; or
  - (b) an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent,
- they must send to the applicant, or where an agent is acting on behalf of the applicant that agent, an acknowledgement of receipt of that application.
- (2) The acknowledgement referred to in paragraph (1) must—
- (a) include an explanation of the timescales within which the planning authority are to give notice to the applicant of their decision on the application; and
  - (b) inform the applicant of any right to appeal to the Scottish Ministers under section 19 of the principal Act.
- (3) Where the application does not comply with regulation 6, 7 or 8, as the case may be, the planning authority must send to the applicant, or where an agent is acting on behalf of the applicant that agent, a notice identifying any information, plan, other documents or fee the applicant must submit in order to comply with regulation 6, 7 or 8, as the case may be.

#### Further information

**13.** A planning authority may require from the applicant further information, plans or other documents which they consider that they require to enable them to deal with the application and in

respect of an application under regulation 6, 7 or 8, may do so in addition to the information, plans and other documents which must be contained in or accompany an application in accordance with regulation 6, 7 or 8, as the case may be.

### **Consultation before determination of applications**

**14.**—(1) Subject to paragraph (2), a planning authority must, before determining an application under regulation 6, 7 or 8, consult—

- (a) the safety regulator;
- (b) the Police Service of Scotland;
- (c) Scottish Natural Heritage;
- (d) a community council established in accordance with the provisions of Part IV of the Local Government (Scotland) Act 1973 <sup>M1</sup>, any part of whose area is within or adjoins the land to which the application relates;
- (e) the Scottish Fire and Rescue Service;
- (f) the Scottish Environment Protection Agency;
- (g) a person to whom a licence has been granted under section 7(2) of the Gas Act 1986 <sup>M2</sup> (licence to convey gas through pipes) whose apparatus is situated on, over or under the land to which the application relates or on, over or under adjoining land;
- (h) a person to whom a licence has been granted under section 6(1)(b) or (c) of the Electricity Act 1989 <sup>M3</sup> (transmission and distribution licences) whose apparatus is situated on, over or under the land to which the application relates or on, under or over adjoining land;
- (i) where the land to which the application relates, or any part of that land, is within 2 kilometres of a royal palace, park or residence, the Scottish Ministers;
- (j) where the land to which the application relates, or any part of that land, is within 2 kilometres of the area of any other planning authority or a hazardous substances authority within the meaning of section 39(1) of the Planning (Hazardous Substances) Act 1990 <sup>M4</sup>, that authority;
- (k) where the land to which the application relates, or any part of that land, is land in an area of coal working or former or proposed coal working notified to the planning authority by the British Coal Corporation or the Coal Authority, the Coal Authority;
- (l) where the land to which the application relates, or any part of that land, is land which is used for disposal or storage of controlled waste, the relevant waste disposal authority (where that authority is not also the planning authority);
- (m) where it appears to the planning authority that the development is likely to affect land in the area of the Cairngorms National Park Authority, that Authority; and
- (n) where it appears to the planning authority that the development is likely to affect land in the area of the Loch Lomond and Trossachs National Park, any local authority who would have been responsible for exercising the functions of a planning authority under the principal Act in relation to the application were it not for article 7 of the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 <sup>M5</sup>.

(2) The planning authority need not consult a body or person referred to in paragraph (1) if that body or person has notified the planning authority in writing that it does not wish to be consulted, but this paragraph does not apply in respect of the safety regulator, Scottish Natural Heritage or the Scottish Environment Protection Agency.

(3) The planning authority must also, before determining an application under regulation 6, 7 or 8, consult any other persons of whom the authority are aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the application, and who in the authority's opinion are unlikely to become aware of the application through the notices published in accordance with regulation 5 (notice to owner by applicants), 9 (neighbour notification by planning authorities) or 10 (publication of receipt of application by planning authorities).

(4) Where a planning authority is required to consult in accordance with this regulation they must within 7 days of receiving the application—

- (a) give notice in writing to the body or person concerned containing—
  - (i) a statement of the fact that an application under regulation 6, 7 or 8, as the case may be, has been received;
  - (ii) a description of the proposal to which the application relates;
  - (iii) the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
  - (iv) where applicable, a statement that the proposal is a project, or part of a project, that is subject to a national or transboundary environmental impact assessment or to <sup>F3</sup>a requirement to provide information by virtue of regulation 20 of the 2015 Regulations];
  - (v) a statement that the application may be granted (either unconditionally or subject to conditions) or refused;
  - (vi) a statement that representations (including comments or questions) may be made to the planning authority and details of how representations should be made and the period for making representations (which must not be less than 28 days beginning with the day after the day on which notice is given in accordance with this regulation; and
  - (vii) an indication of the times and places where, and means by which, relevant information is available; and
- (b) ensure that a copy of the application and any information, plans and other documents contained in or accompanying it is available for inspection at their offices during the period allowed for making representations.

(5) In this regulation—

“controlled waste” has the meaning given by section 75(4) of the Environmental Protection Act 1990 <sup>M6</sup>; and

“waste disposal authority” means a local authority exercising their functions under Part II of the Environmental Protection Act 1990.

#### Textual Amendments

- F3** Words in [reg. 14\(4\)\(a\)\(iv\)](#) substituted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), [regs. 1, 4\(5\)](#) (as amended by [S.S.I. 2020/310](#), [regs. 1, 2\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Marginal Citations

- M1** [1973 c.65](#).
- M2** [1986 c.44](#). Section 7 was substituted by section 5 of the [Gas Act 1995 \(c.45\)](#) and subsection (2) was amended by sections 3(2), 76(3) and 108 of, and paragraph 4 of Schedule 6 to, the [Utilities Act 2000 \(c.27\)](#) and [S.I. 2011/2704](#).

- M3** 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000, subsection (1)(b) was substituted by section 136(1) of the [Energy Act 2004 \(c.20\)](#) (“the 2004 Act”) and subsection (1)(c) was amended by section 197(9) of, and Part 1 of Schedule 23 to, the 2004 Act.
- M4** 1990 c.10. Section 39(1) was relevantly amended by paragraph 2(7) of Schedule 13 to the [Environmental Protection Act 1990 \(c.43\)](#).
- M5** S.S.I. 2002/201. The effect of Article 7 is that the functions exercisable by a planning authority under the Planning (Hazardous Substances) (Scotland) Act 1997, are, in relation to the Loch Lomond and The Trossachs National Park transferred to and exercisable by the Park Authority.
- M6** 1990 c.43.

## Representations

15. When determining an application under regulation 6, 7 or 8 a planning authority must take into account any representations made in connection with the application (which were not subsequently withdrawn).

## Duty to notify the Scottish Ministers of applications

16.—(1) Where a planning authority proposes to grant an application under regulation 6, 7 or 8, as the case may be, and the safety regulator or the Scottish Environment Protection Agency has advised against that or has recommended that conditions be imposed on the grant which the authority does not propose to impose, the authority must notify the Scottish Ministers, in writing, of the application and provide them with a copy of the application and any information, plans and other documents contained in or accompanying it.

(2) The planning authority must not grant the application before—

- (a) the expiry of the period of 28 days beginning with the date of the notification given under paragraph (1) or such longer period notified in writing to the planning authority by the Scottish Ministers; or
- (b) the Scottish Ministers notify the authority that they do not intend to require that the application be referred to them under section 18 of the principal Act.

## Time period for determination

17.—(1) Subject to paragraph (2), where a planning authority has received an application under regulation 6, 7 or 8, as the case may be, the authority must give notice to the applicant of their determination or referral of the application to the Scottish Ministers under section 18 of the principal Act within a period of 2 months after the validation date or such extended period as may be agreed in writing between the applicant and the planning authority.

(2) An application under regulation 6, 7 or 8, as the case may be, is not to be determined until after the latest of the date of expiry of—

- (a) the period allowed for the making of representations specified in the notice given in accordance with regulation 5(1) (notice to owner by applicants);
- (b) the period allowed for the making of representations specified in the notice given in accordance with regulation 9(1) (neighbour notification by planning authorities);
- (c) the period allowed for the making of representations specified in the notice given in accordance with regulation 10 (publication of receipt of application by planning authorities); or
- (d) the period of notice given by the planning authority in accordance with regulation 14(4) (a)(vi).



(3) The period of notice referred to in paragraph (2)(d) begins with the date on which all bodies and other persons who the planning authority are required to consult under regulation 14 have been given notice in accordance with that regulation.

(4) The period prescribed for the purposes of section 16(7) of the principal Act (determination of applications for continuation of hazardous substances consent) is the period of 2 months after the validation date.

### **Decision notices on applications under regulation 6, 7 or 8**

- 18.—**(1) The planning authority must within the period referred to in regulation 17(1)—
- (a) give to the applicant, or where an agent is acting on behalf of the applicant that agent, a notice of their decision on an application under regulation 6, 7 or 8, as the case may be (“decision notice”);
  - (b) give a copy of the decision notice to—
    - (i) the safety regulator; and
    - (ii) the Scottish Environment Protection Agency; and
  - (c) inform every other body or other person who made written representations in respect of the application (and provided an address) of their decision on the application and where a copy of the decision notice is available for inspection.
- (2) A decision notice relating to an application under regulation 6 or 7 must include—
- (a) a description of the hazardous substances for which hazardous substances consent has been granted or, as the case may be, refused;
  - (b) the postal address of the land in relation to which hazardous substances consent has been granted or, as the case may be, refused or, if the land in question has no postal address, a description of the location of the land;
  - (c) where hazardous substances consent is granted, any condition to which the consent is subject; and
  - (d) the reference number given to the application by the planning authority.
- (3) A decision notice relating to an application under regulation 8 must include—
- (a) details of the relevant consent to which the application relates;
  - (b) the postal address of the land in relation to which hazardous substances consent has been continued, modified or revoked, as the case may be, or, if the land in question has no postal address, a description of the location of the land;
  - (c) the planning authority's decision on the application, including a description of any modification of the relevant consent made by the authority;
  - (d) the reference number given to the application by the planning authority; and
  - (e) where the relevant consent is modified or revoked, information about the right of compensation provided for in section 17 of the principal Act.
- (4) A decision notice must also—
- (a) identify the bodies and other persons consulted by the planning authority in respect of the application;
  - (b) contain a statement of the number of representations made in respect of the application, a summary of the main issues raised by such representations and an explanation of how they were taken into account in the decision;
  - (c) explain the reasons on which the decision is based; and

- (d) contain information regarding the right to challenge the validity of the decision and the procedures for doing so.
- (5) Where an application is refused or granted subject to conditions the decision notice must be accompanied by—
  - (a) a notice in the form set out in Schedule 5; and
  - (b) a statement—
    - (i) explaining how the applicant may obtain information on how to appeal to the Scottish Ministers under section 19 of the principal Act; and
    - (ii) advising that the applicant may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose.
- (6) Where representations in respect of the application are made by 3 or more persons in the same document, it is sufficient for the purposes of paragraph (1)(c) that the planning authority notify—
  - (a) only the person who sent that document to the planning authority, where it is possible for the planning authority to identify that person; or
  - (b) where it is not possible to do so, only the first named person on the document for whom an address is provided.

#### **Notices of decision on applications for approval of matters specified in conditions**

**19.**—(1) Where a planning authority receives an application for approval, consent or agreement required by a condition imposed on a grant of hazardous substances consent the planning authority must give to the applicant, or where an agent is acting for the applicant that agent, a notice of their decision on the application.

- (2) The notice referred to in paragraph (1) must include—
  - (a) a description of the matter in respect of which approval, consent or agreement has been granted or, as the case may be, refused;
  - (b) an explanation of the reasons on which the decision is based;
  - (c) the reference number given to the application by the planning authority; and
  - (d) the reference number given to the application in respect of which the condition requiring the approval, consent or agreement of the planning authority was imposed.
- (3) Where an application referred to in paragraph (1) is refused or is granted subject to conditions the notice of decision must be accompanied by—
  - (a) a notice in the form set out in Schedule 6; and
  - (b) a statement explaining how the applicant may obtain information on how to appeal to the Scottish Ministers under section 19 of the principal Act.

#### **Notice of reference of applications to the Scottish Ministers**

**20.** On referring an application under regulation 6, 7 or 8 to the Scottish Ministers in accordance with a direction given under section 18 of the principal Act a planning authority must serve on the applicant a notice—

- (a) advising that the application has been referred to the Scottish Ministers;
- (b) setting out the reasons given by the Scottish Ministers for giving the direction; and
- (c) advising that the applicant may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose.

**Changes to legislation:**

There are currently no known outstanding effects for the The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015, PART 3.