
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 181

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

PART 7

Enforcement

Hazardous substances contravention notices

42.—(1) A hazardous substances contravention notice served under section 22 of the principal Act must identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed under section 22(4)(b) of the principal Act as other persons on whom a copy of a hazardous substances contravention notice must be served are all persons having an interest in the land to which the notice relates who in the opinion of the planning authority are materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served under section 22(4) of the principal Act must be accompanied by a statement setting out—

- (a) the planning authority's reasons for issuing the notice; and
- (b) the right of appeal to the Scottish Ministers against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought under regulation 43.

Appeals against hazardous substances contravention notices

43.—(1) A person on whom a hazardous substances contravention notice is served or any other person having an interest in the land to which the notice relates, may appeal to the Scottish Ministers against the notice on the grounds that—

- (a) the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- (b) those matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (c) copies of the hazardous substances contravention notice were not served in accordance with section 22 of the principal Act;
- (d) the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control; or
- (e) any period specified in the notice in accordance with section 22(5) of the principal Act falls short of what should reasonably be allowed.

(2) An appeal under this regulation is to be made to the Scottish Ministers by giving them notice in writing in accordance with this regulation.

(3) The notice of appeal must be served before the date specified in the hazardous substances contravention notice as the date on which it is to take effect.

(4) The notice of appeal must contain—

- (a) the grounds of appeal;
- (b) all matters which the appellant intends to raise in the appeal;
- (c) a note of the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) referred to in regulation 30(3) (decisions as to further procedure) the appellant considers the appeal should be conducted and in particular—
 - (i) a statement of whether or not the appellant wishes the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the appellant so wishes, a statement of the matters on which the appellant wishes the opportunity to be heard;
- (d) the name and address of the appellant; and
- (e) the name and address of any agent acting on behalf of the appellant and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the agent instead of the appellant.

(5) The notice of appeal must be accompanied by—

- (a) a copy of the hazardous substances contravention notice to which the appeal relates;
- (b) a copy of any hazardous substances consent to which the hazardous substances contravention notice relates; and
- (c) copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.

(6) In addition to matters set out in the notice of appeal and the documents accompanying it the appellant may raise matters only in accordance with regulation 32 (written submissions procedure) and 44 (intimation of appeal to planning authority and planning authority's response), the Hearing Session Rules and the Hazardous Substances Inquiry Session Rules.

(7) Part 5 (appeals under section 19 of the principal Act) (other than regulations 24 (notice of appeal), 25 (intimation to planning authority and planning authority's response), 26 (notification to interested parties) and 27 (publication of appeal documents), 36 (compliance with notification and consultation procedures) and 39 (called-in applications)) and the Hearing Session Rules apply to appeals under this regulation with the modification that references to the Schedule to the principal Act in regulation 40 (non-delegated appeals) are to be treated as references to Schedule 4 to the 1997 Act as applied by virtue of regulation 54 (application of provisions of the 1997 Act).

Intimation of appeal to planning authority and planning authority's response

44.—(1) The appellant must at the same time as giving the notice of appeal under regulation 43(2) send to the planning authority a copy of—

- (a) the notice of appeal; and
- (b) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation 43(5)(c).

(2) The planning authority must, not later than 21 days beginning with the date of receipt of the notice of appeal, send to the Scottish Ministers and the appellant—

- (a) a statement (“the planning authority's response”) incorporating a response to each ground of appeal and stating the matters which the planning authority consider require determination and by what, if any, procedure (or combination of procedures) referred to

in regulation 30(3) the planning authority consider the appeal should be conducted and in particular—

- (i) a statement of whether or not the planning authority wish the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the planning authority so wish, a statement of the matters on which the planning authority wish the opportunity to be heard; and
- (b) copies of documents which were before the planning authority and which were taken into account in reaching their decision to issue the notice which is the subject of the appeal.
- (3) The appellant may, within 14 days beginning with the date of receipt of the planning authority's response, send to the Scottish Ministers and the planning authority comments on any matters raised in the planning authority's response.
- (4) The planning authority must until such time as the appeal is determined make available for inspection at an office of the planning authority copies of—
- (a) the notice of appeal;
 - (b) the planning authority's response and any comments made under paragraph (3); and
 - (c) any documents, material and evidence which accompanied the notice of appeal or which were sent with the planning authority's response.

Notification to other parties

45.—(1) The planning authority must not later than 14 days after notification of the appeal under regulation 44 give notice of the appeal to each person (other than the appellant) on whom the hazardous substances contravention notice was served.

- (2) Notice under paragraph (1) is to—
- (a) state the name of the appellant and the address of the land to which the appeal relates;
 - (b) describe the steps required by the hazardous substances contravention notice to which the appeal relates;
 - (c) state that representations may be made to the Scottish Ministers and provide information as to how and by when such representations may be made; and
 - (d) state where a copy of the notice of appeal and the planning authority's response may be inspected.

(3) The period allowed for making representations is to be not less than 14 days after the date on which notice is given under paragraph (1).

Determination of an appeal against a hazardous substances contravention notice

46.—(1) On the determination of an appeal under regulation 43 the Scottish Ministers are to give directions for giving effect to the determination, including, where appropriate, directions for quashing the hazardous substances contravention notice.

- (2) On such an appeal—
- (a) if they are satisfied that the correction or variation will not cause injustice to the appellant or the planning authority the Scottish Ministers may—
 - (i) correct any defect, error or misdescription in the hazardous substances contravention notice; or
 - (ii) vary the terms of the hazardous substances contravention notice.
 - (b) the Scottish Ministers may—

- (i) dismiss the appeal if the appellant fails to comply with regulation 43(3) to (5); or
- (ii) allow the appeal and quash the hazardous substances contravention notice if the planning authority fail to comply with regulation 44(2) and (4).

(3) In a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 22(4) of the principal Act to be served with the hazardous substances contravention notice was not served, the Scottish Ministers may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the notice.

Appeals against hazardous substances contravention notices: supplementary

47. Section 131(4) of the 1997 Act applies to appeals under regulation 43 as it applies to appeals under section 130 of that Act.

Validity of a hazardous substances contravention notice

48. Section 134 of the 1997 Act applies in relation to hazardous substances contravention notices with the following modifications:—

- (a) for “enforcement notice” substitute “ hazardous substances contravention notice ”;
- (b) for “section 130(1)(b) to (e)” substitute “ regulation 43(1)(a) to (c) of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 ”; and
- (c) for “that section” substitute “ that regulation ”.

Execution and cost of works required by hazardous substances contravention notice

49. Section 135 of the 1997 Act has effect in relation to hazardous substances contravention notices with the following modifications:—

- (a) for “enforcement notice” in each place where those words appear substitute “ hazardous substances contravention notice ”; and
- (b) in subsection (4), for “breach of planning control” in each place where those words appear substitute “ contravention of hazardous substances control ”.

Offence where hazardous substances contravention notice not complied with

50. Section 136 of the 1997 Act has effect in relation to hazardous substances contravention notices with the following modifications:—

- (a) for subsection (1) substitute—
 - “(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any step required by the notice to be taken has not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land are in breach of the notice.”;
- (b) in subsection (2), for “the owner of the land” substitute “ a person ”;
- (c) omit subsections (4) and (5);
- (d) in subsection (6), omit “or (5)”; and
- (e) in subsection (7),
 - (i) in paragraph (a), for “enforcement notice” substitute “ hazardous substances contravention notice ”;

- (ii) in paragraph (b), omit “appropriate” and after “section 147” insert “ (as applied by regulation 53 of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015) ”.

Effect of hazardous substances consent on hazardous substances contravention notice

51. Section 137 of the 1997 Act has effect in relation to hazardous substances contravention notices with the following modifications:—

- (a) for subsection (1) substitute—

“Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice ceases to have effect so far as inconsistent with that consent.”;
- (b) omit subsection (2); and
- (c) in subsection (3), for “an enforcement notice or breach of condition notice” substitute “ a hazardous substances contravention notice ”.

Hazardous substances contravention notice to have effect against the subsequent presence of hazardous substances

52.—(1) Section 138 of the 1997 Act has effect in relation to hazardous substances contravention notices with the following modifications:—

- (a) for subsections (1) to (3) substitute—
 - “(1) Compliance with a hazardous substances contravention notice does not discharge that notice.
 - (2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice is in contravention of that notice.
 - (3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, is in contravention of that notice.”; and
- (b) in subsection (4)—
 - (i) for “planning permission” substitute “ hazardous substances consent ”; and
 - (ii) for “carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice” substitute “ is responsible for the presence of a hazardous substance on land in contravention of the requirements of a hazardous substances contravention notice as described in subsection (2) or (3) ”.

Register of hazardous substances contravention notices

53.—(1) Section 147 of the 1997 Act has effect in relation to hazardous substances contravention notices with the modification specified in paragraph (2).

(2) For subsection (1) substitute—

“(1) Every planning authority must, in respect of each hazardous substances contravention notice issued by them, keep an enforcement register containing—

- (a) the postal address of the land to which the notice relates or, if there is no postal address, a description of the land;
- (b) the date on which copies of the notice were served under section 22(4);
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Scottish Ministers against the notice and the date of the final determination of the appeal; and
- (g) particulars of any direction given under regulation 46(1) of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to the notice is to be removed from the register if the notice is quashed by the Scottish Ministers or withdrawn.

(1B) The register—

- (a) is to include an index to enable any person to trace an entry in the register; and
- (b) is to be kept at the principal office of the planning authority.”.

Proceedings for questioning the validity of other orders, decisions and directions

54.—(1) Sections 237(3) and 239 of the 1997 Act apply to appeals under regulation 43 with the modifications specified in paragraphs (2) and (3).

(2) After section 237(3)(f) insert—

“(ff) any decision of the Scottish Ministers on an appeal to them against a hazardous substances contravention notice;”.

(3) In section 239(1)(b)(i), (5)(b) and (9), for “this Act” substitute “ the Planning (Hazardous Substances) (Scotland) Act 1997 ”.

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015, PART 7.