



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.

31 Exercise of powers in relation to Crown land.

- (1) Notwithstanding any interest of the Crown in Crown land, but subject to subsection (2), any restrictions imposed or powers conferred by any of sections 2 to 29 (except sections 20 and 25) shall apply and be exercisable in relation to Crown land, to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown.
- (2) Except with the consent of the appropriate authority, no order or notice shall be made or served under any of the provisions of section 12, 13 or 22 in relation to land which for the time being is Crown land.
- (3) In this section—

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

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“Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department.

- (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, and
 - (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.
- (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.

32 Application for hazardous substances consent in anticipation of disposal of Crown land.

- (1) This section has effect for the purpose of enabling Crown land, or an interest in Crown land, to be disposed of with the benefit of hazardous substances consent.
- (2) Notwithstanding the interest of the Crown in the land in question, an application for any such consent may be made by—
- (a) the appropriate authority, or
 - (b) any person authorised by that authority in writing,
- and, subject to subsections (3) and (4), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.
- (3) Any hazardous substances consent granted by virtue of this section shall apply only—
- (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land, and
 - (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private interest in the land.
- (4) The Secretary of State may by regulations—
- (a) modify or exclude—
 - (i) any of the statutory provisions referred to in subsection (2), and
 - (ii) any other statutory provisions,
 in their application to consents granted by virtue of this section,
 - (b) make provision for requiring a planning authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of this section, and
 - (c) make such other provision in relation to the making and determination of applications by virtue of this section as he thinks necessary or expedient.

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- (5) This section shall not be construed as affecting any right to apply for hazardous substances consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land.
- (6) In this section—
 - “private interest” means an interest which is not a Crown interest,
 - “statutory provisions” means provisions contained in or having effect under any enactment,and references to the disposal of an interest in Crown land include references to the grant of an interest in such land.
- (7) Subsections (3), (5) and (6) of section 31 apply for the purposes of this section as they apply for the purposes of that section.
- (8) A person who is entitled to occupy Crown land by virtue of a contract in writing shall be treated for the purpose of this section as having an interest in land and references to the disposal or grant of an interest in Crown land and to a private interest in such land shall be construed accordingly.

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—

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- (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,
 - (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 [^{F1}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.

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F2(8)

Annotations:

Amendments (Textual)

- F1** 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**
- F2** 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**

36 Application of certain general provisions of principal Act.

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),
- 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),
- section 272 (power to require information as to interests in land),
- section 273 (offences by corporations), and
- section 276 (Act not excluded by special enactments).

37 Financial provisions.

- (1) Where—
- (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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 10(2A) inserted by S.S.I. 2007/569 reg. 4(a)
- s. 10(2B) inserted by 2008 c. 29 Sch. 2 para. 62(2)
- s. 15(3) inserted by 2004 c. 5 Sch. 5 para. 21
- s. 30A inserted by 2004 c. 5 s. 90(3)
- s. 30B 30C inserted by 2004 c. 5 s. 94(5)
- s. 30D inserted by S.S.I. 2006/269 art. 5(4)
- s. 31(5)(ba) inserted by 2004 c. 5 Sch. 5 para. 8(4)
- s. 31(5A) inserted by S.I. 2017/524 Sch. 5 para. 27(b)
- s. 31(7)-(9) inserted by 2004 c. 5 Sch. 5 para. 8(5)
- s. 32A inserted by 2004 c. 5 Sch. 5 para. 13
- s. 35A inserted by 2004 c. 5 Sch. 5 para. 16
- s. 36(1) s. 36 renumbered as s. 36(1) by 2004 c. 5 Sch. 5 para. 22(2)
- s. 36(2) added by 2004 c. 5 Sch. 5 para. 22(2)
- Sch. para. 6(7) inserted by 2004 c. 5 s. 91(3)

Commencement Orders yet to be applied to the Planning (Hazardous Substances) (Scotland) Act 1997

Commencement Orders bringing legislation that affects this Act into force:

- S.I. 2004/2097 art. 2 commences (2004 c. 5)
- S.I. 2006/1281 art. 2-4 commences (2004 c. 5)
- S.I. 2010/101 art. 2-5 commences (2008 c. 29)
- S.I. 2011/2329 art. 2 3 commences (2011 c. 5)
- S.S.I. 2006/101 art. 2 Sch. commences ()
- S.S.I. 2006/268 art. 3 commences (2004 c. 5)