



Planning (Hazardous Substances) (Scotland) Act 1997

1997 CHAPTER 10

Secretary of State's powers

18 Reference of applications to Secretary of State.

- (1) The Secretary of State may give directions requiring applications for hazardous substances consent or applications under section 15(1) to be referred to him instead of being dealt with by planning authorities.
- (2) A direction under this section—
 - (a) may be given either to a particular planning authority or to planning authorities generally, and
 - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State.
- (4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the planning authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) The decision of the Secretary of State on any application referred to him under this section shall be final.

Modifications etc. (not altering text)

- C1** S. 18 applied (7.1.2003) by [The Cairngorms National Park Designation, Transitional and Consequential Provisions \(Scotland\) Order 2003 \(S.S.I. 2003/1\)](#), arts. 1, **7(7)(c)**
- C2** S. 18 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), regs. 1, **56(3)**

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

C3 S. 18(1)-(3) modified (7.1.2003) by The Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1), arts. 1, 7(3)(c) (with art. 3(4)(5)(6))

19 Appeals against decisions or failure to take decisions relating to hazardous substances.

- (1) Where a planning authority—
 - (a) refuse an application for hazardous substances consent, an application under section 15(1) or an application for any consent, agreement or approval of the authority required by a condition imposed on the grant of such consent, or
 - (b) grant it subject to conditions,
 the applicant may appeal to the Secretary of State.
- (2) A person who has made an application for hazardous substances consent may also appeal to the Secretary of State if the planning authority have not given to the applicant—
 - (a) notice of their decision on the application, or
 - (b) notice that the application has been referred to the Secretary of State in accordance with directions given under section 18,
 within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the planning authority.
- (3) An appeal under this section shall be made by notice served within such time and in such manner as may be prescribed.
- (4) For the purposes of the application of subsection (5) in relation to an appeal under subsection (2), the authority shall be deemed to have refused the application in question.
- (5) On an appeal under this section, the Secretary of State may—
 - (a) allow or dismiss the appeal, or
 - (b) reverse or vary any part of the decision of the planning authority (whether the appeal relates to that part of it or not),
 and may deal with the application as if it had been made to him in the first instance.
- (6) Before determining an appeal under this section the Secretary of State shall, if either the appellant or the planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (7) If the Secretary of State proposes to reverse or vary any part of the decision of the planning authority to which the appeal does not relate, he shall give notice of his intention to the planning authority and to the appellant and shall give each of them an opportunity of making representations about his proposals.
- (8) The decision of the Secretary of State on an appeal under this section shall be final.
- (9) If at any time before or during the determination of an appeal under this section it appears to the Secretary of State that the appellant is responsible for undue delay in the progress of the appeal, he may—
 - (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal, and

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- (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly.
- (10) The Schedule to this Act (which makes provision regarding the determination of certain appeals by a person appointed by the Secretary of State) applies to appeals under this section.

20 Validity of decisions as to applications.

- (1) If any person is aggrieved by any decision of the Secretary of State under section 18 or 19 and wishes to question the validity of that decision on the grounds—
- (a) that it is not within the powers of this Act, or
 - (b) that any of the relevant requirements have not been complied with in relation to that decision,
- he may, within 6 weeks from the date on which the decision is taken, make an application to the Court of Session under this section.
- (2) Without prejudice to subsection (1), if the planning authority who made the decision on the application to which the proceedings relate or, as the case may be, referred the application wish to question the validity of any such decision as is mentioned in that subsection on any of the grounds there mentioned, the authority may, within 6 weeks from the date on which the decision is taken, make an application to the Court of Session under this section.
- (3) On any application under this section the Court of Session—
- (a) may by interim order suspend the operation of the decision in question until the final determination of the proceedings;
 - (b) if satisfied that the decision in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that decision.
- (4) In this section “the relevant requirements”, in relation to any decision, means any requirements of this Act or the principal Act or of the ^{M1}Tribunals and Inquiries Act 1992 or of any order, regulations or rules made under this Act or under either of those Acts which are applicable to that decision.
- (5) Except as provided by this section, the validity of any such decision as is mentioned in subsection (1) shall not be questioned in any legal proceedings whatsoever.
- (6) Nothing in subsection (5) shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is there mentioned.

Modifications etc. (not altering text)

- C4 S. 20 modified (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\)](#), regs. 1, **56(5)**
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Marginal Citations

- M1 1992 c. 53.

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