



# Planning (Hazardous Substances) (Scotland) Act 1997

## 1997 CHAPTER 10

An Act to consolidate certain enactments relating to special controls in respect of hazardous substances with amendments to give effect to recommendations of the Scottish Law Commission. [27th February 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Annotations:

#### Modifications etc. (not altering text)

- C1** Act modified (27.5.1997) by 1997 c. 8, ss. 24(4), 278(2), **Sch. 1 para. 3**  
Act: power to modify conferred (27.5.1997) by 1997 c. 8, **ss. 2(2)**, 278(2) (with s. 20)  
Act restricted (27.5.1997) by 1997 c. 8, ss. 41(6), 278(2), **Sch. 3 Pt. 1 para. 1(6)(a)** (with ss. 64, 219)  
Act amended (27.5.1997) by 1997 c. 8, **ss. 277(9)**, 278(2)  
Act amended (27.5.1997) by 1997 c. 11, ss. 5, 6(2), **Sch. 3 para. 8**  
Act applied (27.5.1997) by 1997 c. 11, **ss. 1(2)**, 6(2)

### *Administration*

#### **1 Planning authorities: hazardous substances.**

- (1) It shall be the duty of the planning authority to control hazardous substances in accordance with the provisions of this Act.
- (2) The duty under subsection (1) applies to an urban development corporation only if they are the planning authority in relation to all kinds of development.

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### *Control over presence of hazardous substances*

## **2 Requirement of hazardous substances consent.**

- (1) Subject to the provisions of this Act, the presence of a hazardous substance on, over or under land requires the consent of the planning authority (in this Act referred to as “hazardous substances consent”).
- (2) Subsection (1) does not apply if the aggregate quantity of the substance—
- (a) on, over or under the land,
  - [<sup>F1</sup>(aa) on, over or under other land controlled by the same person and which, in all the circumstances (including in particular the purposes for which the land and the land mentioned in paragraph (a) is used) forms with the land so mentioned a single establishment;]
  - (b) on, over or under other land which is within 500 metres of [<sup>F2</sup>the land mentioned in paragraph (a)] and controlled by the same person, or
  - (c) in or on a structure controlled by the same person any part of which is within 500 metres of [<sup>F3</sup>the land mentioned in paragraph (a)],
- is less than the quantity prescribed as the controlled quantity for that substance.
- [<sup>F4</sup>(2A) A quantity of a substance which falls within more than one paragraph of subsection (2) shall only be counted once.]
- [<sup>F5</sup>(3) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless—
- (a) it is unloaded; or
  - (b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.]
- (4) The Secretary of State may by regulations provide that hazardous substances consent is not required or is only required—
- (a) in relation to land of prescribed descriptions;
  - (b) by reason of the presence of hazardous substances in prescribed circumstances.
- (5) Regulations under this section may make different provision for different cases or descriptions of cases.

#### **Annotations:**

##### **Amendments (Textual)**

- F1** S. 2(2)(aa) inserted (6.7.2000) by S.S.I. 2000/179, **art. 2(2)(a)**
- F2** Words in s. 2(2)(b) substituted (6.7.2000) by S.S.I. 2000/179, **art. 2(2)(b)**
- F3** Words in s. 2(2)(c) substituted (6.7.2000) by S.S.I. 2000/179, **art. 2(2)(c)**
- F4** S. 2(2A) inserted (6.7.2000) by S.S.I. 2000/179, **art. 2(2)(d)**
- F5** S. 2(3) substituted (6.7.2000) by S.S.I. 2000/179, **art. 2(2)(e)**

## **3 Power to prescribe hazardous substances.**

- (1) For the purposes of this Act the Secretary of State—

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- (a) shall by regulations specify—
    - (i) the substances that are hazardous substances, and
    - (ii) the quantity which is to be the controlled quantity of any such substance, and
  - (b) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance.
- (2) Regulations which—
- (a) are made by virtue of subsection (1)(a)(i), or
  - (b) are made by virtue of subsection (1)(a)(ii) and reduce the controlled quantity of a substance,
- may make such transitional provision as appears to the Secretary of State to be appropriate.
- (3) Regulations under this section may make different provision for different cases or descriptions of cases.

#### *Obtaining hazardous substances consent*

### **4 Hazardous substances consent: general.**

- (1) Hazardous substances consent—
- (a) may be granted on an application under this Act, or
  - (b) may be deemed to have been granted by virtue of section 9 [<sup>F6</sup>, 10 or 10A].
- (2) Without prejudice to the provisions of this Act, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being interested in the land.

#### **Annotations:**

##### **Amendments (Textual)**

**F6** Words in s. 4(1)(b) substituted (6.7.2000) by S.S.I. 2000/179, art. 3(2)

### **5 Applications for hazardous substances consent.**

- (1) Provision may be made by regulations with respect to—
- (a) the form and manner in which applications under this Act for hazardous substances consent are to be made,
  - (b) the particulars which they are to contain and the evidence by which they are to be verified,
  - (c) the manner in which they are to be advertised, and
  - (d) the time within which they are to be dealt with.
- (2) Regulations may—
- (a) require an applicant for hazardous substances consent or the planning authority or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;

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- (b) require the planning authority to conduct appropriate consultations before determining applications for hazardous substances consent;
  - (c) provide for the manner in which such a consultation is to be carried out and the time within which—
    - (i) such a consultation;
    - (ii) any stage in such a consultation, is to be completed;
  - (d) require the planning authority to determine applications for hazardous substances consent within such time as may be prescribed;
  - (e) require the planning authority to give prescribed persons or bodies prescribed information about applications for hazardous substances consent including information as to the manner in which such applications have been dealt with.
- (3) In subsection (2) “appropriate consultations” means consultations with the Health and Safety Executive and with such persons or bodies as may be prescribed.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

## **6 Certificates as to interests in land etc.**

- (1) Regulations may provide that an application for hazardous substances consent, or an appeal against the refusal of such an application or against the imposition of a condition on such a consent, shall not be entertained unless it is accompanied by a certificate in the prescribed form as to the interests in the land to which the application or appeal relates.
- (2) Any such regulations may—
- (a) include requirements corresponding to those mentioned in sections 34(1), 35(2) and (4) and 38(2) of the principal Act,
  - (b) make provision as to who is to be treated as the owner of land for the purposes of any provision of the regulations, and
  - (c) make different provision for different cases or descriptions of case.
- (3) If any person—
- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and which contains a statement which he knows to be false or misleading in a material particular, or
  - (b) recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **7 Determination of applications for hazardous substances consent.**

- (1) Subject to the following provisions of this Act, where an application is made to a planning authority for hazardous substances consent, that authority may—
- (a) grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit, or
  - (b) refuse hazardous substances consent.

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- (2) In dealing with such an application the planning authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—
  - (a) to any current or contemplated use of the land to which the application relates,
  - (b) to the way in which land in the vicinity is being used or is likely to be used,
  - (c) to any planning permission that has been granted for development of land in the vicinity,
  - (d) to the provisions of the development plan, and
  - (e) to any advice which the Health and Safety Executive have given following consultations in pursuance of regulations under section 5(2).
- (3) If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (4) It shall be the duty of a planning authority, when granting hazardous substances consent, to include in that consent—
  - (a) a description of the land to which the consent relates,
  - (b) a description of the hazardous substance or substances to which it relates, and
  - (c) in respect of each hazardous substance to which it relates, a statement of the maximum amount permitted by the consent to be present at any one time.

## **8 Power to impose conditions on grant of hazardous substances consent.**

- (1) Without prejudice to the generality of section 7(1), a planning authority may grant hazardous substances consent conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission or may grant such consent subject to conditions with respect to any of the following—
  - (a) how and where any hazardous substance to which the consent relates is to be kept or used,
  - (b) times between which any such substance may be present, and
  - (c) the permanent removal of any such substance—
    - (i) on or before a date specified in the consent, or
    - (ii) before the end of a period specified in it and commencing on the date on which it is granted.
- (2) A planning authority may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject.
- (3) It shall be the duty of a planning authority, when granting hazardous substances consent, to include in that consent, in respect of each hazardous substance to which it relates, a statement of all conditions relating to that substance subject to which the consent is granted.

## **9 Deemed hazardous substances consent: established presence.**

- (1) Hazardous substances consent deemed to be granted by a planning authority under section 38 of the <sup>M1</sup>Housing and Planning Act 1986 (under which hazardous substances consent is deemed to be granted in certain circumstances where a

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hazardous substance was present before 1st May 1993) shall continue to have effect notwithstanding the repeal of that section and shall be deemed to be granted by the authority under this section.

- (2) Hazardous substances consent which is deemed to be granted under this section is subject to—
- (a) the condition that the maximum aggregate quantity of the substance that may be present—
    - (i) on, over or under the land to which the claim relates,
    - (ii) on, over or under other land which is within 500 metres of it and controlled by the same person, or
    - (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,
 at any one time shall not exceed the established quantity, and
  - (b) such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent.
- (3) The provisions of this Act (except section 20) shall apply in relation to any hazardous substances consent deemed to be granted under this section as if it had been granted by the planning authority on an application to them.
- (4) In this section “established quantity” means, in relation to any land—
- (a) where before 1st May 1993 there was a notification in respect of a substance in accordance with any of the <sup>M2</sup>Notification of Installations Handling Hazardous Substances Regulations 1982—
    - (i) the quantity notified or last notified before that date, or
    - (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the period of 12 months immediately preceding that date,
 whichever is the greater;
  - (b) where a notification was not required before that date by any of those Regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period.

**Annotations:**

**Marginal Citations**

**M1** 1986 c.63.

**M2** S.I. 1982/1357.

**10 Deemed hazardous substances consent: government authorisation.**

- (1) Where—
- (a) the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority, and
  - (b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent,

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the department may, on granting that authorisation, also direct that hazardous substances consent for that development shall be deemed to be granted subject to such conditions (if any) as may be specified in the directions.

- (2) On granting a consent under section 36 of the <sup>M3</sup>Electricity Act 1989 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the directions.
- (3) The department or, as the case may be, the Secretary of State, shall consult the Health and Safety Commission before issuing any such directions.
- (4) For the purposes of this section development shall be taken to be authorised by a government department if—
  - (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
  - (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable, or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) The provisions of this Act (except section 20) shall apply in relation to any hazardous substances consent deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 18.
- (6) A government department or the Secretary of State shall, as respects any hazardous substances consent deemed to be granted by virtue of directions under this section, send to the planning authority concerned any such information as appears to be required by them for the purposes of a register under section 27.

**Annotations:**

**Marginal Citations**

**M3** 1989 c.29.

**[<sup>F7</sup>10A Deemed hazardous substances consent: established presence**

- (1) Where a hazardous substance was present on, over or under any land at any time within the establishment period, for which hazardous substances consent was not required during that period, hazardous substances consent may be claimed in respect of its presence.

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- (2) A claim shall be made on Form 12 (as set out in Schedule 2 to the Regulations) before the end of the transitional period and shall contain the information specified in regulation 15 of the Regulations.
- (3) Subject to subsections (4) and (5), the planning authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).
- (4) Hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (5) If it appears to the planning authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—
- (a) to notify the claimant that in their opinion the claim is invalid; and
  - (b) to give their reasons for that opinion.
- (6) 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—
    - (i) on, over or under the land to which the claim for the consent relates;
    - (ii) on, over or under other land controlled by the same person and which, in all the circumstances (including in particular the purposes for which the land and the land mentioned in sub-paragraph (i) is used), forms with the land so mentioned a single establishment;
    - (iii) on, over or under other land which is within 500 metres of the land mentioned in sub-paragraph (i) and controlled by the same person; or
    - (iv) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in sub-paragraph (i),
 at any one time shall not exceed the established quantity and in calculating the established quantity a quantity of a substance which is present under more than one sub-paragraph in this subsection shall be counted only once; and
  - (b) to the conditions set out in Schedule 3 to the Regulations.
- (7) In this section and in section 10B—
- “establishment period” means the period of 12 months immediately preceding the relevant date;
- “established quantity” means, in relation to any land, the maximum quantity which was present on, over or under the land at any one time within the establishment period;
- “the Regulations” means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 <sup>F8</sup>;
- “the relevant date” means the date on which the Planning (Control of Major - Accident Hazards) (Scotland) Regulations 2000 came into force;
- “the transitional period” means the period of 6 months beginning with the relevant date.



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**Annotations:**

**Amendments (Textual)**

**F7** Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

**F8** S.I. 1993/323, amended by S.I. 1994/2567 and 1996/252.

**10B** [<sup>F9</sup> **Transitional exemptions**]

- (1) No offence is committed under section 21, and no hazardous substances contravention notice may be issued in relation to a hazardous substance which is on, over or under any land, if—
- (a) the substance was present on, over or under the land at any time within the establishment period and was not a substance or quantity of substance for which hazardous substances consent was required before the relevant date; and
  - (b) the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.
- (2) This section shall have effect until the end of the transitional period.]]

**Annotations:**

**Amendments (Textual)**

**F7** Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

**F9** Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

*Variation and revocation of consents*

**11 Applications for removal of conditions attached to hazardous substances consent.**

- (1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted or is deemed to have been granted.
- (2) On such an application the planning authority shall consider only the question of the conditions subject to which hazardous substances consent should be granted.
- (3) If on such an application the planning authority determine—
- (a) that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or
  - (b) that it should be granted unconditionally,
- they shall grant hazardous substances consent accordingly.
- (4) If on such an application the planning authority determine that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, they shall refuse the application.
- (5) Where—

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(a) hazardous substances consent has been granted or is deemed to have been granted for the presence on, over or under land of more than one hazardous substance, and

(b) an application under this section does not relate to all the substances,

the planning authority shall have regard to any condition relating to a substance to which the application does not relate only to the extent that it has implications for a substance to which the application does relate.

(6) Where—

(a) more than one hazardous substances consent has been granted or is deemed to have been granted in respect of the same land, and

(b) an application under this section does not relate to all the consents,

the planning authority shall have regard to any consent to which the application does not relate only to the extent that it has implications for a consent to which the application does relate.

## **12 General power by order to revoke or modify hazardous substances consent.**

(1) The planning authority may by order revoke a hazardous substances consent or modify it to such extent as they consider expedient if it appears to them, having regard to any material consideration, that it is expedient to revoke or modify it.

(2) The planning authority may also by order revoke a hazardous substances consent if it appears to them—

(a) that there has been a material change of use of land to which a hazardous substances consent relates,

(b) that planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced,

(c) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least 5 years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity, or

(d) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least 5 years been so present.

(3) An order made by virtue of subsection (2)(a) or (b) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance.

(4) An order under this section shall specify the grounds on which it is made.

## **13 Confirmation by Secretary of State of section 12 orders.**

(1) An order under section 12 shall not take effect unless it is confirmed by the Secretary of State.

(2) The Secretary of State may confirm any such order submitted to him either without modification or subject to such modification as he considers expedient.

(3) Where a planning authority submit any such order to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order—

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- (a) on any person who is an owner, occupier or lessee of the whole or any part of the land to which the order relates, and
  - (b) on any other person who in their opinion will be affected by the order.
- (4) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (5) If within that period a person on whom the notice is served so requires, the Secretary of State shall, before he confirms the order, give such an opportunity to that person and to the planning authority.
- (6) Where an order under section 12 has been confirmed by the Secretary of State, the planning authority shall serve a copy of the order on every person who was entitled to be served with notice under subsection (3).

#### **14 Compensation in respect of orders under section 12(1).**

- (1) This section applies where an order is made under section 12(1) revoking or modifying a hazardous substances consent.
- (2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—
  - (a) by depreciation of the value of an interest in the land to which he is entitled, or
  - (b) by being disturbed in his enjoyment of the land,the authority shall pay to that person compensation in respect of that damage.
- (3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.
- (4) Any compensation payable to a person under this section by virtue of such an order shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.
- (5) Sections 85 to 87 of the principal Act (which contain general provisions as to the assessment of and the determination of claims for compensation) shall apply as if compensation under this section were compensation under section 83 of that Act.

#### **15 Revocation of hazardous substances consent on change of control of land.**

- (1) A hazardous substances consent is revoked if there is a change in the person in control of part of the land to which it relates unless an application for the continuation of the consent has previously been made to the planning authority.
- (2) Regulations may make provision in relation to applications under subsection (1) corresponding to any provision that may be made by regulations under section 5 or 6 in relation to applications for hazardous substances consent.

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## **16 Determination of applications for continuation of hazardous substances consent.**

- (1) When an application is made under section 15(1) for the continuation of a hazardous substances consent, the planning authority—
  - (a) may modify the consent in any way they consider appropriate, or
  - (b) may revoke it.
- (2) In dealing with such an application the authority shall have regard to any material consideration and, in particular, but without prejudice to the generality of the foregoing—
  - (a) to the matters to which a planning authority are required to have regard by section 7(2)(a) to (d), and
  - (b) to any advice which the Health and Safety Executive have given following consultations in pursuance of regulations under section 15(2).
- (3) If an application relates to more than one consent, the authority may make different determinations in relation to each.
- (4) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (5) It shall be the duty of a planning authority, when continuing hazardous substances consent, to attach to the consent either—
  - (a) a statement that is unchanged in relation to the matters included in it by virtue of sections 7(4) and 8(3), or
  - (b) a statement of any change in respect of those matters.
- (6) The modifications which a planning authority may make by virtue of subsection (1)
  - (a) include, without prejudice to the generality of that provision, making the consent subject to conditions with respect to any of the matters mentioned in section 8(1); and section 8(2) shall apply as respects those conditions as it applies to the grant of consent subject to conditions.
- (7) Where any application under section 15(1) is made to a planning authority then, unless 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 authority, the authority either—
  - (a) give notice to the applicant of their decision on the application, or
  - (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 18,
 the application shall be deemed to have been granted.

## **17 Compensation on revocation or modification of consent under section 15.**

Where on an application under section 15(1) the planning authority modify or revoke the hazardous substances consent, they shall pay to the person in control of the whole of the land before the change in control by virtue of which the application was made compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

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### *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.

#### **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

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- (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
  - (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.

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- (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 <sup>M4</sup>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.

**Annotations:**

**Marginal Citations**

M4 1992 c. 53.

*Contraventions of hazardous substances control*

**21 Offences.**

- (1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control if—
  - (a) a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
    - (i) there is no hazardous substances consent for the presence of the substance, or
    - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent, or
  - (b) there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In subsection (1) “the appropriate person” means—
  - (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
    - (i) any person knowingly causing the substance to be present on, over or under the land;
    - (ii) any person allowing it to be so present; and
  - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the occupier of the land.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

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- (6) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or
  - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
    - (i) that the substance was present, or
    - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
  - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (8) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that he was failing to comply with a condition subject to which hazardous substances consent had been granted.

## **22 Power to issue hazardous substances contravention notice.**

- (1) Where it appears to the planning authority that there is or has been a contravention of hazardous substances control they may issue a notice—
- (a) specifying the alleged contravention, and
  - (b) requiring such steps as may be specified in the notice to be taken to remedy wholly or partly the contravention,
- if they consider it expedient to do so having regard to any material consideration.
- (2) Such a notice is referred to in this Act as a “hazardous substances contravention notice”.
- (3) A planning authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (4) A copy of a hazardous substances contravention notice shall be served—
- (a) on the owner, the lessee and the occupier of the land to which it relates, and
  - (b) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect, and
  - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where a planning authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (1)



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- (b), if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The planning authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before or after it takes effect.
- (9) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice or would, if the notice were reissued, be served with a copy of it.

### **23 Hazardous substances contravention notices: supplementary provisions.**

- (1) The Secretary of State may by regulations—
- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by section 22;
  - (b) provide—
    - (i) for appeals to him against hazardous substances contravention notices;
    - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
    - (iii) for the procedure to be followed on such appeals;
    - (iv) for the directions that may be given on such an appeal;
    - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 130 to 134, 237(3) and 239 of the principal Act;
  - (c) direct that any of the provisions of sections 135 to 138, 140, 141, 143(1) to (6), 144, 145 and 147 of that Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;
  - (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (2) If any person appeals against a hazardous substances contravention notice, the notice shall have no effect pending the final determination or the withdrawal of the appeal.
- (3) Regulations under this section may make different provisions for different cases or descriptions of cases.

### **24 Variation of hazardous substances contravention notices.**

- (1) A planning authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 22(5)(b) in the notice.

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- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The planning authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were reissued, be served with a copy of it.

## **25 Interdicts restraining breaches of hazardous substances control.**

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act or the principal Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.

### *Miscellaneous provisions*

## **26 Temporary exemption directions.**

- (1) If it appears to the Secretary of State—
  - (a) either—
    - (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity, or
    - (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it, and
  - (b) that the presence of a hazardous substance on, over or under land specified in the direction, in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity,

he may direct that, subject to such conditions or exceptions as he thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.
- (2) A direction under this section—
  - (a) may be withdrawn at any time, and
  - (b) shall in any case cease to have effect at the end of the period of 3 months beginning with the day on which it was given, but without prejudice to the Secretary of State’s power to give a further direction.
- (3) The Secretary of State shall send a copy of any such direction to the planning authority for the land.

## **27 Registers etc.**

- (1) Every planning authority shall keep, in such manner as may be prescribed, a register containing such information as may be so prescribed with respect to—

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- (a) applications for hazardous substances consent made to that authority,
  - (b) applications under section 15(1) made to that authority,
  - (c) hazardous substances consent having effect by virtue of section 9 or 10 with respect to land for which that authority is the planning authority,
  - (d) revocations or modifications of hazardous substances consent granted with respect to such land, and
  - (e) directions under section 26 sent to the authority by the Secretary of State,
- and every such register shall also contain such information as may be prescribed as to the manner in which applications for hazardous substances consent have been dealt with.
- (2) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

## **28 Health and safety requirements.**

- (1) Nothing in—
- (a) any hazardous substances consent granted or deemed to be granted or having effect by virtue of this Act, or
  - (b) any hazardous substances contravention notice issued under section 22,
- shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions.
- (2) To the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.
- (3) Where it appears to a planning authority who have granted, or are deemed to have granted, a hazardous substances consent or who have issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by subsection (2) the authority shall, as soon as is reasonably practicable, consult the Health and Safety Executive with regard to the matter.
- (4) If the Health and Safety Executive advise the authority that the consent or notice is rendered wholly void, the authority shall revoke it.
- (5) If they advise that part of the consent or notice is rendered void, the authority shall so modify it as to render it wholly operative.
- (6) In this section “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in Part I of the <sup>M5</sup>Health and Safety at Work etc. Act 1974.

### **Annotations:**

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### **Marginal Citations**

**M5** 1974 c. 37.

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## **29 Fees.**

- (1) The Secretary of State may by regulations make provision for fees of the prescribed amount in respect of applications for, or for the continuation of, hazardous substances consent—
  - (a) made to an urban development corporation to be paid to the corporation;
  - (b) referred to him under section 18 to be paid to him;
  - (c) deemed to have been made to him under section 133(7) of the principal Act by virtue of regulations made under section 23 to be paid to him.
- (2) Regulations made under this section may provide for—
  - (a) the transfer to the Secretary of State of any fee received by a planning authority in respect of an application referred to in paragraph (b) or (c) of subsection (1);
  - (b) the remission or refunding of a prescribed fee (in whole or in part) in prescribed circumstances or in pursuance of a direction given by him;
 and the regulations may make different provision for different areas or for different cases or descriptions of cases.
- (3) Section 252 of the principal Act applies to an application for the continuation of hazardous substances consent.

### *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 <sup>F10</sup>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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F11(8) .....

**Annotations:**

**Amendments (Textual)**

- F10** 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
- F11** 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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## *Supplemental*

### **38 Interpretation.**

(1) In this Act—

“contravention of hazardous substances control” shall be construed in accordance with section 21(2),

“hazardous substances consent” means consent required by section 2,

“hazardous substances contravention notice” means such a notice as is mentioned in section 22(1), and

“the principal Act” means the <sup>M6</sup>Town and Country Planning (Scotland) Act 1997.

(2) In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section, the following expressions have the same meaning as in the principal Act—

“development”,

“development plan”,

“enactment”,

“functions”,

“government department”,

“land”,

“local authority”,

“minerals”,

“Minister”,

“owner”,

“planning authority”,

“planning permission”,

“prescribed”,

“public gas transporter”,

“statutory undertakers”,

“urban development corporation”,

“use”, and

“Valuation Office”.

(3) For the purposes of sections 2 to 8, 10 to 19, 21 to 23 and 29(1) and (2) any two bodies corporate are to be treated as being one person if—

(a) one of them is a body corporate of which the other is a subsidiary (within the meaning of section 736 of the <sup>M7</sup>Companies Act 1985), or

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- (b) both of them are subsidiaries (within the meaning of that Act) of one and the same body corporate.
- (4) For the purposes of sections 10 and 37(2) a public gas transporter shall be deemed to be a statutory undertaker.
- (5) For the purposes of section 37(2) [<sup>F12</sup>a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act)], the Civil Aviation Authority [<sup>F13</sup>, a person who holds a licence under chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence)] and any holder of a licence under section 6(1) of the <sup>M8</sup>Electricity Act 1989 shall be deemed to be statutory undertakers.
- (6) Without prejudice to section 20(2) of the <sup>M9</sup>Interpretation Act 1978, references in this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by or under any other enactment.

#### Annotations:

##### Amendments (Textual)

**F12** Words in s. 38(5) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 117**

**F13** Words in s. 38(5) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 13**; S.I. 2001/869, **art. 2**

##### Marginal Citations

**M6** 1997 c. 8.

**M7** 1985 c. 6.

**M8** 1989 c. 29.

**M9** 1978 c. 30.

## 39 Regulations.

- (1) The Secretary of State may make regulations—
- (a) for prescribing the form of any notice, order or other document authorised or required by this Act to be served, made or issued by a planning authority which is a local authority;
  - (b) for any purpose for which regulations are authorised or required to be made under this Act.
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## 40 Short title, commencement and extent.

- (1) This Act may be cited as the Planning (Hazardous Substances) (Scotland) Act 1997.
- (2) This Act shall come into force at the end of the period of 3 months beginning with the day on which it is passed.
- (3) This Act extends to Scotland only.

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## SCHEDULE

Section 19(10).

### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

#### *Determination of appeals by appointed person*

- 1
- (1) The Secretary of State may by regulations prescribe classes of appeals under section 19 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
  - (2) Those classes of appeals shall be so determined except in such classes of case—
    - (a) as may for the time being be prescribed, or
    - (b) as may be specified in directions given by the Secretary of State.
  - (3) Such regulations may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
  - (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
  - (5) A person appointed under this paragraph is referred to in this Schedule as an “appointed person”.

#### *Powers and duties of appointed person*

- 2
- (1) An appointed person shall have the same powers and duties as the Secretary of State has under section 19(5), (7) and (9).
  - (2) Subsection (6) of that section shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the planning authority whether they wish to appear before and be heard by the appointed person.
  - (3) If both the parties express a wish not to appear and be heard, the appeal may be determined without their being heard.
  - (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
  - (5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
  - (6) Except as provided by section 20, the decision of an appointed person on an appeal shall be final.

#### *Determination of appeals by Secretary of State*

- 3
- (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
  - (2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take

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into account by regulations made under section 6 or, as the case may be, 15(2) and, if any person has been appointed under paragraph 1, on him.

- (3) Where in consequence of such a direction an appeal under section 19 falls to be determined by the Secretary of State himself, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
  - (4) The Secretary of State shall give the appellant, the planning authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—
    - (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations, or
    - (b) in the case of the appellant or the planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wish to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard, but was not given an opportunity of doing so.
  - (5) Except as provided by sub-paragraph (4), the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.
  - (6) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.
- 4
- (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
  - (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the planning authority and any person who has made representations relating to the subject matter of the appeal which the authority are required to take into account by regulations made under section 6 or, as the case may be, 15(2).
  - (3) Where such a further direction has been given, the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
  - (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.

*Appointment of another person to determine appeal*

- 5
- (1) At any time before the appointed person has determined the appeal the Secretary of State may—
    - (a) revoke his appointment, and
    - (b) appoint another person under paragraph 1 to determine the appeal instead.
  - (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.

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- (3) Nothing in sub-paragraph (2) shall require—
- (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person), or
  - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

#### *Local inquiries and hearings*

- 6 (1) Whether or not the parties have asked for an opportunity to appear and be heard, an appointed person—
- (a) may hold a local inquiry in connection with the appeal, and
  - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
- (a) holds a hearing by virtue of paragraph 2(4), or
  - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.
- (3) Subject to sub-paragraph (4), the expenses of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Subsections (4) to (13) of section 265 of the principal Act apply to an inquiry held under this paragraph as they apply to an inquiry held under that section.
- (5) The appointed person has the same power to make orders under subsection (9) of that section in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.
- (6) For the purposes of this paragraph, references to the Minister in subsections (9) to (12) of that section shall be read as references to the appointed person.

#### *Supplementary provisions*

- 7 (1) The <sup>M10</sup>Tribunals and Inquiries Act 1992 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) The functions of determining an appeal and doing anything in connection with it conferred by this Schedule on an appointed person who is <sup>F14</sup>a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.]

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**Annotations:****Amendments (Textual)**

**F14** Words in [Sch. para. 7\(2\)](#) substituted (23.10.2002) by [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#), s. 25, [Sch. 6](#) {para. 19}; S.I. 2002/467, **art. 2**

**Modifications etc. (not altering text)**

**C2** [Sch. para. 7](#) modified (1.7.1999) by S.I. 1999/1351, **art. 17(7)(c)**; S.I. 1998/3178

**Marginal Citations**

**M10** 1992 c. 53.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 4(1)(b) words substituted by S.S.I. 2006/269 art. 5(2)
- s. 5(3) words substituted by S.I. 2014/469 Sch. 2 para. 16
- s. 7 applied by S.S.I. 2015/181 reg. 56(4)
- s. 7(2)(c) words inserted by 2008 c. 29 Sch. 2 para. 60
- s. 7(2)(e) words substituted by S.I. 2014/469 Sch. 2 para. 17
- s. 8(1) words inserted by 2008 c. 29 Sch. 2 para. 61
- s. 8(2) words substituted by S.I. 2014/469 Sch. 2 para. 18
- s. 10(3) substituted by 2008 c. 29 Sch. 2 para. 62(3)
- s. 10(3) words inserted by S.S.I. 2007/569 reg. 4(b)(ii)
- s. 10(3) words omitted by S.S.I. 2007/569 reg. 4(b)(i)
- s. 10(3) words substituted by S.I. 2008/960 Sch. 3
- s. 10(6) word substituted by 2008 c. 29 Sch. 2 para. 62(4)(a)
- s. 10(6) words inserted by S.S.I. 2007/569 reg. 4(c)
- s. 10(6) words inserted by 2008 c. 29 Sch. 2 para. 62(4)(b)
- s. 12(2)(b) words inserted by 2008 c. 29 Sch. 2 para. 63(a)
- s. 12(2)(b) words inserted by 2008 c. 29 Sch. 2 para. 63(b)
- s. 15(1) excluded by S.S.I. 2015/181 reg. 66
- s. 16(2)(b) words substituted by S.I. 2014/469 Sch. 2 para. 19
- s. 18 applied by S.S.I. 2003/1 art. 7(7)(c)
- s. 18 modified by S.S.I. 2015/181 reg. 56(3)
- s. 18(1)-(3) modified by S.S.I. 2003/1 art. 7(3)(c)
- s. 20 applied by 1997 c. 8 s. 241C(5) (as inserted) by 2006 asp 17 s. 29
- s. 20 modified by S.S.I. 2015/181 reg. 56(5)
- s. 27(1)(c) words substituted by S.S.I. 2006/269 art. 5(3)
- s. 28(1) words omitted by S.I. 2014/469 Sch. 2 para. 20(2)(b)
- s. 28(1) words substituted by S.I. 2014/469 Sch. 2 para. 20(2)(a)
- s. 28(3) words substituted by S.I. 2014/469 Sch. 2 para. 20(3)
- s. 28(4) words substituted by S.I. 2014/469 Sch. 2 para. 20(4)
- s. 28(5) words substituted by S.I. 2014/469 Sch. 2 para. 20(5)
- s. 28(6) substituted by S.I. 2014/469 Sch. 2 para. 20(6)
- s. 31(1) (2) repealed by 2004 c. 5 Sch. 5 para. 8(2) Sch. 9
- s. 31(3) words substituted by 2004 c. 5 Sch. 5 para. 8(3)
- s. 31(5)(b) words inserted by S.I. 2017/524 Sch. 5 para. 27(a)
- s. 32 repealed by 2004 c. 5 Sch. 5 para. 12 Sch. 9
- s. 36 words inserted by 2004 c. 5 Sch. 5 para. 22(1)(a)
- s. 36 words inserted by 2004 c. 5 Sch. 5 para. 22(1)(b)
- s. 36 words inserted by 2004 c. 5 Sch. 5 para. 22(1)(c)
- s. 38(1) words inserted by 2008 c. 29 Sch. 2 para. 64
- s. 38(1) words inserted by S.I. 2014/469 Sch. 2 para. 20(7)
- s. 38(3)(a) words substituted by S.I. 2009/1941 Sch. 1 para. 167(a)
- s. 38(3)(b) words substituted by S.I. 2009/1941 Sch. 1 para. 167(b)
- s. 38(5) words substituted by 2011 c. 5 Sch. 12 para. 149(a)
- s. 38(5) words substituted by 2011 c. 5 Sch. 12 para. 149(b)

**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)