
STATUTORY INSTRUMENTS

1993 No. 323

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993

PART 3

EXPRESS CONSENT

Applications for hazardous substances consent

5.—(1) Subject to paragraph (2), an application to a planning authority for hazardous substances consent shall—

- (a) be made on Form 1;
- (b) include the information specified in the form, a site map, and a substance location plan; and
- (c) be accompanied by 3 copies of the form, the map and plan submitted with it and by the notices and certificates required by regulations 6, 7 and 8.

(2) An application to the planning authority under section 56H(1) (grants of hazardous substances consent without compliance with conditions previously attached) shall—

- (a) be made on Form 2;
- (b) include the information specified in the form, a change of location plan, if required by paragraph (6), and particulars of the relevant consent; and
- (c) be accompanied by 3 copies of the form, the relevant consent, any plan submitted with the form and by the notices and certificates required by regulations 6, 7 and 8.

(3) An application to the planning authority under section 56K(2) (provisions as to effect of hazardous substances consent and change of control of land) shall—

- (a) be made on Form 2;
- (b) included the information specified in the form, a change of control plan and particulars of the relevant consent; and
- (c) be accompanied by 3 copies of the form, the relevant consent, the change of control plan and by the notices and certificates required by regulations 6, 7 and 8.

(4) The site map required by paragraph (1)(b) shall be a map reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000 which identifies the land to which the application relates and shows National Grid lines and reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500 which identifies—

- (a) any area of the site intended to be used for the storage of the substance;

(1) Section 56H of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990 (c. 43), Schedule 13, paragraph 11(8).

(2) Section 56K of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; and
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which section 56H applies and where the condition which was previously applied restricted the location of the hazardous substance. Any such plan shall be of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

(7) the change of control plan required by paragraph (3)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control.

(8) The “relevant consent” referred to in paragraphs (2) and (3) is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the relevant consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under the Act, a copy of the relevant claim, in the case of a consent deemed to be granted under section 38 of the 1986 Act or a copy of the relevant direction, in the case of a consent deemed to be granted under section 56G(3).

(9) Where an application referred to in paragraph (2) or (3) applies to more than one relevant consent, particulars of each such consent shall be included in the application.

(10) Regulations 6 to 14 shall apply to applications made under section 56K as they apply to applications for hazardous substances consent.

Neighbour notification

6.—(1) Subject to the following paragraphs, and applicant for hazardous substances consent under regulation 5 shall notify each of those persons holding an interest in neighbouring land as specified in paragraph (2) who has not been served, in accordance with regulation 8(2) with notice of the application, by sending each of them—

- (a) a notice of the application in the form set out in Form 3—
 - (i) stating that the application, plans and maps relating to it may be inspected in the register kept by the planning authority;
 - (ii) stating the address at which the application may be inspected in accordance with regulation 9; and
 - (iii) inviting representations to be made to the planning authority during the period of 21 days beginning with the date of the notice; and
 - (b) a plan showing the situation or location of the land to which the application relates.
- (2) The persons holding a notifiable interest in neighbouring land are—
- (a) in the case of lands and heritages entered in the valuation roll at the date of the application, the persons appearing in the valuation roll in force at that time as being the owners, lessees and occupiers of those lands and heritages; and
 - (b) in the case of lands and heritages not entered in the valuation roll at the date of the application, the owners and occupiers of those lands and heritages.
- (a) (3) (a) The notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(a)—

(3) Section 56G of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(7).

- (i) in each case where the name and address of the owner, lessee or occupier can be ascertained from the valuation roll, shall be sent to such person at his address as entered in the valuation roll;
 - (ii) where information as to the owner, lessee or occupier of neighbouring land or of any premises contained or included in neighbouring land cannot be ascertained from the valuation roll, shall be sent addressed to “the Owner” at such land or premises, where the name of the owner cannot be ascertained, to “the Lessee” at such land or premises where the name of the lessee cannot be ascertained and to “the Occupier” at such land or premises where the name of the occupier cannot be ascertained;
- (b) the notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(b) shall be sent addressed in each case to “the Owner”, and “the Occupier” at each address of the premises contained or included in the neighbouring land.
- (4) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of the certificates set out in Forms 4 to 7 is appropriate, stating—
- (a) that notification has been carried out under paragraphs (1) to (3)
 - (i) in the case of lands and heritages entered in the valuation roll, detailing as appropriate—
 - (aa) the names and addresses of those persons having a notifiable interest in neighbouring land who have been notified under paragraphs (1), (2)(a) and (3)(a)(i), with details of their interest, namely that of an owner, lessee or occupier, as the case may be; and
 - (bb) the addresses of the premises in respect of which the owner of the lessee or the occupier has been notified in accordance with paragraphs (1), (2)(a) and 3(a)(ii), with details as to whether the notification was sent addressed to “the Owner”, to “the Lessee” or to “the Occupier”, or to any or all of them; and
 - (ii) in the case of lands and heritages not entered in the valuation roll, listing the addresses of the premises in respect of which the owners and occupiers have been notified in accordance with paragraphs (1), (2)(b) and (3)(b); or
 - (b) that no notification under paragraphs (1) to (3) is required; or
 - (c) that it is not possible to carry out notification because there are no premises on the neighbouring land to which the notification can be sent.

Publication of notices of applications

7.—(1) Before making an application for hazardous substances consent to the planning authority, the applicant shall, during the 21 day period immediately preceding the application publish in a newspaper circulating in the locality in which the land to which the application relates is situated a notice of the application in the form set out in Form 8.

(2) The notice required by paragraph (1) shall invite representations on the application to be made to the planning authority within 21 days of the publication of the notice.

(3) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by a copy of the notice referred to in paragraph (1), certified by, or on behalf of, the applicant as having been published in a newspaper in accordance with paragraph (1) and specifying the name of the newspaper and the date of its publication.

Notification of applications to owners

8.—(1) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 9 shall, in the case of an application for hazardous substances consent, be a notice given of Form 10 and shall invite any owner on whom the notice is served to make representations on the application to the planning authority within 21 days of service of the notice.

Inspection of applications

9. The applicant shall make a copy of the application available for inspection at a place within the locality of the land to which the application relates during the period or periods allowed for making representations pursuant to regulations 6(1)(a)(iii), 7(2) and 8(2).

Procedure on receipt of applications by planning authority

10.—(1) When the planning authority receive an application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, they shall, as soon as practicable, send to the applicant a written acknowledgement of receipt.

(2) Where, in the opinion of the planning authority, the application is invalid, the authority shall, as soon as practicable, notify the applicant of their opinion, giving their reasons.

(3) For the purposes of this regulation and regulations 11 and 12, the date on which the application for hazardous substances consent is received shall be taken to be the date on which the last of the following events occurred—

- (a) the application form has been received by the planning authority;
- (b) any certificates or documents required by regulations 6, 7 and 8 have been received by that authority; and
- (c) any fee required to be paid in respect of the application has been paid to that authority.

Consultation before the grant of hazardous substances consent

11.—(1) Except where the consultee has notified the planning authority in writing that it does not wish to be consulted, the authority shall, before determining an application for hazardous substances consent, consult—

- (a) the Health and Safety Executive;
- (b) the Regional or District council concerned, where that council is not also the planning authority;
- (c) Scottish Natural Heritage⁽⁴⁾;
- (d) the community council concerned;
- (e) the fire and civil defence authority concerned, where that authority is not also the planning authority;
- (f) the river purification authority for the area concerned;
- (g) the public gas supplier concerned;
- (h) the electricity company concerned;

(4) See 1991 c. 28.

- (i) where the land to which the application relates is within 2 kilometres of a royal palace park or residence the Secretary of State;
- (j) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (k) where the land to which the application relates is situated within 2000 metres of—
 - (i) an adjacent Region or District, the council for that Region or District;
 - (ii) the area of an adjacent fire authority and civil defence authority, that authority;
 - (iii) an adjacent new town, the development corporation for the new town;
- (l) where it appears to the planning authority dealing with the application that land in the area of any other planning authority may be affected, that authority;
- (m) where the application relates to land in an area of coal working or former or proposed coal working notified to the planning authority by the British Coal Corporation, that Corporation;
- (n) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the planning authority.

(2) Where, under this regulation, a planning authority is required to consult in respect of an application, they shall, unless a copy of the application has been served on the consultee by the applicant, serve the consultee with a copy of the application within 7 days of its receipt by the authority.

(3) In this regulation—

“consultee” means any body listed in paragraph (1)(a)—(n);

“controlled waste” has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990⁽⁵⁾;

“river purification authority” means a river purification board established under section 135 as read with section 135A of the Local Government (Scotland) Act 1973⁽⁶⁾ or an island council;

“waste disposal authority” means a district or island council exercising their functions as a disposal authority under Part I of the Control of Pollution Act 1974⁽⁷⁾ or as a waste disposal authority under Part II of the Environmental Protection Act 1990.

Determination of applications for hazardous substances consent

12.—(1) A planning authority shall not determine an application for hazardous substances consent before the expiry of—

- (a) the period or periods allowed for making representation pursuant to regulation 6(1)(a)(iii), 7(2) and 8(2); and
- (b) where the authority is required to consult under regulation 11, a period of 28 days beginning with the date on which the consultee is served with a copy of the application, or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(2) Subject to paragraph (1), the period within which a planning authority shall give notice to an applicant of their decision on an application for hazardous substances consent or referral of the

(5) 1990 c. 43.

(6) 1973 c. 65; section 135 was amended by the Control of Pollution Act 1974 (c. 40), Schedule 4 and the Water (Scotland) Act 1980 (c. 45), Schedule 9, paragraph 3; section 135A was inserted by the Natural Heritage (Scotland) Act 1991 (c. 28), Schedule 10, paragraph 6.

(7) 1974 c. 40.

application to the Secretary of State or regional planning authority, shall be two months, commencing on the date of receipt of the application or (except where the applicant has already given notice of appeal to the Secretary of State) such extended period as may be agreed upon in writing between the applicant and planning authority.

(3) When a planning authority give notice of a decision on an application for hazardous substances consent the notice shall be in writing and where hazardous substances consent is refused or is granted subject conditions—

- (a) state the reasons for that decision; and
- (b) include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under section 33(8) within 6 months of the date of the notice of the decision.

(4) The planning authority shall, as soon as is practicable, inform the following persons of the terms of their decision—

- (a) the Health and Safety Executive;
- (b) the Regional or District council, where that council is not the planning authority;
- (c) every other consultee (as defined in regulation 11(3)) who has made representation to them on the application;
- (d) every owner who has made representations to them on the application; and
- (e) every person holding a notifiable interest in neighbouring land who has made representations to them on the application.

Notice of reference of applications to the Secretary of State or regional planning authority

13. On referring any application to the Secretary of State under section 32(9) or to a regional planning authority under section 179 of the Local Government (Scotland) Act 1973(10), a planning authority shall serve on the applicant notice—

- (a) of the terms of the direction given in accordance with section 32;
- (b) of any reasons given by the Secretary of State or, as the case may be, such authority;
- (c) that the application has been referred to the Secretary of State or, as the case may be, such authority; and
- (d) in the case of an application referred to the Secretary of State, that the Secretary of State will, if the applicant so desires, afford to the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and that the decision of the Secretary of State on the application will be final.

Appeals

14.—(1) An appeal to the Secretary of State under section 33 or 34 shall be made within 6 months of—

- (a) in the case of an appeal under section 33 (appeal against refusal of consent or against grant of consent subject to conditions) the date of the notice of the decision giving rise to the appeal; or

(8) Section 33 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act, which section was itself inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(9) Section 32 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

(10) Section 179 was substituted by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 3, paragraph 24 and amended by the 1986 Act, Schedule 11, paragraph 61; section 179 has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

- (b) in the case of an appeal under section 34 (failure to give decision)(11) the expiry of the period specified in regulation 12(2).
- (2) An appeal under section 33 or 34 shall—
 - (a) be made to the Secretary of State by lodging with him a notice of appeal; and
 - (b) be accompanied by a copy of each of the documents specified in paragraph (3) and by the certificate required by paragraph (4).
- (3) The documents mentioned in paragraph (2)(b) are—
 - (a) the application made to the planning authority which has occasioned the appeal;
 - (b) any notices and certificates required by regulations 6, 7 and 8 which accompanied the application;
 - (c) any correspondence with the authority relation to the application; and
 - (d) the notice of decision, if any.
- (4) An appeal under section 33 or 34 shall not be entertained by the Secretary of State unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the appellant.
- (5) The required notice referred to in certificates B and C of Form 9 shall, in the case of and appeal under section 33 or 34, be a notice given on Form 11.
- (6) The appellant shall send a copy of the completed notice of appeal form and accompanying documents and certificate to the planning authority at the same time as the appeal is made to the Secretary of State.

(11) Section 34 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.