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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 181**

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

**PART 8**

Miscellaneous

**Fees for applications**

- 55.**—(1) Subject to paragraph (3), the fee which is payable to a planning authority with—
- (a) an application under regulation 6 (applications for hazardous substances consent) where the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity is £1,000; and
  - (b) an application under—
    - (i) regulation 6 (other than an application referred to in sub-paragraph (a));
    - (ii) regulation 7 (applications for removal of conditions attached to hazardous substances consent); or
    - (iii) regulation 8 (application for continuation of hazardous substances consent where there has been a change in the person in control of any part of the land),is £500.

(2) Where applications relating to the same site are made to 2 or more planning authorities, a fee is payable only to the authority in whose area the largest part of the site is situated and the amount payable is the amount that would have been payable if the application had fallen to be made to one authority in relation to the whole site.

(3) Any fee paid pursuant to this regulation must be refunded if the application to which it relates is rejected as invalidly made.

**Applications by planning authorities**

**56.**—(1) An application by a planning authority for hazardous substances consent, or an application by a planning authority under section 11 (applications for removal of conditions attached to hazardous substances consent) or 15 (revocation of hazardous substances consent on change of control of part of land) of the principal Act is to be made to the Scottish Ministers.

(2) Regulations 5 (notice to owner by applicants), 6 (applications for hazardous substances consent), 7 (applications for removal of conditions), 8 (applications for continuation of hazardous substances consent where there has been a change in the person in control of part of the land), 9 (neighbour notification by planning authorities) and 10 (publication of receipt of applications by planning authorities), 13 (further information), 14 (consultation before determination of applications), 15 (representations) and 18(1) to (4) and (6) (decision notices on applications under regulation 6, 7 or 8) apply to applications made to the Scottish Ministers by a planning authority

as they apply to applications made to a planning authority, with the modification that “a planning authority” and “the planning authority” are to be read as “the Scottish Ministers”.

(3) For the purpose of regulation 41 (register of hazardous substances consents) an application under regulation 6, 7 or 8 made to the Scottish Ministers by a planning authority is to be treated as an application made to the planning authority and referred to the Scottish Ministers under section 18 of the principal Act.

(4) Section 7 of the principal Act (determination of applications for hazardous substances consent) applies in relation to an application made to the Scottish Ministers by a planning authority as it applies in relation to an application made to a planning authority.

(5) For the purpose of section 20 of the principal Act (validity of decisions as to applications) a decision of the Scottish Ministers on an application made to them by a planning authority is to be treated as a decision under section 18.

### **Access to review procedure before a court**

**57.** Any non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have sufficient interest, and rights capable of being impaired, for the purposes of access to any review procedures before a court of law in respect of the giving of consent, permission or other authorisation in relation to a project referred to in Article 15(1) of the Directive.

### **Electronic communications**

**58.—**(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that the document transmitted by the electronic communication is—
  - (i) capable of being accessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than 7 days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000<sup>(1)</sup> (general interpretation);

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

### **Service of notices**

**59.** Section 271 of the 1997 Act (service of notices) applies to notices or other documents required or authorised to be served or given under these Regulations on the owners or occupiers of land as it applies to notices or other documents required or authorised to be served or given under the 1997 Act.

### **Applications made before the commencement date**

**60.**—(1) In respect of an application for hazardous substances consent or an application under section 15(1) of the principal Act made before the commencement date but in respect of which no notice of the decision of the planning authority is given to the applicant before the commencement date the provisions of—

- (a) Part 3 of the 1993 Regulations (other than regulations 12(3) and (4) (determination of applications for hazardous substances consent), 13 (notice of reference of applications to the Scottish Ministers) and 14 (appeals)) continue to apply as those provisions had effect immediately before the commencement date; and
- (b) these Regulations (other than regulations 5 (notice to owner by applicants), 6 (applications for hazardous substances consent), 7 (applications for removal of conditions), 8 (applications for continuation of hazardous substances consent where there has been a change in the person in control of part of the land), 9 (neighbour notification by planning authorities), 10 (publication of receipt of applications by planning authorities), 11 (validation date), 12 (acknowledgement of applications) and 17(1) to (3) (time period for determination)) apply as they apply to an application made under regulation 6, 7 or 8 on or after the commencement date.

(2) Where the proposal in respect of which such an application is made is a project, or part of a project, that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive and the notice published in accordance with regulation 7 of the 1993 Regulations did not state that fact, the planning authority must publish a notice in a newspaper circulating in the locality in which the land to which the application relates is situated.

(3) The notice to be published under paragraph (2) is to be in the same terms as the notice set out in Schedule 4.

### **Interpretation of existing consents**

**61.**—(1) In this regulation “existing consent” means—

- (a) a consent, in the case of a hazardous substances consent granted on an application under the 1993 Regulations;

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(1) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

- (b) a claim, in the case of a consent deemed to be granted under section 9 or 10A of the principal Act(2) (deemed hazardous substances consent: established presence);
- (c) a direction, in the case of a consent deemed to be granted, or having effect as if deemed to be granted, by virtue of section 10 of the principal Act (deemed hazardous substances consent: government authorisation),

granted or made before the commencement date under which the presence of a category of substance listed in column 1 of Part B of Schedule 1 to the 1993 Regulations or the presence of a hazardous substance named in column 1 of Part A of Schedule 1 to the 1993 Regulations is expressly authorised.

(2) This regulation applies to an existing consent where the category or substance referred to in paragraph (1)—

- (a) is not contained in Schedule 1 to these Regulations; or
- (b) is differently named or defined under Schedule 1 to these Regulations.

(3) Where this regulation applies any reference in an existing consent to a category or substance referred to in paragraph (1) is to be interpreted as if these Regulations had not come into force.

(4) In paragraph (1)(a) to (c) a reference to a consent includes any continuation of that consent which is granted or deemed to be granted under section 16 of the principal Act.

#### **Saving provision for deemed consent conditions**

**62.**—(1) This regulation applies to any consent that was deemed to be granted under section 10A or 30D of the principal Act(3) before the commencement date.

(2) In relation to any consent to which this regulation applies—

- (a) the conditions in Schedule 3 to the 1993 Regulations continue to apply (unless any condition was removed following an application under section 11 of the principal Act); and
- (b) those conditions continue to be interpreted in accordance with regulation 17 of the 1993 Regulations.

#### **Notification of other establishments**

**63.**—(1) This regulation applies where hazardous substances consent would be required but for the exemption in paragraph 12 of Schedule 2 (presence of established substances).

(2) Where this regulation applies the person in control of the land to which the exemption relates must give the planning authority notice in writing containing—

- (a) details of the person in control of the land;
- (b) details of the location of the land;
- (c) the maximum amount of any hazardous substances which is subject to the exemption which was held on, over or under the land in the period of 12 months ending on 31st May 2015; and
- (d) an explanation of why paragraph 12 of Schedule 2 applies.

(3) The planning authority must, as soon as practicable after receiving the notice given under paragraph (2), send a copy to the Scottish Environment Protection Agency and the safety regulator.

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(2) Section 9 provides that hazardous substances consent deemed to be granted by a planning authority under section 38 of the Housing and Planning Act 1986 shall continue to have effect notwithstanding the repeal of that section and shall be deemed to be granted by the authority under said section 9, and the relevant claim is the claim submitted under said section 38. Section 10A was inserted by [S.S.I. 2000/179](#).

(3) Section 30D was added by [S.S.I. 2006/269](#).

### **Appeals made after the commencement date**

**64.**—(1) Subject to paragraph (2), these Regulations apply to an appeal under section 19 of the principal Act where notice of the appeal is given on or after the commencement date.

(2) In the case of an appeal under section 19 of the principal Act where the relevant date is before the commencement date, the notice of appeal must be served on the Scottish Ministers within a period of 6 months from the relevant date.

(3) In this regulation “relevant date” means in the case of an appeal under—

- (a) section 19(1) of the principal Act, the date of the notice of the decision giving rise to the appeal; and
- (b) section 19(2) of the principal Act, the date on which the applicant first becomes entitled to appeal under that subsection.

### **Appeals made before the commencement date**

**65.**—(1) This regulation applies in respect of—

- (a) an appeal under section 19 of the principal Act; and
- (b) an appeal against a hazardous substances contravention notice,

where notice of the appeal is given before the commencement date.

(2) The 1993 Regulations continue to apply to an appeal to which this regulation applies as those Regulations had effect immediately before the commencement date.

(3) Regulation 38 (notice of decision on appeal) applies in respect of an appeal to which this regulation applies.

### **Applications referred to the Scottish Ministers before the commencement date**

**66.** Part 5, other than regulation 38 (notice of decision on appeal), does not apply in respect of the procedure for dealing with an application for hazardous substances consent or an application under section 15(1) of the principal Act referred to the Scottish Ministers by virtue of a direction under section 18(1) of the principal Act given before the commencement date.

### **Amendments**

**67.** Schedule 8 has effect.

### **Revocations**

**68.** Subject to regulations 60 (applications made before the commencement date) and 65 (appeals made before the commencement date), the instruments listed in column 1 of the table in Schedule 9 are revoked to the extent described in column 3 of that table.