

2022 No. 286

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Miscellaneous Amendment)
(Scotland) Regulations 2022**

Made - - - - 27th September 2022

Laid before the Scottish Parliament 29th September 2022

Coming into force - - 1st December 2022

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 34, 43 and 275 of the Town and Country Planning (Scotland) Act 1997(a), and section 3 of the Planning (Hazardous Substances) (Scotland) Act 1997(b), and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Town and Country Planning (Miscellaneous Amendment) (Scotland) Regulations 2022 and come into force on 1 December 2022.

(2) In these Regulations—

“the 2013 Regulations” means the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(c),

“the 2015 Regulations” means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015(d).

Amendment of the 2013 Regulations

2.—(1) The 2013 Regulations are amended in accordance with paragraphs (2) and (3).

(2) Omit regulation 28(3)(a)(v) (decision notice).

(3) In schedule 4 (notice for publication in newspaper) in Note 4, for “Where the development to which the application belongs is a class of development prescribed for the purposes of section 35A(1)” substitute, “Where the application is an application in respect of which the applicant was required to comply with section 35B”.

(a) 1997 c. 8. There are amendments to section 34 which are not relevant to the changes made by these Regulations. Section 43 was relevantly amended by section 16 of the Planning etc. (Scotland) Act 2006 (asp 17). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(b) 1997 c. 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(c) S.S.I. 2013/155 to which there are amendments which are not relevant to the changes made by these Regulations.

(d) S.S.I. 2015/181.

Amendment of the 2015 Regulations

3.—(1) Subject to regulation 4, the 2015 Regulations are amended in accordance with paragraph (2).

(2) In the Notes to Part 1 and 2 of schedule 1 (hazardous substances and controlled quantities)—

(a) for Note 5 substitute—

“5.—(1) In the case of an establishment where two or more below-threshold substances in the same hazard group are present, the rule in paragraph (3) applies to those substances.

(2) In this note—

“below-threshold substances” are substances falling within Part 1 or 2 of this schedule which are present in quantities below the quantities corresponding to those substances specified in column 2 of those Parts,

“hazard group” means each of the following groups of substances—

- (a) substances listed in Part 2 of this schedule which fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1 and substances which fall within section H, entries H1 to H3, of Part 1,
- (b) substances listed in Part 2 of this schedule that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids and substances which fall within section P, entries P1a to P8, of Part 1,
- (c) substances listed in Part 2 of this schedule which fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2 and substances which fall within section E, entries E1 and E2, of Part 1.

(3) Where, in relation to the below-threshold substances in the same hazard group, the sum produced by the formula in paragraph (4) is greater than or equal to 1, the controlled quantity of each substance shall be the value q_n used in that formula.

(4) The formula is—

$$\frac{q1}{CQ1} + \frac{q2}{CQ2} + \frac{q3}{CQ3} + \frac{q4}{CQ4} + \frac{q5}{CQ5} +$$

where

q_n = the quantity of a below-threshold substance which is present at the establishment,

CQ_n = the quantity corresponding to that substance specified in column 2 of Part 1 or 2 of this schedule (except for Hydrogen where CQ is to be 5, and for liquefied petroleum gas and natural gas (including liquefied natural gas) where CQ is to be 50).”,

(b) in Note 7, for “each group of categories in Note 5(a), (b) and (c)” substitute “each hazard group under Note 5”.

Transitional exemptions

4.—(1) No offence is committed under section 21 of the Planning (Hazardous Substances) (Scotland) Act 1997 before 1 December 2023, and no hazardous substances contravention notice may be issued before that date, in relation to a hazardous substance which is on, over or under any land, if—

(a) the relevant substance was present on, over or under the land at any time during the relevant period,

- (b) hazardous substances consent was not required for the presence of the quantity of the relevant substance at the time it was present during the relevant period,
 - (c) hazardous substances consent would have been required for the presence of the quantity of the relevant substance had the amendments made by regulation 3 of these Regulations been in force at that time, and
 - (d) the substance is not present during the period beginning on 1 December 2022 and ending at the end of 30 November 2023 in a quantity greater than the established quantity.
- (2) In this regulation—
- “the established quantity”, in relation to any land, means the maximum quantity of a relevant substance which was present on, over or under the land at any one time within the relevant period,
- “the relevant period” is the period of 12 months ending at the end of 30 November 2022.

TOM ARTHUR
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
27th September 2022

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the “2013 Regulations”) and the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the “2015 Regulations”) and come into force on 1 December 2022.

Regulation 2 omits regulation 28(3)(a)(v) (decision notice). This provision is no longer required following the amendment of sections 58 (duration of planning permission) and 59 (planning permission in principle) of the Town and Country Planning (Scotland) Act 1997 by section 32 (duration of planning permission) of the Planning (Scotland) Act 2019. Regulation 2 also amends the Notice in schedule 4 of the 2013 Regulations to reflect changes made to section 35A of the Town and Country Planning (Scotland) Act 1997.

Part 2 and schedule 1 (hazardous substances and controlled quantities) of the 2015 Regulations set out the substances which are hazardous substances for the purpose of the Planning (Hazardous Substances) (Scotland) Act 1997 and the controlled quantities of those substances. Regulation 3 amends Note 5 to Parts 1 and 2 of schedule 1 to clarify the “addition rule” in relation to how controlled quantities are calculated where two or more hazardous substances are present together but individually the amounts of those substances fall below the usual controlled quantities. When applying the addition rule, no account is to be taken of substances present within the establishment which exceed the controlled quantity and the rule must be applied to each of three hazard groups categorised in Part 1 of schedule 1 as health, physical and environmental hazards. Regulation 3 also amends Note 7 of Parts 1 and 2 of schedule 1 so that for each hazard group, the lowest controlled quantity for that group should be used. Regulation 4 makes transitional provisions in relation to these changes.

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