

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2022

SSI 2022/286

The above instrument was made in exercise of the powers conferred by Scottish Ministers under:

- (1) sections 34, 43 and 275 of the Town and Country Planning (Scotland) Act 1997; and
- (2) section 3 of the Planning (Hazardous Substances) (Scotland) Act 1997 and all other powers enabling them to do so.

The instrument is subject to negative procedure.

(1) The instrument makes amendments to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 by:

omitting regulation 28(3)(a)(v) (decision notice)

and

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

(2) The instrument also amends the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 to clarify a rule about 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. The amended provision makes clearer the circumstances in which the rule applies.

Policy Objectives

The Town and Country Planning (Development Management Procedure) Regulations 2013¹

The changes to The Town and Country Planning (Development Management Procedure) Regulations 2013 (the DMR) are essentially consequential amendments arising from changes introduced by the Planning (Scotland) Act 2019 (the 2019 Act).

Regulation 28 of the DMR specifies the content of decision notices on applications for planning permission. Regulation 28 is amended by omitting regulation 28(3)(a)(v) as 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 (the 1997 Act) by section 32 (duration of planning permission) of the 2019 Act.

¹ <https://www.legislation.gov.uk/ssi/2013/155/contents/made>

Currently sections 58 and 59 of the 1997 Act specify duration of planning permission in the legislation itself or in a direction made by the planning authority. Regulation 28(3)(a)(v) requires the effect of the legislation or direction to be included in the decision notice. The changes to sections 58 and 59 of the 1997 Act made by the 2019 Act will mean duration is specified in a condition attached to the planning permission. Requirements to include in decision notices information on conditions attached to planning permission already exist (Section 43(1A) of the 1997 Act), so regulation 28(3)(a)(v) is redundant.

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 by section 18 of the 2019 Act and The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021² (SSI 2021/99). Section 35A introduced powers to specify exemptions from requirements for pre-application consultation. Such exemptions were specified in SSI 2021/99, which is due to come into force on 1 October 2022, having been postponed due to Coronavirus.

Note 4 in the Notice specified in Schedule 4 of the DMR, on newspaper notices required for certain planning applications, triggers the inclusion of certain wording where pre-application consultation is required. This change to Note 4 accommodates the fact that a PAC exemptions could apply in future under section 35A of the 1997 Act.

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015³

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the 2015 Regulations) implement land-use planning requirements from the European Directive 2012/18/EU (Seveso III Directive). The aim is to prevent major accidents and mitigate the consequences of major accidents through land-use planning, making decisions about the location of major hazard installations and about the development of land around them.

Hazardous substances consent is an important mechanism in the control of major accident hazards. It is designed to regulate the presence of hazardous substances so that they cannot be kept or used at or above specified quantities until the responsible authorities have had the opportunity to assess the risk of an accident and potential consequences for people in the surrounding area and for the environment. The regulations set out the hazardous substances that, when present at or above specified controlled quantities, will require consent for those substances to be held at a site ('establishment'). Sites which wish to hold certain quantities of hazardous substances at or above defined limits must obtain hazardous substance consent from the relevant authority.

Regulation 3 amends the wording in Note 5 to Parts 1 and 2 of Schedule 1 of the 2015 Regulations to clarify the "addition rule". The "addition rule" is the formula expressed to calculate whether hazardous substances consent is required where substances would be present below the controlled quantity, as specified in legislation. The amendment ensures that where two or more hazardous substances are present together, but individually the amounts of those substances fall below the usual controlled quantities, that the rule must be applied. The rule identifies where such substances, albeit in low quantities, together introduce or increase the risk of a major accident hazard.

² <https://www.legislation.gov.uk/ssi/2021/99/contents>

³ <https://www.legislation.gov.uk/ssi/2015/181/contents/made>

The rule applies in relation to each of three hazard groups (categorised in Part 1 of Schedule 1 of the 2015 regulations as health, physical and environmental hazards) to assess whether such substances require hazardous substances consent. 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.

In the interests of safety, and to provide clarity on when the addition rule must be applied in the presence of hazardous substances, the amendment at Regulation 3 is necessary to accurately reflect the intention of the Seveso Directive.

Regulation 4 makes transitional provision in relation to the above amendment. This allows an opportunity for any necessary consents to be obtained from the relevant authority within a 12 month period.

Consultation

Insofar as these regulations introduce consequential amendments to the DMR relating to coming into force of provisions of the 2019 Act and related regulations, no specific consultation has been carried out.

Contact was made with operators, key agencies and local authorities to advise them of the amendment to clarify the wording of the addition rule in the 2015 Regulations.

Impact Assessments

As these regulations introduce consequential amendments to the DMR relating to coming into force of provisions of the 2019 Act and related regulations, no impact assessments have been carried out in relation to this instrument.

Similarly no significant impact is foreseen for any operators who find they are non-compliant with the 2015 Regulations. There is a 12 month transitional period in order to obtain any necessary consents.

Financial Effects

The Minister for Public Finance, Planning and Community Wealth confirms that no BRIA is necessary as these regulations:

- make consequential amendments to the DMR related to the bringing into force of specific provisions contained in the 2019 Act and related regulations;
- provide clarification on the addition rule formula for assessing whether hazardous substances require consent at an establishment. The regulations do not involve any change in policy.
- The instrument itself has no financial effects on the Scottish Government, local government or on business. Similarly as this amendment provides clarification to the addition rule formula and not a policy change, no BRIA was required.

Scottish Government
Directorate for Local Government and Communities

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