



Housing and Planning Act 1986

1986 CHAPTER 63

PART IV

HAZARDOUS SUBSTANCES

Scotland

35 Hazardous substances-Scotland

The following shall be inserted after section 56AA of the Town and Country Planning (Scotland) Act 1972—

“Hazardous substances

56A Hazardous substances.

- (1) Subject to subsection (2) of this section and to section 56B below, it shall be the duty of the planning authority to control hazardous substances in accordance with the provisions of this Act.
- (2) An urban development corporation shall control hazardous substances in their area if they are the planning authority in relation to all kinds of development.

56B Hazardous substances-statutory undertakers.

- (1) The appropriate Minister shall be the planning authority in respect of hazardous substances in relation to land to which this section applies.
- (2) This section applies—
 - (a) to operational land of statutory undertakers;
 - (b) to land in which statutory undertakers hold, or propose to acquire, an interest with a view to the land being used as operational land.

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- (3) For the purposes of this section any land to which this subsection applies but which is not operational land of statutory undertakers authorised to carry on a harbour shall be treated as if it were such operational land.
- (4) Subsection (3) above applies—
- (a) to a wharf ; and
 - (b) to harbour land,
- as defined in the Harbours Act 1964.
- (5) Any question whether subsection (3) above applies to land shall be determined by the Secretary of State and the Minister who is the appropriate Minister in relation to operational land of statutory undertakers who are authorised to carry on harbour undertakings.

56C Requirement of hazardous substances consent.

- (1) Subject to the provisions of this Part 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") unless the aggregate quantity of the substance—
- (a) on, under or over the land ;
 - (b) on, under or over other land which is within 500 metres of it 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 it,
- is less than the controlled quantity.
- (2) 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 it is unloaded.
- (3) The Secretary of State
- (a) shall by regulations specify—
 - (i) the substances that are hazardous substances for the purposes of this Act;
 - (ii) the quantity which is to be the controlled quantity of any such substance;
 - (b) may by regulations provide that hazardous substances consent is not required or is only required—
 - (i) in relation to land of prescribed descriptions;
 - (ii) by reason of the presence of hazardous substances in prescribed circumstances ;
 - (c) 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 for the purposes of this Act.
- (4) Regulations which—
- (a) are made by virtue of sub-paragraph (i) of subsection (3)(a) above ; or
 - (b) are made by virtue of sub-paragraph (ii) of that paragraph and reduce the controlled quantity of a substance,

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may make such transitional provision as appears to the Secretary of State to be appropriate.

- (5) The power to make such transitional provision includes, without prejudice to its generality, power to apply section 38 of the Housing and Planning Act 1986 subject to such modifications as appear to the Secretary of State to be appropriate.
- (6) Regulations under this section may make different provision for different cases or descriptions of cases.
- (7) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 are to be treated as being one person for the purposes of this section and sections 56D to 56L and 97B below.

56D Applications for hazardous substances consent.

- (1) Provision may be made by regulations with respect to—
 - (a) the form and manner in which applications 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 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 and corresponding to one or other of those described in section 24(1)(a) to (d) of this Act and any such regulations may—
 - (a) include requirements corresponding to those mentioned in sections 23(1), 24(2) and (4) and 26(3) of this Act; and
 - (b) make provision as to who is to be treated as the owner of land for the purposes of any provision of the regulations.
- (3) If any person issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (2) above and which contains a statement which he knows to be false or misleading in a material particular, or 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.
- (4) Regulations—
 - (a) may 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;
 - (b) may require the planning authority to conduct appropriate consultations before determining applications for hazardous substances consent;
 - (c) may provide for the manner in which such a consultation is to be carried out and the time within which—

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- (i) such a consultation ;
 - (ii) any stage in such a consultation,
- is to be completed ;
- (d) may require the planning authority to determine applications for hazardous substances consent within such time as may be prescribed;
 - (e) may 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.
- (5) In subsection (4) above " appropriate consultations " means—
- (a) consultations—
 - (i) in the case of a planning authority other than the appropriate Minister, with the Health and Safety Executive ; and
 - (ii) in the case of the appropriate Minister, with the Health and Safety Commission ; and
 - (b) consultations with such persons or bodies as may be prescribed.
- (6) Regulations under this section may make different provision for different cases or descriptions of cases.

56E 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, in dealing with the application, shall have regard to any material considerations, and—
 - (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit; or
 - (b) may refuse hazardous substances consent.
- (2) Without prejudice to the generality of subsection (1) above, in dealing with an application the authority shall have regard—
 - (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 or Health and Safety Commission have given following consultations in pursuance of regulations under section 56D(4) above.
- (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

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- (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 and of all conditions relating to that substance subject to which the consent is granted.
- (5) Without prejudice to the generality of subsection (1) above, a planning authority may grant hazardous substances 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;
 - (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;
 - (d) the consent being conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission,
- but a planning authority other than the appropriate Minister 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.

56F References to regional planning authority and Secretary of State and appeals.

- (1) Subject to subsections (2) and (3) below, sections 32 to 34 of this Act and section 179 (reference of applications to regional planning authority) of the Local Government (Scotland) Act 1973 shall have effect in relation to applications for hazardous substances consent and to decisions on such applications as though they were applications for planning permission.
- (2) In the application of sections 32 to 34 of this Act to hazardous substances consent—
 - (a) section 32(4) and section 33(5) and (7) shall be omitted;
 - (b) the words " and in such manner as may be prescribed" shall be substituted for the words in section 33(2) following " time " ;
 - (c) in section 34, the words "by the development order" shall be omitted from both places where they occur.
- (3) Subsections (1) and (2) above do not have effect in relation to applications for hazardous substances consent relating to land to which section 56B of this Act applies or to decisions on such applications.

56G Deemed hazardous substances consent by virtue of authorisation of government department.

- (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 not being a local authority; and

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- (b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, 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) The department shall consult the Health and Safety Commission before issuing any such directions.
- (3) The provisions of this Act (except Parts VII and XII) 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 32 of this Act, as applied by section 56F of this Act.
- (4) The reference in subsection (1) above to the authorisation of a government department is to be construed in accordance with section 37(3) of this Act.

56H Grants of hazardous substances consent without compliance with conditions previously attached.

- (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, and—
- (a) if they determine that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or that it should be granted unconditionally, they shall grant hazardous substances consent accordingly; and
- (b) if they 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.
- (3) Where—
- (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 only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.
- (4) 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 only have regard to any consent to which the application does not relate to the extent that it has implications for a consent to which the application does relate.

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- (5) Regulations may make provision in relation to applications under this section corresponding to any provision that may be made by regulations under section 56D of this Act in relation to applications for hazardous substances consent.

56J Power to revoke or modify hazardous substance consent.

- (1) If it appears to the planning authority that—
- (a) there has been a material change of use of land to which a hazardous substances consent relates; or
 - (b) 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,
- they may by order—
- (i) if the consent relates only to one substance, revoke it;
 - (ii) if it relates to more than one, revoke it or revoke it so far as it relates to a specified substance.
- (2) The planning authority may by order—
- (a) revoke a hazardous substances consent which relates to only one substance if it appears to them that that substance has not for at least 5 years been present on, under or over the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; and
 - (b) revoke a hazardous substances consent which relates to a number of substances if it appears to them that none of those substances has for at least 5 years been so present.
- (3) 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.
- (4) An order under this section shall specify the grounds on which it is being made.
- (5) An order under this section, other than an order relating to land to which section 56B of this Act applies, shall not take effect unless it is confirmed by the Secretary of State, and the Secretary of State may confirm any such order submitted to him either without modification or subject to such modification as he considers expedient.
- (6) Where a planning authority submit an order under this section to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order on—
- (a) 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) any other person who in their opinion will be affected by the order;
- and if within the period specified in that behalf in the notice (not being less than 28 days from the service thereof) any person on whom the notice is served so requires, the Secretary of State, before confirming the order, shall afford to that person and to the planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for that purpose.

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- (7) Where an order under this section 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 (6) of this section.
- (8) Section 159 of this Act shall have effect where a hazardous substances consent is revoked or modified by an order made in the exercise of the power conferred by subsection (3) of this section as it has effect where an order is made under section 49 of this Act.

56K Provisions as to effect of hazardous substances consent and change of control of land.

- (1) Without prejudice to the provisions of this Part 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.
- (2) 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.
- (3) Regulations may make provision in relation to applications under subsection (2) above corresponding to any provision that may be made by regulations under section 56D of this Act in relation to applications for hazardous substances consent.
- (4) When such application is made, the authority, having regard to any material consideration—
 - (a) may modify the consent in any way they consider appropriate; or
 - (b) may revoke it.
- (5) Without prejudice to the generality of subsection (4) above, in dealing with an application the authority shall have regard—
 - (a) to the matters to which a planning authority are required to have regard by section 56E(2)(a) to (d) above ; and
 - (b) to any advice which the Health and Safety Executive or Health and Safety Commission have given following consultations in pursuance of regulations under subsection (3) above.
- (6) If an application relates to more than one consent, the authority may make different determinations in relation to each.
- (7) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (8) It shall be the duty of a planning authority, when continuing hazardous substances consent, to attach to the consent one of the following—
 - (a) a statement that is unchanged in relation to the matters included in it by virtue of section 56E(4) above;
 - (b) a statement of any change in respect of those matters.
- (9) The modifications which a planning authority may make by virtue of subsection (4)(a) above include, without prejudice to the generality of that

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paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in section 56E(5) above.

- (10) Subject to subsection (11) below, sections 32 to 34 of this Act and section 179 of the Local Government (Scotland) Act 1973 shall have effect in relation to applications under subsection (2) above and to decisions on such applications as though they were applications for planning permission.
- (11) In the application of sections 32 to 34 of this Act by virtue of subsection (10) above—
- (a) section 32(4) and section 33(5) and (7) shall be omitted;
 - (b) the words " and in such manner as may be prescribed" shall be substituted for the words in section 33(2) following " time " ;
 - (c) in section 34—
 - (i) the words " by the development order" shall be omitted from the first place where they occur; and
 - (ii) the words " the application shall be deemed to have been granted " shall be substituted for the words following paragraph (b).
- (12) Where the authority modify or revoke the consent, they shall pay to the person in control of the whole of the land before the change compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

56L Offences.

- (1) Subject to this Part of this Act, 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—
- (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, under or over 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;
 - (b) if 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) above " the appropriate person " means—
- (a) in relation to a contravention falling within paragraph (a) of subsection (2) above—
 - (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—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum ; or
 - (b) on conviction on indictment, to a fine,
- and if the contravention is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £200 for each day on which it continues or on conviction on indictment to a fine.
- (5) 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.
 - (6) In any proceedings for an offence consisting of a contravention falling within subsection (2) (a) above, 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.
 - (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b) above, 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.

56M Emergencies.

- (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;

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- (b) shall in any case cease to have effect at the end of the period of three 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) Subject to subsection (4) below, the Secretary of State shall send a copy of any such direction to the planning authority in relation to the land.
- (4) Where the land is land to which section 56B of this Act applies, the Secretary of State shall send the copy to the authority which would be the planning authority in relation to that land but for that section.

56N 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—
 - (a) to applications for hazardous substances consent—
 - (i) made to that authority, or
 - (ii) made to the appropriate Minister with respect to land in relation to which, but for section 56B of this Act, that authority would be the planning authority ;and including information as to the manner in which such applications have been dealt with;
 - (b) to hazardous substances consent deemed to be granted under section 38 of the Housing and Planning Act 1986 with respect to land in relation to which that authority is or but for section 56B of this Act would be, the planning authority ;
 - (c) to revocations or modifications of hazardous substances consent granted with respect to such land ; and
 - (d) to directions under section 56M above sent to the authority by the Secretary of State.
- (2) Where with respect to any land the appropriate Minister exercises any of the functions of a planning authority for the purposes of hazardous substances control he shall send to the authority which, but for section 56B of this Act, would be the planning authority for those purposes in relation to that land any such information as appears to him to be required by them for the purposes of maintaining a register under this section.
- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

56O Health and safety requirements.

- (1) Nothing in—
 - (a) any hazardous substances consent granted or deemed to be granted under—
 - (i) the preceding provisions of this Act; or
 - (ii) section 38 of the Housing and Planning Act 1986 ; or
 - (b) any hazardous substances contravention notice issued under section 97B of this Act,

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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 ; and to the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.

- (2) 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 (1) above, the authority shall, as soon as is reasonably practicable, consult the appropriate body with regard to the matter.
- (3) If the appropriate body advise the authority that the consent or notice is rendered wholly void, the authority shall revoke it.
- (4) 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.
- (5) In this section—
 - " the appropriate body " means—
 - (a) in relation to a planning authority other than the appropriate Minister, the Health and Safety Executive ; and
 - (b) in relation to the appropriate Minister, the Health and Safety Commission ; and
 - " relevant statutory provisions", " improvement notice " and " prohibition notice " have the same meanings as in Part I of the Health and Safety at Work etc. Act 1974."