



Planning (Hazardous Substances) (Scotland) Act 1997

1997 CHAPTER 10

Obtaining hazardous substances consent

4 Hazardous substances consent: general.

- (1) Hazardous substances consent—
- (a) may be granted on an application under this Act, or
 - (b) may be deemed to have been granted by virtue of section 9 ^[^{F1}], [^{F2}10, 10A or 30D]] .
- (2) Without prejudice to the provisions 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.

Textual Amendments

F1 Words in s. 4(1)(b) substituted (6.7.2000) by [S.S.I. 2000/179, art. 3\(2\)](#)

F2 Words in s. 4(1)(b) substituted (12.6.2006) by [The Planning and Compulsory Purchase Act 2004 \(Transitional Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/269\), arts. 1\(1\), 5\(2\)](#)

5 Applications for hazardous substances consent.

- (1) Provision may be made by regulations with respect to—
- (a) the form and manner in which applications under this Act 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—

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

- (a) 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) require the planning authority to conduct appropriate consultations before determining applications for hazardous substances consent;
 - (c) provide for the manner in which such a consultation is to be carried out and the time within which—
 - (i) such a consultation;
 - (ii) any stage in such a consultation,
 is to be completed;
 - (d) require the planning authority to determine applications for hazardous substances consent within such time as may be prescribed;
 - (e) 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.
- (3) In subsection (2) “appropriate consultations” means consultations with the [F3 safety regulator] and with such persons or bodies as may be prescribed.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

Textual Amendments

- F3** Words in s. 5(3) substituted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), [Sch. 2 para. 16](#) (with Sch. 4)

6 Certificates as to interests in land etc.

- (1) 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 as to the interests in the land to which the application or appeal relates.
- (2) Any such regulations may—
- (a) include requirements corresponding to those mentioned in sections 34(1), 35(2) and (4) and 38(2) of the principal Act,
 - (b) make provision as to who is to be treated as the owner of land for the purposes of any provision of the regulations, and
 - (c) make different provision for different cases or descriptions of case.
- (3) If any person—
- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and which contains a statement which he knows to be false or misleading in a material particular, or
 - (b) 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,

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

7 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 may—
 - (a) grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit, or
 - (b) refuse hazardous substances consent.
- (2) In dealing with such an application the planning authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—
 - (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 [^{F4}or development consent] 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 [^{F5}safety regulator has] given following consultations in pursuance of regulations under section 5(2).
- (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
 - (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.

Textual Amendments

- F4** Words in s. 7(2)(c) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\), s. 241\(8\), Sch. 2 para. 60](#) (with s. 226); [S.I. 2010/101, art. 2](#) (with art. 6)
- F5** Words in s. 7(2)(e) substituted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\), art. 1\(2\), Sch. 2 para. 17](#) (with Sch. 4)

Modifications etc. (not altering text)

- C1** [S. 7](#) applied (1.6.2015) by [The Town and Country Planning \(Hazardous Substances\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/181\), regs. 1, 56\(4\)](#)

8 Power to impose conditions on grant of hazardous substances consent.

- (1) Without prejudice to the generality of section 7(1), a planning authority may grant hazardous substances consent conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission [^{F6}or development consent] or may grant such consent subject to conditions with respect to any of the following—

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

- (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, and
 - (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.
- (2) A planning authority 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 [F7 safety regulator has] advised the authority that any consent they might grant should be subject.
- (3) It shall be the duty of a planning authority, when granting hazardous substances consent, to include in that consent, in respect of each hazardous substance to which it relates, a statement of all conditions relating to that substance subject to which the consent is granted.

Textual Amendments

- F6** Words in s. 8(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 61** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F7** Words in s. 8(2) substituted (1.4.2014) by [The Energy Act 2013 \(Office for Nuclear Regulation\) \(Consequential Amendments, Transitional Provisions and Savings\) Order 2014 \(S.I. 2014/469\)](#), art. 1(2), **Sch. 2 para. 18** (with Sch. 4)

9 Deemed hazardous substances consent: established presence.

- (1) Hazardous substances consent deemed to be granted by a planning authority under section 38 of the ^{M1}Housing and Planning Act 1986 (under which hazardous substances consent is deemed to be granted in certain circumstances where a hazardous substance was present before 1st May 1993) shall continue to have effect notwithstanding the repeal of that section and shall be deemed to be granted by the authority under this section.
- (2) Hazardous substances consent which is deemed to be granted under this section is subject to—
- (a) the condition that the maximum aggregate quantity of the substance that may be present—
 - (i) on, over or under the land to which the claim relates,
 - (ii) on, over or under other land which is within 500 metres of it and controlled by the same person, or
 - (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,
 at any one time shall not exceed the established quantity, and
 - (b) such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent.
- (3) The provisions of this Act (except section 20) shall apply in relation to any hazardous substances consent deemed to be granted under this section as if it had been granted by the planning authority on an application to them.

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

- (4) In this section “established quantity” means, in relation to any land—
- (a) where before 1st May 1993 there was a notification in respect of a substance in accordance with any of the ^{M2}Notification of Installations Handling Hazardous Substances Regulations 1982—
 - (i) the quantity notified or last notified before that date, or
 - (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the period of 12 months immediately preceding that date,whichever is the greater;
 - (b) where a notification was not required before that date by any of those Regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period.

Marginal Citations

M1 1986 c.63.

M2 S.I. 1982/1357.

10 Deemed hazardous substances consent: government authorisation.

- (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 who are not a local authority, and
 - (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) On granting a consent under section 36 of the ^{M3}Electricity Act 1989 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the directions.

[^{F8}(2A) On making an order under section 1 of the Transport and Works (Scotland) Act 2007 which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Scottish Ministers may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the directions.]

[^{F9}(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]

[^{F10}(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.]

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

- (4) For the purposes of this section development shall be taken to be authorised by a government department if—
- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment,
 - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development,
 - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose,
 - (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable, or
 - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,
- and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) The provisions of this Act (except section 20) 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 18.
- (6) A [^{F11}person] shall, as respects any hazardous substances consent deemed to be granted by virtue of directions [^{F12}given by the person] under this section, send to the planning authority concerned any such information as appears to be required by them for the purposes of a register under section 27.

Textual Amendments

- F8** S. 10(2A) inserted (28.12.2007) by [The Transport and Works \(Scotland\) Act 2007 \(Consents under Enactments\) Regulations 2007 \(S.S.I. 2007/569\)](#), regs. 1, **4(a)**
- F9** S. 10(2B) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 62(2)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F10** S. 10(3) substituted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 62(3)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F11** Word in s. 10(6) substituted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 62(4)(a)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F12** Words in s. 10(6) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 62(4)(b)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

Marginal Citations

- M3** 1989 c.29.

[^{F13}10A Deemed hazardous substances consent: established presence

- (1) Where a hazardous substance was present on, over or under any land at any time within the establishment period, for which hazardous substances consent was not required during that period, hazardous substances consent may be claimed in respect of its presence.

Changes to legislation: *There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)*

- (2) A claim shall be made on Form 12 (as set out in Schedule 2 to the Regulations) before the end of the transitional period and shall contain the information specified in regulation 15 of the Regulations.
- (3) Subject to subsections (4) and (5), the planning authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).
- (4) Hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (5) If it appears to the planning authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—
- (a) to notify the claimant that in their opinion the claim is invalid; and
 - (b) to give their reasons for that opinion.
- (6) Hazardous substances consent which is deemed to be granted under this section is subject—
- (a) to the condition that the maximum aggregate quantity of the substance that may be present—
 - (i) on, over or under the land to which the claim for the consent relates;
 - (ii) on, over or under other land controlled by the same person and which, in all the circumstances (including in particular the purposes for which the land and the land mentioned in sub-paragraph (i) is used), forms with the land so mentioned a single establishment;
 - (iii) on, over or under other land which is within 500 metres of the land mentioned in sub-paragraph (i) and controlled by the same person; or
 - (iv) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in sub-paragraph (i),at any one time shall not exceed the established quantity and in calculating the established quantity a quantity of a substance which is present under more than one sub-paragraph in this subsection shall be counted only once; and
 - (b) to the conditions set out in Schedule 3 to the Regulations.
- (7) In this section and in section 10B—
- “establishment period” means the period of 12 months immediately preceding the relevant date;
- “established quantity” means, in relation to any land, the maximum quantity which was present on, over or under the land at any one time within the establishment period;
- “the Regulations” means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 ^{F14};
- “the relevant date” means the date on which the Planning (Control of Major - Accident Hazards) (Scotland) Regulations 2000 came into force;
- “the transitional period” means the period of 6 months beginning with the relevant date.

Textual Amendments

F13 Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

Changes to legislation: There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent. (See end of Document for details)

F14 S.I. 1993/323, amended by S.I. 1994/2567 and 1996/252.

[^{F15} **Transitional exemptions**]

^{F15}**10B**

- (1) No offence is committed under section 21, and no hazardous substances contravention notice may be issued in relation to a hazardous substance which is on, over or under any land, if—
- (a) the substance was present on, over or under the land at any time within the establishment period and was not a substance or quantity of substance for which hazardous substances consent was required before the relevant date; and
 - (b) the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.
- (2) This section shall have effect until the end of the transitional period.]]

Textual Amendments

F13 Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

F15 Ss. 10A, 10B inserted (6.7.2000) by S.S.I. 2000/179, art. 3(3)

Changes to legislation:

There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Obtaining hazardous substances consent.