Planning (Hazardous Substances) (Scotland) Act 1997

1997 CHAPTER 10

Variation and revocation of consents

11 Applications for removal of conditions attached to hazardous substances consent.

(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.

(3) If on such an application the planning authority determine—

(a) that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted, or

(b) that it should be granted unconditionally,

they shall grant hazardous substances consent accordingly.

(4) If on such an application the planning authority 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.

(5) 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 have regard to any condition relating to a substance to which the application does not relate only to the extent that it has implications for a substance to which the application does relate.

(6) 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 have regard to any consent to which the application does not relate only to the extent that it has implications for a consent to which the application does relate.

12 General power by order to revoke or modify hazardous substances consent.

(1) 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.

(2) The planning authority may also by order revoke a hazardous substances consent if it appears to them—

(a) that there has been a material change of use of land to which a hazardous substances consent relates,

(b) that planning permission **[**[F1]or development consent**]** 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 **[**[F2]or development consent**]** relates has been commenced,

(c) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least 5 years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity, or

(d) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least 5 years been so present.

(3) An order made by virtue of subsection (2)(a) or (b) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance.

(4) An order under this section shall specify the grounds on which it is made.

Textual Amendments

F1 Words in s. 12(2)(b) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 63(a)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

F2 Words in s. 12(2)(b) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 63(b)** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

13 Confirmation by Secretary of State of section 12 orders.

(1) An order under section 12 shall not take effect unless it is confirmed by the Secretary of State.

(2) The Secretary of State may confirm any such order submitted to him either without modification or subject to such modification as he considers expedient.

(3) Where a planning authority submit any such order to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order—

(a) on 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) on any other person who in their opinion will be affected by the order.

(4) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(5) If within that period a person on whom the notice is served so requires, the Secretary of State shall, before he confirms the order, give such an opportunity to that person and to the planning authority.

(6) Where an order under section 12 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 (3).

14 Compensation in respect of orders under section 12(1).

(1) This section applies where an order is made under section 12(1) revoking or modifying a hazardous substances consent.

(2) If, on a claim made to the planning authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—

(a) by depreciation of the value of an interest in the land to which he is entitled, or

(b) by being disturbed in his enjoyment of the land,

the authority shall pay to that person compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the planning authority compensation in respect of any expenses reasonably incurred by him in that behalf.

(4) Any compensation payable to a person under this section by virtue of such an order shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) Sections 85 to 87 of the principal Act (which contain general provisions as to the assessment of and the determination of claims for compensation) shall apply as if compensation under this section were compensation under section 83 of that Act.

15 Revocation of hazardous substances consent on change of control of land.

(1) 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.

(2) Regulations may make provision in relation to applications under subsection (1) corresponding to any provision that may be made by regulations under section 5 or 6 in relation to applications for hazardous substances consent.

[[F3](3) This section does not apply if the control of the land changes from one emanation of the Crown to another.**]**

Textual Amendments

F3 S. 15(3) inserted (12.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), s. 121(4), **Sch. 5 para. 21** (with s. 111); S.S.I. 2006/268, art. 3(f)

Modifications etc. (not altering text)

C1 S. 15(1) excluded (1.6.2015) by The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (S.S.I. 2015/181), regs. 1, **66**

16 Determination of applications for continuation of hazardous substances consent.

(1) When an application is made under section 15(1) for the continuation of a hazardous substances consent, the planning authority—

(a) may modify the consent in any way they consider appropriate, or

(b) may revoke it.

(2) In dealing with such an application the authority shall have regard to any material consideration and, in particular, but without prejudice to the generality of the foregoing—

(a) to the matters to which a planning authority are required to have regard by section 7(2)(a) to (d), and

(b) to any advice which the **[**[F4]safety regulator has**]** given following consultations in pursuance of regulations under section 15(2).

(3) If an application relates to more than one consent, the authority may make different determinations in relation to each.

(4) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.

(5) It shall be the duty of a planning authority, when continuing hazardous substances consent, to attach to the consent either—

(a) a statement that is unchanged in relation to the matters included in it by virtue of sections 7(4) and 8(3), or

(b) a statement of any change in respect of those matters.

(6) The modifications which a planning authority may make by virtue of subsection (1)(a) include, without prejudice to the generality of that provision, making the consent subject to conditions with respect to any of the matters mentioned in section 8(1); and section 8(2) shall apply as respects those conditions as it applies to the grant of consent subject to conditions.

(7) Where any application under section 15(1) is made to a planning authority then, unless within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority either—

(a) give notice to the applicant of their decision on the application, or

(b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 18,

the application shall be deemed to have been granted.

Textual Amendments

F4 Words in s. 16(2)(b) 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. 19** (with Sch. 4)

17 Compensation on revocation or modification of consent under section 15.

Where on an application under section 15(1) the planning authority modify or revoke the hazardous substances consent, they shall pay to the person in control of the whole of the land before the change in control by virtue of which the application was made compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

Changes to legislation:
There are currently no known outstanding effects for the Planning (Hazardous Substances) (Scotland) Act 1997, Cross Heading: Variation and revocation of consents.