
STATUTORY INSTRUMENTS

1999 No. 915

The Water Protection Zone (River Dee Catchment) Designation Order 1999

Citation and commencement

1. This Order may be cited as The Water Protection Zone (River Dee Catchment) Designation Order 1999 and shall come into force on 21st June 1999.

Interpretation

2.—(1) In this Order,

“the Act” means the Water Resources Act 1991;

“the 1994 Regulations” means the Chemicals (Hazard Information and Packaging For Supply) Regulations 1994(1);

“the 1999 Regulations” means the Water Protection Zone (River Dee Catchment) (Procedural and Other Provisions) Regulations 1999(2);

“the Agency” means the Environment Agency;

“agricultural unit” has the same meaning as in the Agriculture Act 1947(3);

“catchment control site” means a site used for or in connection with—

- (a) an industrial process;
- (b) the research and development of products or processes;
- (c) storage or as a distribution centre; or
- (d) the storage or treatment of water, surface water, trade effluent or domestic sewage;

within which there is kept or used, or proposed to be kept or used, a controlled substance but excluding a construction area, retail premises, a site within an agricultural unit and a site used for carrying on a prescribed process within the meaning of Part I of the Environmental Protection Act 1990(4) being a process designated for central control under that Part;

“construction area” means an area of land on, over or under which a building or other civil engineering operation is in the course of being constructed or carried out but does not include any other land in the vicinity thereof except that which is being used to facilitate the operation;

“contravention of protection zone control” has the meaning given in article 4(2);

“controlled activity” means the keeping or use of a controlled substance within a catchment control site;

“controlled substance” means any substance which is—

- (a) a dangerous substance;

(1) 1994/3247 amended by S.I. 1996/1092.

(2) S.I. 1999/916.

(3) 1947 c. 48.

(4) 1990 c. 43, as amended by the Environment Act 1995 c. 25; and *see* section 1(5) of the Environmental Protection Act for the definition of “prescribed process”.

- (b) a fuel, lubricant or industrial spirit or solvent, which is a liquid under normal conditions or which is kept as a liquid within a site;
- (c) a medicinal product within the meaning of the Medicines Act 1968⁽⁵⁾;
- (d) food which is a liquid under normal conditions;
- (e) feeding stuff which is liquid under normal conditions;
- (f) an inorganic fertiliser;
- (g) a cosmetic product within the meaning of the Cosmetic Products (Safety) Regulations 1996⁽⁶⁾; or
- (h) a substance identified by its manufacturer as being toxic, harmful, corrosive or irritant; of which there is kept or used, or proposed to be kept or used, the relevant quantity: but does not include—
 - (i) controlled waste within the meaning of Part II of the Environmental Protection Act 1990⁽⁷⁾ insofar as such waste is being treated, kept or disposed of in accordance with a waste management licence in force under the provisions of Part II of that Act;
 - (ii) radioactive waste, as defined in section 2 of the Radioactive Substances Act 1993⁽⁸⁾;
 - (iii) any fuel used exclusively for the production of heat or power;
 - (iv) any substance contained in a pipe-line except in relation to a catchment control site where the pipeline has an inlet or outlet at the site;
 - (v) any substance present at a site for a period of 24 hours or less whilst it is being conveyed from one place to another; or
 - (vi) any substance which is a gas or vapour under normal conditions;

“dangerous substance” means a substance dangerous for supply within the meaning of the 1994 Regulations and to which those Regulations apply, other than any such substance which is, in accordance with those Regulations, classified only as being a substance which is explosive, flammable, highly flammable or extremely flammable; and includes any substance listed among the families and groups of substances in List I or List II to the annex to the Council Directive 76/464/EEC⁽⁹⁾ on Pollution caused by certain Dangerous Substances discharged into the Aquatic Environment of the Community;

“establishment period” means the period of 12 months ending on the date on which this Order comes into force;

“feeding stuff” means feeding stuff within the meaning of the Agriculture Act 1970⁽¹⁰⁾ and any substance used as an ingredient in its manufacture;

“food” has the same meaning as in the Food Safety Act 1990⁽¹¹⁾;

“industrial process” means a process for or incidental to any of the following purposes—

- (a) the making of any article or substance or part of any article or substance (including food);
- (b) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article or substance; or
- (c) the getting, dressing or treatment of minerals;

⁽⁵⁾ 1968 c. 67.

⁽⁶⁾ S.I. 1996/2925.

⁽⁷⁾ See section 75(4) of the Environmental Protection Act 1990 for the definition of controlled waste.

⁽⁸⁾ 1993 c. 12.

⁽⁹⁾ OJNo. L129, 18.5.76, p.23.

⁽¹⁰⁾ 1970 c. 40.

⁽¹¹⁾ 1990 c. 16.

“inorganic fertiliser” means a fertiliser used for the cultivation of crops or plants of any description, including trees, which is in the form of inorganic salts obtained by extraction, physical industrial processes, chemical industrial processes, or a combination of any or all of these, and includes calcium cyanamide, and urea and its condensation products;

“minerals” has the same meaning as in the Town and Country Planning Act 1990⁽¹²⁾;

“the protection zone” means the water protection zone designated by article 3 of this Order;

“protection zone consent” means consent to the carrying on of a controlled activity granted on application under the 1999 Regulations or duly claimed under article 6 of this Order;

“the relevant quantity” means—

- (a) in relation to food or feeding stuff which is not a dangerous substance, an amount comprising or in excess of 500 litres; and
- (b) in every other case, an amount equal to or in excess of—
 - (i) 50 litres when present in a single vessel; but otherwise
 - (ii) 200 litres;

“retail premises” means any premises used wholly or mainly for the sale of goods to the public;

“site” means an area of land or a structure (whether floating or not) under the control of a person;

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour and includes any substance which is a mixture of two or more substances;

“vessel” means any container in which a controlled substance may be kept or used whether or not the container is designed or adapted for the purpose or is affixed to the land, and includes a container which forms part of plant or machinery.

(2) In determining whether the relevant quantity of a controlled substance is kept or used or proposed to be kept or used within a site, no account shall be taken of any quantity of such a substance which is or is to be kept or used within the site in any vehicle, water-borne craft, aircraft or hovercraft for the purposes of the use of that vehicle or craft as a means of transport.

(3) Any reference in this Order to the person in control of a site is a reference to the person having control of the site in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

(4) Any reference in this article to a liquid, gas or vapour under normal conditions is a reference to that liquid, gas or vapour in an unpressurised state at 15 degrees centigrade.

(5) Where in this Order reference is made to a quantity of a substance expressed in litres, that reference shall mean—

- (a) in the case of a liquid, the volume in litres of that liquid; and
- (b) in the case of a solid, the same number of kilograms of that solid;

and for the purposes of aggregation, one litre of a liquid shall be deemed to be equivalent to one kilogram of a solid.

Designation of water protection zone

3. There is hereby designated as a water protection zone, to be known as “the River Dee Water Protection Zone”, the area edged in red on the map prepared in triplicate and marked “The map referred to in the Water Protection Zone (River Dee Catchment) Designation Order 1999” signed by the Parliamentary Under Secretary of State in the Department of the Environment, Transport and the

(12) 1990 c. 8.

Regions and the Parliamentary Under Secretary of State for Wales, of which one copy is deposited and available for inspection at the office of the Environment Agency at Chester Road, Buckley, Clwyd CH7 3AJ and one copy each at the offices of the Department of the Environment, Transport and the Regions, Ashdown House, 123 Victoria Street, London SW1E 6DE and the Welsh Office, Cathays Park, Cardiff CF1 3NQ respectively.

Requirement of consent for the carrying on of a controlled activity

4.—(1) No person shall carry on a controlled activity within the protection zone in contravention of protection zone control.

(2) Subject to articles 5, 6 and 7 there is a contravention of protection zone control—

- (a) if a controlled activity is or has been carried on within the protection zone and either—
 - (i) there is no protection zone consent for the carrying on of that activity; or
 - (ii) there is protection zone consent for the carrying on of that activity but the quantity of controlled substances kept or used 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 protection zone consent was granted.

Contravention of protection zone control

5.—(1) If at any time on or after the expiry of six months after the date on which this Order comes into force, there is a contravention of protection zone control, any person causing or knowingly permitting it shall be guilty of an offence.

(2) A person guilty of an offence under this article shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000 or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(3) In any proceedings for an offence under this article 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.

(4) In any proceedings for an offence consisting of a contravention falling within sub-paragraph (2)(a) of article 4, 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 sub-paragraph (2)(a)(i), that the controlled activity was being carried on;
- (b) if the case falls within sub-paragraph (2)(a)(ii), that the controlled substance was kept or used in a quantity exceeding the maximum quantity permitted by the consent.

(5) In any proceedings for an offence consisting of a contravention falling within sub-paragraph (2)(b) of article 4, it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which protection zone consent had been granted.

Transitional Claims

6.—(1) Where a controlled activity was carried on at any catchment control site at any time within the establishment period, protection zone consent may be claimed under this article by the person in control of the site.

(2) A claim under this article shall be made before the end of the transitional period on a form provided for the purpose by the Agency which shall incorporate or be accompanied by the information and other documentation specified in the Schedule to this Order.

(3) Subject to paragraphs (4), (5) and (6) the Agency shall be deemed to have granted such protection zone consent as is claimed.

(4) If it appears to the Agency that the claim fails to meet the requirements of paragraph (2) the Agency shall serve on the applicant within 4 weeks of its receipt of the claim a notice—

- (a) informing the applicant that in its opinion the claim failed to meet the requirements;
- (b) giving its reasons for that opinion; and
- (c) except where a claim was made after the end of the transitional period, inviting the applicant to make good any deficiencies in the claim within a specified period, being not less than 7 days beginning with the date of service of the notice.

(5) If it appears to the Agency that the applicant has failed to comply with the provisions of the notice referred to in paragraph (4) it shall inform the applicant in writing before the end of the period of 2 weeks beginning with the end of the period specified in paragraph (4)(c) that the claim is invalid.

(6) Protection zone consent which is claimed under this article is subject to conditions that:

- (a) the maximum aggregate quantity of the controlled substances that may be kept or used within the catchment control site to which the claim for consent relates at any one time shall not exceed the maximum quantity of those substances which were specified in the information supplied in accordance with paragraph (2) and were kept or used at any one time within the establishment period; and
- (b) each controlled substance will be kept and used in the place and manner in which information supplied in accordance with paragraph (2) shows that it was kept and used within the establishment period; and
- (c) none of the controlled substances shall be kept or used in a vessel greater in capacity than the vessel or the largest of the vessels, in which information supplied in accordance with paragraph (2) shows that the substance was kept or used within the establishment period.

(8) In this article “the transitional period” means the period of 6 months beginning on the date in which this Order comes into force.

Transitional exemption from contravention proceedings

7.—(1) Where an application or claim for protection zone consent for a controlled activity is made on or before the expiry of six months after the date on which this Order comes into force, in accordance with regulation 5 of the 1999 Regulations or article 6 of this Order, as the case may be, no offence is committed under article 5 of this Order in relation to that activity until the application or claim is disposed of.

(2) For the purposes of paragraph (1) an application under the 1999 Regulations is disposed of on the date on which the protection zone consent applied for is granted or if the application is refused the date on which—

- (a) the period for appealing expires without an appeal being made; or
- (b) any appeal is withdrawn or finally determined.

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(3) For the purposes of paragraph (1) a claim under article 6 of this Order is disposed of either at the expiry of the period of 6 weeks beginning with the date of the claim or, if the Agency informs the claimant that the claim is invalid under article 6(5), the date of that notification whichever is the earlier.

Signed by the authority of the Secretary of State for the Environment, Transport and the Regions.

A G Meale
Parliamentary Under Secretary of State,
Department of the Environment, Transport and
the Regions

17th March 1999

Signed by authority of the Secretary of State for Wales

Jon Owen Jones
Parliamentary Under Secretary of State, Welsh
Office

19th March 1999