
WELSH STATUTORY INSTRUMENTS

2015 No. 1597

The Planning (Hazardous Substances) (Wales) Regulations 2015

PART 5

Other matters relating to hazardous substances consent
(consents register, fees, application of the PHSA to hazardous
substances authorities and notification of other establishments)

Consents register

22.—(1) The register required by section 28(1) of the PHSA must be kept in 6 parts—

- (a) Part 1 must contain details of every application for hazardous substances consent made to the hazardous substances authority and not finally determined;
- (b) Part 2 must contain, in respect of every application for hazardous substances consent made to the hazardous substances authority—
 - (i) details of the application;
 - (ii) particulars of any direction given under section 20 of the PHSA;
 - (iii) details of the decision (if any) of the authority, including details of any conditions subject to which consent was granted and the date of the decision; and
 - (iv) the reference number, date and effect of any decision of the Welsh Ministers, whether on a reference under section 20 of the PHSA or on an appeal under section 21 of the PHSA;
- (c) Part 3 must contain details of every order revoking or modifying hazardous substances consent made by the hazardous substance authority and the date and effect of any confirmation by the Welsh Ministers in accordance with section 15 of the PHSA;
- (d) Part 4 must contain, in respect of every hazardous substances consent deemed to be granted under section 11(3) of the PHSA, details of the claim;
- (e) Part 5 must contain details of every hazardous substances consent deemed to be granted by virtue of a direction given by the Welsh Ministers or a department of the government of the United Kingdom under section 12 of the PHSA; and
- (f) Part 6 must contain details of any direction under section 27 of the PHSA sent to the authority by the Welsh Ministers.

(2) Where the Welsh Ministers grant hazardous substances consent under section 177 of the TCPA on the determination of an appeal against a hazardous substances contravention notice, the hazardous substances authority for the land covered by the consent must enter the date and effect of that decision in Part 2 of the register.

(3) The register must include an index of entries in the register.

(4) Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority.

(5) The register must be kept at the principal office of the hazardous substances authority.

(6) For the purposes of paragraph (1)(a), an application is not to be treated as finally determined unless—

- (a) it has been decided by the hazardous substances authority and the period specified in regulation 13(1) has expired without any appeal having been made to the Welsh Ministers;
- (b) it has been referred to the Welsh Ministers under section 20 of the PHSA or an appeal has been made to the Welsh Ministers under section 21 of the PHSA, the Welsh Ministers' decision has been issued and the period of 6 weeks specified in section 22(1) of the PHSA has expired without any application having been made to the High Court under that section;
- (c) an application has been made to the High Court under section 22 of the PHSA and the matter has been determined, either by final dismissal of the application by a Court or by the quashing of the Welsh Ministers' decision and the issue of a fresh decision (without a further application under section 22 of the PHSA being duly made); or
- (d) it has been withdrawn by the applicant before being determined; or
- (e) an appeal under section 21 or an application under section 22 has been withdrawn by the applicant before the Welsh Ministers' decision has been issued.

(7) Where this regulation requires details of an application, direction, consent, claim form or notice to be provided in the register, the following must be provided—

- (a) details of the person in control of the land to which the application, direction, consent, claim form or notice relates, where applicable; and
- (b) the category in Column 1 of Part 1 of Schedule 1 to these Regulations in which any substance that is the subject of the application, direction, consent, claim form or notice falls.

Fees for applications

23.—(1) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for hazardous substances consent as follows—

- (a) if section 13(1) of the PHSA applies (new consent without previous conditions), £200;
- (b) if section 13(1) of the PHSA does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400; and
- (c) in all other cases, £250.

(2) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for the continuation of hazardous substances consent under section 17(1) of the PHSA of £200.

(3) Where applications relating to the same site are made to two or more hazardous substances authorities, a fee is to be paid only to the authority in whose area the largest part of the site is situated and the amount payable is the amount that would have been payable if the application had fallen to be made to one authority in relation to the whole site.

(4) Any fee due in respect of an application must accompany the application when it is made to the hazardous substances authority.

(5) Any fee paid pursuant to this regulation must be refunded if the application is rejected as invalidly made.

Fees for deemed applications

24.—(1) Subject to paragraph (5), a fee must be paid to the Welsh Ministers in every case where an application for hazardous substances consent is deemed to have been made by virtue of

section 177(5) of the TCPA (in consequence of an appeal under section 174 of that Act against a hazardous substances contravention notice).

(2) The fee mentioned in paragraph (1) is payable by every person who has made a valid appeal against the relevant hazardous substances contravention notice and whose appeal has not been withdrawn before the date on which the Welsh Ministers issue a notice under paragraph (4).

(3) Subject to paragraph (7), the fee payable is the amount which would be payable under regulation 23 if the application were an application to which that regulation applied.

(4) The fee due must be paid at such time as the Welsh Ministers may in the particular case specify by notice in writing to the appellant.

(5) This regulation does not apply where the appellant had—

- (a) before the date when the hazardous substances contravention notice was issued, applied to the hazardous substances authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid to the authority the fee payable in respect of that application, or
- (b) before the date specified in the notice as the date on which it is to take effect, made an appeal to the Welsh Ministers against the refusal of the hazardous substances authority to grant consent,

and at the date when the relevant notice was issued that application or, in the case of an appeal made before that date, that appeal, had not been determined.

(6) Any fee paid in respect of the deemed application must be refunded to the appellant by the Welsh Ministers if—

- (a) the Welsh Ministers decline jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the requirements of subsections (1) to (3) of section 174 of the TCPA;
- (b) the Welsh Ministers dismiss the relevant appeal in exercise of the powers under section 176(3)(a) of the TCPA (on the grounds that the appellant has failed to comply with section 174(4) of that Act);
- (c) the Welsh Ministers allow the relevant appeal and quash the relevant hazardous substances contravention notice in exercise of the powers under section 176(3)(b) of the TCPA (on the grounds that the hazardous substances authority have failed to comply with regulation 17(2) of these Regulations);
- (d) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which notice in writing of the withdrawal is received by the Welsh Ministers and—
 - (i) the date (or in the event of postponement, the latest date) appointed for the holding of an inquiry or hearing into that appeal; or
 - (ii) in the case of an appeal which is being dealt with by written representations, the date (or in the event of postponement, the latest date) appointed for the inspection of the site to which the notice relates;
- (e) the hazardous substances authority withdraws the relevant hazardous substances contravention notice before it takes effect, or the Welsh Ministers decide that the notice is a nullity;
- (f) the Welsh Ministers allow the relevant appeal on any of the grounds set out in section 174(2)(b) to (e) of the TCPA; or
- (g) the Welsh Ministers allow the relevant appeal on the ground that the notice is invalid, or that it contains a defect, error or misdescription which cannot be corrected under section 176(1)(a) of the TCPA.

(7) Where a hazardous substances contravention notice is varied under section 176(1) of the TCPA otherwise than to take account of a grant of hazardous substances consent under section 177(1) of the TCPA, and the fee calculated in accordance with paragraph (3) would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable is that lesser amount and any excess amount already paid must be refunded.

(8) In determining a fee under paragraph (7) no account is to be taken of any change in fees which takes effect after the making of the deemed application.

Application of the PHSA to hazardous substances authorities

25.—(1) Any application by a hazardous substances authority for hazardous substances consent must be made to the Welsh Ministers.

(2) Regulations 5 to 8, 10 and 11(2) apply to the making of such an application as they apply to applications made to a hazardous substances authority.

(3) For the purpose of regulation 22, an application made to the Welsh Ministers by a hazardous substances authority is to be treated as an application made to the hazardous substances authority and referred to the Welsh Ministers under section 20 of the PHSA.

(4) Section 9 (other than subsection (2)(e)) of the PHSA applies in relation to an application made to the Welsh Ministers by a hazardous substances authority as it applies in relation to an application made to a hazardous substances authority.

(5) For the purpose of section 22 of the PHSA, a decision of the Welsh Ministers on an application made to them by a hazardous substances authority is to be treated as a decision under section 20 of the PHSA.