



2011 CHAPTER 25

PART 4

ADDITIONAL PLANNING CONTROL

CHAPTER 2

HAZARDOUS SUBSTANCES

Requirement of hazardous substances consent

108.—(1) Subject to the provisions of this Part, the presence of a hazardous substance on, over or under land requires the consent of the council (in this Act referred to as “hazardous substances consent”) unless the aggregate quantity of the substance—

- (a) on, over or under the land;
- (b) on, over or under other land which is controlled by the same person and which, in all the circumstances (including in particular the purpose for which the land and the land mentioned in paragraph (a) is used), forms with the land so mentioned a single establishment;
- (c) on, over or under other land which is within 500 metres of the land mentioned in paragraph (a) and controlled by the same person; or
- (d) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in paragraph (a),

is less than the controlled quantity.

(2) A quantity of a substance which falls within more than one paragraph of subsection (1) shall only be counted once.

(3) 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—

- (a) it is unloaded; or
 - (b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.
- (4) The Department—
- (a) must 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.
- (5) Regulations which—
- (a) are made by virtue of paragraph (a)(i) of subsection (4); or
 - (b) are made by virtue of paragraph (a)(ii) of that subsection and reduce the controlled quantity of a substance,

may make such transitional provision as appears to the Department to be appropriate.

(6) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 (c. 41) are to be treated as being one person for the purposes of this section and sections 109 to 117 and 162.

Applications for hazardous substances consent

- 109.**—(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.

Status: This is the original version (as it was originally enacted).

(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, must 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 42(1)(a) to (d); and any such regulations may—

- (a) include requirements corresponding to sections 42(4) and 45(4); and
- (b) make provision as to who is to be treated as in actual possession 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) and which contains a statement which that person 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, that person 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 council or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- (b) may require the council to consult with the Health and Safety Executive for Northern Ireland and with such other bodies or persons as may be prescribed 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—
 - (i) such a consultation;
 - (ii) any stage in such a consultation, is to be completed;
- (d) may require the council to determine applications for hazardous substances consent within such time as may be prescribed;
- (e) may require councils 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;
- (f) may prohibit councils from granting hazardous substances consent during such period as may be prescribed.

Determination of applications for hazardous substances consent

110.—(1) Subject to the following provisions of this Act, where an application is made to a council for hazardous substances consent, the council, in dealing with the application, must have regard to any material considerations, and—

- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as it thinks fit; or
- (b) may refuse hazardous substances consent.

(2) Without prejudice to the generality of subsection (1), in dealing with an application the council must 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 local development plan; and
- (e) to any advice which the Health and Safety Executive for Northern Ireland has given following consultations in pursuance of regulations made under section 109(4).

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

(4) It shall be the duty of a council, 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 quantity 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), a council 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.
- (6) A council 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 for Northern Ireland has advised the council that any consent it might grant should be subject.

Grant of hazardous substances consent without compliance with conditions previously attached

111.—(1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

(2) Regulations may make provision with respect to—

- (a) the form and content of such applications; and
- (b) the procedure to be followed in relation to such applications.

(3) On such an application the authority which granted the previous hazardous substances consent must consider only the question of the conditions subject to which hazardous substances consent should be granted, and—

- (a) if it determines 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, the authority must grant hazardous substances consent accordingly; and
- (b) if it determines that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, the authority must refuse the application.

(4) Where—

- (a) hazardous substances consent has 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 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.

(5) Where—

- (a) more than one hazardous substances consent has been granted in respect of the same land; and
- (b) an application under this section does not relate to all the consents,

the authority shall only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate.

Revocation or modification of hazardous substances consent

112.—(1) If it appears to a council 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,

it 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) A council may by order—

- (a) revoke a hazardous substances consent which relates to only one substance if it appears to the council 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; and
- (b) revoke a hazardous substances consent which relates to a number of substances if it appears to the council that none of those substances has for at least 5 years been so present.

(3) A council may by order revoke a hazardous substances consent or modify it to such extent as it considers expedient if it appears to the council, having regard to any material consideration, that it is expedient to revoke or modify it.

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

Confirmation by Department of section 112 orders

113.—(1) An order under section 112 shall not take effect unless it is confirmed by the Department.

(2) The Department may confirm any such order submitted to it either without modification or subject to such modification as it considers expedient.

(3) Where a council submits an order under section 112 to the Department for its confirmation under this section, the council must serve notice of the order—

- (a) on any person who is an owner of the whole or any part of the land to which the order relates;
- (b) on any person other than an owner who appears to it to be in control of the whole or any part of that land;

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

(4) A notice under subsection (3) must specify the period (which must not be less than 28 days from the service of it) within which any person on whom the notice is served may require an opportunity of appearing before and being heard by the planning appeals commission.

(5) If such a person so requires, the Department, before confirming the order, must give that person and the council such an opportunity.

(6) Where an order under section 112 has been confirmed by the Department, the council must serve a copy of the order on every person who was entitled to be served with notice under subsection (3).

Call in of certain applications for hazardous substances consent to Department

114.—(1) The Department may give directions requiring applications for hazardous consent to be referred to it instead of being dealt with by a council.

(2) A direction under subsection (1)—

(a) may be given either to a particular council or to councils generally; and

(b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Where the Secretary of State or, as the case may be, the Department of Justice has certified that an application for hazardous substances consent is an application to which section 235 (national security) applies, the Department of the Environment must give a direction to the council to which the application was made requiring the application to be referred to the Department of the Environment instead of being dealt with by the council.

(4) Where an application for hazardous substances consent is referred to the Department under this section, sections 109 and 110 shall apply, with any necessary modifications, as they apply to such an application which falls to be determined by a council.

(5) Any application in respect of which a direction under this section has effect shall be referred to the Department accordingly.

(6) For the purpose of considering representations made in respect of an application to which section 235 applies which has been referred to it under this section, the Department must, subject to any rules made under subsection (2) or (5) of that section, cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(7) For the purpose of considering representations made in respect of an application referred to it under this section, other than an application mentioned

in subsection (6), the Department may cause a public local inquiry to be held by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department.

(8) Where a public local inquiry is not held under subsection (7), the Department must, before determining the application, serve a notice on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof), either the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

- (a) the planning appeals commission; or
- (b) a person appointed by the Department.

(9) In determining an application referred to it under this section, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(10) The decision of the Department on an application referred to it under this section shall be final.

Appeals

115.—(1) Where an application for hazardous substances consent is made to a council, then if that consent is refused or is granted subject to conditions the applicant may by notice in writing under this section appeal to the planning appeals commission.

(2) Subsection (1) does not apply to any application referred to the Department under section 114.

(3) Any notice under this section must be served on the planning appeals commission within 4 months from the date of notification of the decision to which it relates or such other period as may be prescribed.

(4) Where an appeal is brought under this section the planning appeals commission—

- (a) must publish notice of the appeal in at least one newspaper circulating in the locality in which the land to which the appeal relates is situated; and
- (b) must not determine the appeal before the expiration of 14 days from the date on which notice of the appeal is first published in a newspaper in pursuance of paragraph (a).

(5) Where an appeal is brought under this section from a decision of a council, the planning appeals commission, subject to subsection (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the

appeal relates to that part of the decision or not, and may deal with the application as if it had been made to it in the first instance.

(6) Before determining an appeal under this section, the planning appeals commission must, if either the applicant or the council so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(7) Where an application for hazardous substances consent is made to a council then unless within the prescribed period, or within such extended period as may be agreed upon in writing between the applicant and the council, the council either—

- (a) gives notice to the applicant of its decision on the application; or
- (b) gives notice to the applicant that the application has been referred to the Department under section 114,

subsections (1) to (6) shall apply in relation to the application—

- (i) as if the consent to which it relates had been refused by the council; and
- (ii) as if notification of the council's decision had been received by the applicant at the end of the prescribed period, or at the end of the extended period, as the case may be.

Effect of hazardous substances consent and change of control of land

116.—(1) Without prejudice to the provisions of this Part, any hazardous substances consent shall (except in so far as it otherwise provides) have effect for the benefit of the land to which it relates and of all persons for the time being having an estate therein.

(2) A hazardous substances consent shall cease to have effect if there is a change of 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 council.

(3) Regulations may make provision in relation to applications under subsection (2) corresponding to any provision that may be made by regulations under section 109 in relation to applications for hazardous substances consent.

(4) Subsections (2) and (3) do not apply if the control of land changes from one emanation of the Crown to another.

(5) When such an application is made, the council, having regard to any material consideration—

- (a) may modify the consent in any way it considers appropriate; or
- (b) may revoke it.

(6) Without prejudice to the generality of subsection (5), in dealing with an application the council must have regard to—

- (a) the matters to which it is required to have regard by section 110(2); and

- (b) any advice given by the Health and Safety Executive for Northern Ireland in relation to the application.
- (7) If an application relates to more than one consent, the council may make different determinations in relation to each.
- (8) If a consent relates to more than one hazardous substance, the council may make different determinations in relation to each.
- (9) It shall be the duty of the council, when continuing hazardous substances consent, to attach to the consent one of the following—
 - (a) a statement that it is unchanged in relation to the matters included in it by virtue of section 110(4);
 - (b) a statement of any change in respect of those matters.
- (10) The modifications which the council may make by virtue of paragraph (a) of subsection (5) include, without prejudice to the generality of that paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in section 110(5).
- (11) Subject to subsection (12), section 115 shall have effect in relation to applications under subsection (2) and to decisions on such applications as though they were applications for hazardous substances consent.
- (12) In the application of section 115 by virtue of subsection (11)—
 - (a) subsection (2) of that section is omitted; and
 - (b) in subsection (7) of that section for the words from “either” to the end there are substituted the words “gives notice to the applicant of its decision on the application, the application shall be deemed to have been granted.”.

Offences

- 117.**—(1) Subject to the provisions of this Part, 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, over or under 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) “the appropriate person” means—

(a) in relation to a contravention falling within paragraph (a) of subsection (2)

(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 person in control of the land.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine,

and in determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

(5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—

(a) that the accused 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), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence the accused did not know, and had no reason to believe,—

(a) if the case falls within paragraph (a)(i) of that subsection—

(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) of that subsection, 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), it shall be a defence for the accused to prove that the accused did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

Emergencies

118.—(1) If it appears to the Department—

- (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,

it may direct that, subject to such conditions or exceptions as it 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 revoked at any time;
 - (b) must in any case cease to have effect at the end of the period of 3 months beginning with the day on which it was given, but without prejudice to the Department's power to give a further direction.
- (3) The Department must send a copy of any such direction to the council in whose district any land affected by the direction is situated and to the Health and Safety Executive for Northern Ireland.

Health and safety requirements

- 119.**—(1) Nothing in—
- (a) any hazardous substances consent granted or deemed to be granted; or
 - (b) any hazardous substances contravention notice issued under section 162 (hazardous substances contravention notices),

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 council after a hazardous substances consent has been granted, or is deemed to have been granted, or after a hazardous substances contravention notice has been issued that the consent or notice or part of it is rendered void by subsection (1), the council must, as soon as is reasonably practicable, consult the Health and Safety Executive for Northern Ireland with regard to the matter.

(3) If the Executive advises the council that the consent or notice is rendered wholly void, the council must revoke it.

(4) If the Executive advises that part of the consent or notice is rendered void, the council must so modify it as to render it wholly operative.

(5) In this section, “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in the [Health and Safety at Work \(Northern Ireland\) Order 1978 \(NI 9\)](#).

Applications by councils for hazardous substances consent

120.—(1) The provisions listed in subsection (2) shall apply in relation to granting hazardous substances consent to councils, subject to regulations made by virtue of this subsection.

(2) The provisions are—

- (a) the provisions of this Chapter;
- (b) the provisions of Part 5;
- (c) sections 182, 184, 223 and 242.

(3) Regulations made under subsection (1) may—

- (a) provide for any of the provisions listed in subsection (2) to apply subject to prescribed exceptions or modifications or not to apply;
- (b) make new provision as to any matter dealt with in any of those provisions.

(4) Subject to the provisions of paragraph 3(3) of Schedule 8 to the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#), any regulations made under subsection (1) may in particular provide for securing—

- (a) that any application by a council for hazardous substances consent in respect of the presence of a hazardous substance on, over or under land shall be made to the Department and not to the council;
- (b) that any order or notice authorised to be made, issued or served under this Chapter or Part 5 shall be made, issued or served by the Department and not by the council.