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STATUTORY INSTRUMENTS

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**1992 No. 656**

**The Planning (Hazardous Substances) Regulations 1992**

**PART 3**

**EXPRESS CONSENT**

**Applications for hazardous substances consent**

**5.—(1)** Subject to paragraph (2) and regulation 26, an application for hazardous substances consent shall—

- (a) be made to the hazardous substances authority on Form 1;
- (b) include the information specified in the form, a site map, and a substance location plan;
- (c) be accompanied by 3 copies of the form, the map and plan submitted with it and the notices and certificates required by regulations 6 and 7.

(2) Subject to regulation 26, an application to which section 13 applies (application for hazardous substances consent without a condition subject to which a previous consent was granted) shall—

- (a) be made to the hazardous substances authority on Form 2;
- (b) include the particulars specified in the form, a change of location plan, if required by paragraph (6), and particulars of the relevant consent;
- (c) be accompanied by 3 copies of the form, the relevant consent, any plan submitted with it and the notices and certificates required by regulations 6 and 7.

(3) An application under section 17 (application for the continuation of consent following a change of control) shall—

- (a) be made to the hazardous substances authority on Form 2;
- (b) include the particulars specified in the form, a change of control plan, and particulars of the relevant consent;
- (c) be accompanied by 3 copies of the form, the relevant consent, the change of control plan and the notices and certificates required by regulations 6 and 7.

(4) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies—

- (a) any area of the site intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present;
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which section 13 applies which relates to a condition restricting the location of a hazardous substance, and shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

(7) The change of control plan required by paragraph (3) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control.

(8) The relevant consent referred to in paragraphs (2)(b) and (3)(b) is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the relevant consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under the Act, a copy of the relevant claim, in the case of a consent deemed to be granted under section 11 or a copy of the relevant direction, in the case of a consent deemed to be granted under section 12.

(9) Where an application referred to in paragraphs (2) or (3) relates to more than one relevant consent, particulars of each such consent shall be included in the application.

(10) Regulations 6 to 13 shall apply to applications made under section 17 as they apply to applications for hazardous substances consent.

### **Publication of notices of applications**

6.—(1) Before making an application for hazardous substances consent to the hazardous substances authority, the applicant shall, during the 21 day period immediately preceding the application—

- (a) publish in a local newspaper circulating in the locality in which the land to which the application relates is situated a notice of the application on Form 3; and
- (b) subject to paragraphs (3) and (4), post that notice on the land for not less than 7 days during that 21 day period, sited and displayed in such a way as to be easily legible without entering onto the land.

(2) The notice required by paragraph (1) shall invite representations on the application to be made to the hazardous substances authority within 21 days of the publication or posting of the notice, as the case may be.

(3) An applicant shall not be required to comply with paragraph (1)(b) if—

- (a) he has no right of access or other rights in respect of the land which would enable him to post the notice as required; and
- (b) he has taken all reasonable steps to acquire such rights but has failed.

(4) The applicant shall not be treated as having failed to comply with paragraph (1)(b) if the notice is, without any fault or intention of his, removed, obscured or defaced before the 7 days referred to in that paragraph have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement.

(5) An application for hazardous substances consent shall not be entertained by the hazardous substances authority unless it is accompanied by—

- (a) a copy of the notice referred to in paragraph (1), certified by, or on behalf of, the applicant as having been published in a local newspaper in accordance with paragraph (1)(a) and specifying the name of the newspaper and the date of its publication; and
- (b) the appropriate certificate on Form 4, signed by or on behalf of the applicant.

### **Notification of applications to owners**

7.—(1) An application for hazardous substances consent shall not be entertained by the hazardous substances authority unless it is accompanied by which ever of certificates A to D set out in Form 5 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 5 shall, in the case of an application for hazardous substances consent, be a notice given on Form 6 and shall invite any owner on whom the notice is served to make representations on the application to the hazardous substances authority within 21 days of service of the notice.

### **Inspection of applications**

8. The applicant shall make a copy of the application available for inspection at a place within the locality of the application site during the period or periods allowed for making representations pursuant to regulation 6(2) and 7(2).

### **Receipt of applications by hazardous substances authority**

9.—(1) When the hazardous substances authority receive an application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substance consent, they shall, as soon as practicable, acknowledge receipt in writing.

(2) Where, in the opinion of the hazardous substances authority, the application is invalid, the authority shall, as soon as practicable, notify the applicant of their opinion, giving their reasons.

(3) For the purposes of this regulation and regulations 10 and 11, an application for hazardous substances consent shall be taken to have been received when each of the following events has occurred—

- (a) the application form has been served on the hazardous substances authority;
- (b) any certificate or documents required by regulations 6 and 7 have been served on that authority; and
- (c) any fee required to be paid in respect of the application has been paid to that authority and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment.

### **Consultation before the grant of hazardous substances consent**

10.—(1) Except where the body or person concerned has notified the hazardous substances authority that they do not wish to be consulted, the authority shall, before determining an application for hazardous substances consent, consult—

- (a) the Health and Safety Executive;
- (b) the district or London borough council or county council concerned, where that council is not also the hazardous substances authority;
- (c) the parish or community council concerned;
- (d) the fire and civil defence authority concerned, where that authority is not also the hazardous substances authority;
- (e) the National Rivers Authority;
- (f) the public gas supplier concerned;
- (g) the electricity board concerned;
- (h) where the land to which the application relates is within 2 kilometres of a royal palace, park or residence, the Secretary of State;

- (i) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (j) where the land to which the application relates is situated within 2000 metres of—
  - (i) an adjacent county, district or London borough, the council for that county, district or London borough;
  - (ii) the area of an adjacent fire authority and civil defence authority, that authority;
  - (iii) an adjacent new town, the development corporation for the new town;
- (k) where it appears to the hazardous substances authority dealing with the application that land in the area of any other hazardous substances authority may be affected, that authority;
- (l) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981(1) applies (sites of special scientific interest), in England, the Nature Conservancy Council or, in Wales, the Countryside Council for Wales;
- (m) where the application relates to land in an area of coal working notified to the hazardous substances authority by the British Coal Corporation, that Corporation;
- (n) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the hazardous substances authority.

(2) Where, under this regulation, a hazardous substances authority is required to consult in respect of an application, they shall, unless a copy of the application has been served on the consultee by the applicant, serve the consultee with a copy of the application within 7 days of its receipt by the authority.

(3) In paragraph (1)(n), “controlled waste” has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990 and “waste disposal authority” shall be construed in accordance with section 30(2) of that Act.

#### **Determination of applications for hazardous substances consent**

**11.—**(1) A hazardous substances authority shall not determine an application for hazardous substances consent before the expiry of—

- (a) the period or periods allowed for making representations pursuant to regulation 6(2) and 7(2); and
- (b) where the authority is required to consult under regulation 10, a period of 28 days beginning with the date on which the consultee is served with a copy of the application, or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(2) Subject to paragraph (1), a hazardous substances authority shall, within the period specified in paragraph (3), give the applicant written notice of their decision or notice that the application has been referred to the Secretary of State for determination by him.

(3) The period specified for the purposes of paragraph (2) is—

- (a) a period of 8 weeks from the date when the application is received by the hazardous substances authority;
- (b) except where the applicant has already given notice of appeal to the Secretary of State, such extended period as may be agreed in writing by the applicant and the hazardous substances authority; or

- (c) where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured, the appropriate period specified in (a) or (b) above calculated without regard to any time between the date when the authority sent the applicant written notice of the dishonouring of the cheque and the date when the authority are satisfied that they have received the full amount of the fee.
- (4) When a hazardous substances authority give notice of a decision on an application the notice shall, where hazardous substances consent is refused or is granted subject to conditions—
  - (a) state, clearly and precisely, their full reasons for the refusal or for any condition imposed;
  - (b) include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under section 21 within 6 months of the date of the notice of the decision, or such longer period as the Secretary of State may at any time allow.
- (5) The hazardous substances authority shall, as soon as is practicable, inform the following persons of the terms of their decision—
  - (a) the Health and Safety Executive;
  - (b) the district or London borough council or county council, where that council is not the hazardous substances authority concerned;
  - (c) any other consultees who have made representations to them on the application; and
  - (d) any owners who have made representations to them on the application.

#### **Notice of reference of applications to the Secretary of State**

- 12.** On referring any application to the Secretary of State pursuant to a direction under section 20, a hazardous substance authority shall serve on the applicant a notice—
- (a) informing the applicant that the application has been referred to the Secretary of State;
  - (b) setting out the reasons given by the Secretary of State for issuing the direction; and
  - (c) containing a statement that the Secretary of State will, if the applicant so desires, give the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

#### **Appeals**

- 13.—**(1) An appeal to the Secretary of State under section 21 shall be made within 6 months of—
- (a) the date of the notice of the decision giving rise to the appeal; or
  - (b) in the case of an appeal under section 21(2), the expiry of the period specified in regulation 11(3),
- or within such longer period as the Secretary of State may, at any time, allow.
- (2) An appeal under section 21 shall—
- (a) be made to the Secretary of State on a form obtained from him;
  - (b) include the information specified in the form; and
  - (c) be accompanied by the documents specified in paragraph (3) and the certificate required by paragraph (4).
- (3) The documents mentioned in paragraph (2)(c) are—
- (a) the application made to the hazardous substances authority which has occasioned the appeal;
  - (b) any notices and certificates required by regulations 6 and 7 which accompanied the application;

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- (c) any correspondence with the authority relating to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 21 shall not be entertained by the Secretary of State unless it is accompanied by which ever of certificates A to D is appropriate set out in Form 5, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C shall, in the case of an appeal under section 21, be a notice given on Form 7.

(6) The appellant shall send a copy of the completed notice of appeal form and accompanying certificate to the hazardous substances authority at the same time as the appeal is made to the Secretary of State.