
STATUTORY INSTRUMENTS

1991 No. 1220

The Planning(Northern Ireland) Order 1991

PART V

ADDITIONAL PLANNING CONTROL

Hazardous substances

Requirement of hazardous substances consent

53.—(1) Subject to the provisions of this Part, the presence of a hazardous substance on, over or under land requires the consent of the Department (in this Order 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 within 500 metres of it and controlled by the same person; or
- (c) in or on a structure controlled by the same person any part of which is within 500 metres of it, is less than the controlled quantity.

(2) 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 it is unloaded.

(3) The Department—

- (a) shall by regulations specify—
 - (i) the substances that are hazardous substances for the purposes of this Order;
 - (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 Order.

(4) Regulations which—

- (a) are made by virtue of sub-paragraph (a)(i) of paragraph (3); or
- (b) are made by virtue of sub-paragraph (a)(ii) of that paragraph and reduce the controlled quantity of a substance, may make such transitional provision as appears to the Department to be appropriate.

(5) The power to make such transitional provision includes, without prejudice to its generality, power to apply paragraph 4 of Schedule 4, subject to such modifications as appear to the Department to be appropriate.

(6) Bodies corporate which are inter-connected for the purposes of the Fair Trading Act 1973 are to be treated as being one person for the purposes of this Article and Articles 54 to 61 and 81.

Applications for hazardous substances consent

54.—(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.

(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, shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one or other of those described in Article 22(1)(a) to (d); and any such regulations may—

- (a) include requirements corresponding to Articles 22(4) and 25(3); 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 paragraph (2) and which contains a statement which he 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, he 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 Department or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- (b) may require the Department to consult with the Department of Economic Development, the district council for the area in which the land is situated 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 Department to determine applications for hazardous substances consent within such time as may be prescribed.

Determination of applications for hazardous substances consent

55.—(1) Subject to the following provisions of this Order, where an application is made to the Department for hazardous substances consent, the Department, in dealing with the application, shall 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 paragraph (1), in dealing with an application the Department shall 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; and
 - (d) to the provisions of the development plan.
- (3) If an application relates to more than one hazardous substance, the Department may make different determinations in relation to each.
- (4) It shall be the duty of the Department, 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 paragraph (1), the Department 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.

Special procedure for major applications

56.—(1) Where, in relation to an application for hazardous substances consent, the Department considers that the presence of any hazardous substance on, over or under land for which consent is sought, would—

- (a) involve a substantial departure from the development plan for the area in which the land is situated;
- (b) be of significance to the whole or a substantial part of Northern Ireland; or
- (c) affect the whole of a neighbourhood, the Department may within two months from the date of the application serve on the applicant a notice in such form as may be prescribed applying this Article to the application.

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on the applicant 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) the applicant so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(4) In determining an application to which this Article applies, the Department shall, where any inquiry or hearing is held, take into account the report of the planning appeals commission.

(5) The decision of the Department on an application to which this Article applies shall be final.

Appeals

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

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 56(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

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

(a) shall 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) shall 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 sub-paragraph (a).

(5) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraph (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof 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 Article, the planning appeals commission shall, if either the applicant or the Department 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 the Department then unless within the prescribed period, or within such extended period as may be agreed upon in writing between the applicant and the Department, the Department either—

(a) gives notice to the applicant of its decision on the application; or

(b) gives notice to him that the application is one to which Article 56 applies, paragraphs (1) to (6) shall apply in relation to the application—

(i) as if the consent to which it relates had been refused by the Department; and

(ii) as if notification of the Department's decision had been received by the applicant at the end of the prescribed period, or at the end of the said extended period, as the case may be.

Grant of hazardous substances consent without compliance with conditions previously attached

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

(2) On such an application the Department shall 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 Department shall 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 Department shall refuse the application.

(3) 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 Article does not relate to all the substances,

the Department 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.

(4) Where—

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

the Department 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

59.—(1) If it appears to the Department 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) The Department may by order—

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

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

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

(5) Before making an order under this Article, the Department shall serve notice—

- (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;

and if within the period specified in that behalf in the notice (not being less than 28 days from the service thereof) any person on whom the notice is served so requests in writing, the Department shall afford to that person an opportunity of appearing before, and being heard by, the planning appeals commission.

(6) Where an order under this Article has been made, the Department shall serve a copy of the order on every person who was entitled to be served with notice under paragraph (5).

Effect of hazardous substances consent and change of control of land

60.—(1) Without prejudice to the provisions of this Part, any hazardous substances consent shall (except in so far as it otherwise provides) enure 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 Department.

(3) Regulations may make provision in relation to applications under paragraph (2) corresponding to any provision that may be made by regulations under Article 54 in relation to applications for hazardous substances consent.

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

- (a) may modify the consent in any way it considers appropriate;

or

- (b) may revoke it.

(5) Without prejudice to the generality of paragraph (4), in dealing with an application the Department shall have regard to the matters to which it is required to have regard by Article 55(2).

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

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

(8) It shall be the duty of the Department, 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 Article 55(4);
- (b) a statement of any change in respect of those matters.

(9) The modifications which the Department may make by virtue of paragraph (4)(a) include, without prejudice to the generality of that sub-paragraph, the making of the consent subject to conditions with respect to any of the matters mentioned in Article 55(5).

(10) Subject to paragraph (11), Article 57 shall have effect in relation to applications under paragraph (2) and to decisions on such applications as though they were applications for hazardous substances consent.

(11) In the application of Article 57 by virtue of paragraph (10)—

- (a) paragraph (2) of that Article shall be omitted; and
- (b) in paragraph (7) of that Article for the words from “either” to the end there shall be substituted the words “gives notice to the applicant of its decision on the application, the application shall be deemed to have been granted.”.

Offences

61.—(1) Subject to 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 paragraph (1) “the appropriate person” means—
 - (a) in relation to a contravention falling within sub-paragraph (a) of paragraph (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 sub-paragraph (b) of that paragraph, the person in control of the land.
- (4) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and if the contravention is continued after the conviction he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day on which it continues.
- (5) 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.
- (6) In any proceedings for an offence consisting of a contravention falling within paragraph (2) (a), 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 (a)(i)—
 - (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 sub-paragraph (a)(ii), 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 paragraph (2) (b), 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 hazardous substances consent had been granted.

Emergencies

62.—(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 Article—

(a) may be withdrawn at any time;

(b) shall in any case cease to have effect at the end of the period of three 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 shall send a copy of any such direction to the district council in whose area any land affected by the direction is situated and to the Department of Economic Development.

Health and safety requirements

63.—(1) Nothing in—

(a) any hazardous substances consent granted or deemed to be granted under—

(i) the preceding provisions of this Order; or

(ii) paragraph 4 of Schedule 4; or

(b) any hazardous substances contravention notice issued under Article 81,

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 the Department after it has granted, or is deemed to have granted, a hazardous substances consent or has issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by paragraph (1), the Department shall, as soon as is reasonably practicable, consult the Department of Economic Development with regard to the matter.

(3) If that Department advises the Department that the consent or notice is rendered wholly void, the Department shall revoke it.

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

(5) In this Article “relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in the Health and Safety at Work (Northern Ireland) Order 1978.