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STATUTORY RULES OF NORTHERN IRELAND

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**2015 No. 344**

**The Planning (Hazardous Substances)  
(No. 2) Regulations (Northern Ireland) 2015**

**PART 1**

**General**

**Citation and commencement**

1. These Regulations may be cited as the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015 and shall come into operation on 16th October 2015.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(1)</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011;

“the CLP Regulation” means Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1907/2006;

“consent” means consent required under section 108 of the 2011 Act;

“the Directive” means Council Directive 2012/18/EU of the European Parliament and of the Council<sup>(2)</sup> on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC;

“the General Development Procedure Order” means the Planning (General Development Procedure) Order (Northern Ireland) 2015<sup>(3)</sup>;

“the Hazardous Substances Regulations” means the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015<sup>(4)</sup>;

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001<sup>(5)</sup>;

(3) In these Regulations

(a) a reference to a section is a reference to that section of the 2011 Act.

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(1) 1954 c 33 (N.I.)

(2) O.J. No. L 197, 24.7.2012, p. 1

(3) S.R. 2015 No. 72

(4) S.R. 2015 No. 61

(5) 2001 c.9 (N.I.) as amended by 2003 c.21

- (b) references to the CLP Regulation are references to that Regulation as amended from time to time;
  - (c) expressions appearing both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive
- (4) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—
- (a) the expression “address” includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person to provide a name or address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;
  - (b) references to forms, maps, plans, notices or other documents or copies of such things include references to such documents or copies of them in electronic form.
- (5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, map, plan, notice or other document to any other person (“the recipient”).
- (6) The requirement shall be taken to be fulfilled where the application or other document transmitted by means of electronic communication is—
- (a) capable of being accessed by the recipient;
  - (b) legible in all material respects; and
  - (c) sufficiently permanent to be used for subsequent reference.
- (7) In paragraph (6), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.
- (8) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.
- (9) A requirement in these Regulations that any application or other document should be in writing is fulfilled where the document meets the criteria in paragraph (6).

## PART 2

### Hazardous Substances, Controlled Quantities and Exemptions

#### **Hazardous substances and controlled quantities**

**3.—(1) Substances, mixtures or preparations—**

- (a) falling within a category in column 1 of Part 1,
- (b) specified in column 1 of Part 2 or,
- (c) meeting the description in column 1 of Part 3,

of Schedule 2 and present as raw materials, products, by-products, residues or intermediates are hazardous substances for the purposes of the 2011 Act.

(2) The quantity specified in column 2 of Schedule 2 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the 2011 Act.

## Exemptions

4.—(1) Hazardous substances consent is not required for the temporary presence of a hazardous substance during the period between its being unloaded from one means of transport to another, including if it is in directly related intermediate temporary storage, while it is being transported from one place to another unless—

- (a) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance; or
- (b) 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.

(2) Hazardous substances consent is not required for the presence of a hazardous substance in, on, over or under land at military establishments, installations or storage facilities.

(3) Hazardous substances consent is not required for the presence of a hazardous substance where it is being transported in a pipeline, including a pumping station, outside of any land in respect of which—

- (a) there is a hazardous substances consent for any substance; or
- (b) (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

(4) Subject to paragraph (5), hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other seagoing craft in an emergency until the expiry of a period of 14 days beginning with the day on which it was so unloaded.

(5) For the purposes of paragraph (4) a substance shall be treated as having been unloaded from a craft in an emergency if it was unloaded from a craft after having been brought into a harbour or harbour area within the meaning of regulation 2 of the Dangerous Substances in Harbour Area Regulations (Northern Ireland) 1991<sup>(6)</sup>, without requiring notification under regulation 6(1) of those Regulations by virtue of an exemption under regulation 6(5) of those Regulations.

(6) Subject to paragraph (7), hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage.

(7) The exemption in paragraph (6) does not apply to a hazardous substance present in—

- (a) a site used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation (EC) No. 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury<sup>(7)</sup>;
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage relating to those operations;
- (d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

(8) Hazardous substances consent is not required for the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965<sup>(8)</sup>.

(9) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of the exploitation, namely the exploration, extraction and processing, of minerals in

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<sup>(6)</sup> S.R. 1991 No. 509

<sup>(7)</sup> O.J. L 304, 14.11.2008, p.75

<sup>(8)</sup> 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1981

mines and quarries, including by means of boreholes, except where present in connection with the matters referred to in paragraphs 7(b) to (d).

(10) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of—

- (a) the offshore exploration and exploitation of minerals, including hydrocarbons; or
- (b) the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.

(11) Hazardous substances consent is not required for the presence of an explosive within the meaning of regulation 2(1) of The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006<sup>(9)</sup> in relation to which a licence is required and has been granted by the Department of Justice under Regulation 11(3) of those Regulations.

(12) Hazardous substances consent is not required where an explosives licence within the meaning of regulation 2(1) of the Explosives in Harbour Areas Regulations (Northern Ireland) 1995<sup>(10)</sup> has been issued.

(13) Hazardous substances consent is not required in relation to a hazardous substance which is on, over or under any land (“the relevant substance”) if—

- (a) the relevant substance was present on, over or under the land at any time during the establishment period;
- (b) hazardous substances consent was not required for the presence of the relevant substance at the time it was present during the establishment period; and
- (c) hazardous substances consent would have been required for the presence of the relevant substance had these Regulations been in operation at that time.

(14) Paragraph (13) does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any one time during the establishment period.

(15) The presence of a substance to which paragraphs (1) to (14) apply shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the 2011 Act or these Regulations.

(16) The presence of a quantity of a hazardous substance—

- (a) in a location where it cannot act as a initiator of a major accident hazard elsewhere on the relevant site; and
- (b) which is equal to or less than two per cent of the relevant controlled quantity for that substance,

shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the 2011 Act or these Regulations.

(17) Where the conditions in paragraph (18) are met, hazardous substances consent is not required for a relevant minor change.

(18) The conditions are that—

- (a) before the relevant minor change occurs, the council receives from the Health and Safety Executive for Northern Ireland (HSENI) notice in writing (which has been copied to the person in control of the land to which the hazardous substances consent in question relates) confirming—

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<sup>(9)</sup> S.R. 2006 No. 425

<sup>(10)</sup> S.R. 1995 No. 87

- (i) details of the relevant minor change, including details about how substances are to be kept and used;
  - (ii) that the relevant minor change will not result in a safety hazard change;
  - (iii) that the relevant minor change will not result in a lower-tier establishment becoming an upper-tier establishment or vice-versa; and
- (b) that any hazardous substances that are held without hazardous substances consent in reliance on this exemption are kept and used in accordance with the details set out in the notice from HSENI.
- (19) In this regulation—
- “establishment period” means the period of 12 months ending on—
- (a) the commencement of these Regulations; or
  - (b) (if later) the date on which the hazardous substances consent was first required for the relevant substance;
- “relevant minor change” means a change to the quantity or type of hazardous substances present on, over or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for this regulation;
- “safety hazard change” means a change to an area notified to the Department by HSENI for the purposes of paragraphs 2(a) of Schedule 3 Part 1 or Part 2 to the General Development Procedure Order, where that change results in—
- (a) that area encompassing any area which it did not previously encompass; or
  - (b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

## PART 3

### Consent

#### **Application for hazardous substances consent**

- 5.—(1) Subject to paragraph (2), an application for consent shall—
- (a) be made to the council ;
  - (b) include the name and address of the applicant;
  - (c) include a site map and a substance location plan;
  - (d) include details of—
    - (i) the location of the land to which the application relates;
    - (ii) the person in control of the land to which the application relates;
    - (iii) each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each relevant substance proposed to be present;
    - (iv) the main activities carried out or proposed to be carried out on the land to which the application relates;
    - (v) how and where each relevant substance is to be kept and used;
    - (vi) how each relevant substance is proposed to be transported to and from the land to which the application relates;

- (vii) the vicinity of the land to which the application relates, where such details are relevant to the risks or consequences of a major accident; and
  - (viii) the measures taken or proposed to be taken to limit the consequences of a major accident; and
  - (e) be accompanied by 3 additional copies of the application, map, plan and the certificate required by regulation 7.
- (2) An application to which section 111 (grant of hazardous substances consent without compliance with conditions previously attached) applies shall—
- (a) be made to the council or, as the case may be, the Department;
  - (b) include the name and address of the applicant;
  - (c) include a change of location plan, if the application relates to a condition restricting the location of a hazardous substance;
  - (d) include a copy of the consent;
  - (e) identify any condition previously imposed on the relevant consent which—
    - (i) it is proposed should no longer be imposed on the consent; or
    - (ii) it is proposed should only be imposed in a modified form;
  - (f) for any condition identified under paragraph (e)(i), give the reason why it should not be imposed;
  - (g) for any condition identified under paragraph (e)(ii)—
    - (i) indicate the proposed modification; and
    - (ii) give the reasons why it should only be imposed in a modified form;
  - (h) describe any relevant changes in circumstances since the date of the relevant consent; and
  - (i) be accompanied by 3 additional copies of the application, the change of location plan, consent and the certificate required by regulation 7.
- (3) An application under section 116(2) (effect of hazardous substances consent and change of control of land) shall—
- (a) be made to the council ;
  - (b) include the name and address of the applicant;
  - (c) include a change of control plan;
  - (d) include a copy of the consent;
  - (e) state the date on which the change of person in control of part of the land is to take place, where known;
  - (f) describe the use of each area of the site identified in the change of control plan;
  - (g) describe any relevant changes in circumstances since the relevant consent was granted;
  - (h) include the certificate required by regulation 7; and
  - (i) be accompanied by 3 additional copies of the application, change of control plan, consent and certificate.
- (4) In this regulation—
- “change of control plan” is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies each area of the site under separate control after the proposed change of control;

“change of location plan” is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application;

“relevant consent” means the existing hazardous substances consent to which the application relates;

“site map” is a map reproduced from, or based on, an Ordnance Survey map with a scale of not less than 1 to 2,500, which identifies the land to which the application relates and shows National Grid lines and reference numbers; and

“substance location plan” is a plan of the land to which the application relates drawn to a scale of not less than 1 to 1,250, which identifies—

- (a) any area of the land intended to be used for 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; and
- (c) access points to and from the land.

(5) Regulations 6 to 13 shall apply to applications made under sections 111 and 116(2) as they apply to applications for consent.

### **Advertisement of notices of applications**

6.—(1) Where an application for consent is made to the council, the council shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated and, where the council maintains a website for the purpose of advertisement, by publication of the notice on the website.

(2) A notice under paragraph (1) shall state—

- (a) the name of the applicant;
- (b) brief details of the consent being sought;
- (c) the address or location of the application site;
- (d) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
- (e) that the council (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
- (f) that representations (including comments or questions) may be made to the council;
- (g) details of how such representations should be made and the time period for making representations, being a date not less than 21 days after the date of publication of the notice;
- (h) the place and times at which and the period during which copies of the application may be inspected by the public.

### **Certificates to accompany applications**

7. An application for 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 by the council or, as the case may be the planning appeals commission, unless it is accompanied by whichever of the certificates A to D set out in the form in Schedule 1 is appropriate, signed by or on behalf of the applicant.

**Inspection of applications**

8. Following receipt of an application under Regulation 5, the council must ensure that a copy of the application is available for inspection at its offices during the period allowed for making representations pursuant to regulation 6(2).

**Council to take account of representations from certain persons**

9. Where an application for consent is accompanied by a certificate C or D as mentioned in regulation 7, the council, in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to any of the land to which the application relates, he or she is such a person as is described in paragraphs (a) to (c) of Certificate C.

**Persons to be treated as in actual possession of land**

10. For the purposes of any provision of these Regulations a person shall be treated as in actual possession of land if that person is entitled to one of the following estates in land namely—

- (a) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate; or
- (b) a tenancy of which not less than 40 years remains unexpired.

**Consultations before determining applications for hazardous substances consent**

11.—(1) Before determining an application for consent the council shall consult with—

- (a) the Department;
- (b) the Health and Safety Executive for Northern Ireland; and
- (c) the Northern Ireland Fire and Rescue Service.

(2) The council must also, before determining an application for hazardous substances consent, consult any other persons, including any non-governmental organisation promoting environmental protection, who are affected or likely be affected by, or have an interest in, the application, and who in the council's opinion are unlikely to become aware of the application through the notices under regulation 6.

(3) When consulting under paragraph (1) or (2) of this regulation, the council must within 7 days—

- (a) notify in writing the body or person concerned that they have received an application for hazardous substances consent and inform them of the following matters;
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the council (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the council;
  - (v) details of how such representations should be made and the time period for making representations which must not be less than 28 days beginning with the day after the



day on which the person or body is notified that an application has been received by the council;

(vi) the place and times at which and the period during which copies of the application may be inspected by the public; and

(b) ensure that a copy of the application and any information, plans and other documents contained in or accompanying it is available for inspection at its offices during the period or periods allowed for making representations.

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

**12.**—(1) The council shall not determine an application for hazardous substances consent before the expiry of the period or periods allowed for making representations under regulations 6(2) and 11(3).

(2) In determining an application for hazardous substances consent, the council must take into account the results of consultations held in relation to that application.

### **Notification of decision**

**13.**—(1) Subject to paragraph (6), for the purposes of section 115(7) (appeals) the prescribed period by which the council must give notice to the applicant of its decision on the application or give notice that the application has been referred to the Department under section 114 (call in of certain applications for hazardous substances consent to Department) is 8 weeks from the date when the application is received by the council.

(2) The council or, as the case may be, the Department shall, as soon as is practicable, inform every person who made representations which it was required to take into account under regulation 9 of its decision on the application.

(3) When the council gives the applicant notice of its decision on an application, the notice must, where hazardous substances consent is refused or is granted subject to conditions—

(a) state, clearly and precisely, the full reasons for the refusal or for any condition imposed; and

(b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the planning appeals commission in accordance with section 115.

(4) The council or, as the case may be, the Department shall, as soon as is practicable, inform the following of the terms of their decision—

(i) the Health and Safety Executive for Northern Ireland; and

(ii) any other consultees who have made representations to them on the application.

(5) The council must make available for inspection at its offices—

(i) the content of the decision and the reasons on which it is based, including any subsequent updates; and

(ii) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

(6) Where a section 235 (national security) certificate is issued the prescribed period is 8 weeks from the date on which that notice is issued to the council or, as the case may be, the Department.

(7) In this regulation a “section 235 certificate” means a certificate issued by the Secretary of State under section 235(1) or by the Department of Justice under section 235(4).

**Applications to the Department for consent to execute works without compliance with conditions previously attached**

14.—(1) Where an application under section 111 is required to be made to the Department then for the purpose of considering representations made in respect of that application 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 for the purpose.

(2) Where a public local inquiry is not held under paragraph (3), 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 of the notice), 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 for the purpose.

(3) In determining an application under section 111 the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(4) The decision of the Department on an application under section 111 shall be final.

**Call in of certain applications for hazardous substances consent to the Department**

15. On referring any application for hazardous substances consent to the Department pursuant to a direction under section 114 (call in of certain applications for hazardous substances consent to the Department), a council must serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Department; and
- (b) setting out the reasons given by the Department for issuing the direction.

**Application of the 2011 Act to councils**

16.—(1) Any application by a council for hazardous substances consent shall be made to the Department.

(2) Regulations 5 to 8, 11 (except paragraph (1)(a)), and 12(2) shall apply to the making of such applications as they apply to applications made to the council subject to the modification that a reference to “the council” is to be read as a reference to “the Department”.

(3) Section 110 (determination of applications for hazardous substances consent), (other than subsection (2)(e)) shall apply in relation to an application made to the Department by a council as it applies in relation to an application made to a council.

(4) A decision of the Department on an application made to it by a council shall be treated as a decision under section 114.

## PART 4

### Policies and public participation

#### **Policies**

**17.**—(1) In formulating any relevant policy, the Department must ensure that the following matters are taken into account—

- (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and
- (b) the matters referred to in Article 13(2) of the Directive.

(2) In this regulation, “relevant policy” means—

- (a) any policy referred to in section 1(1) (general functions of department with regard to development of land); and
- (b) any policy referred to in section 8(5)(b) (plan strategy) and 9(6)(b) (local policies plan).

#### **Plans and programmes**

**18.**—(1) Subject to paragraph (3) this regulation applies where a responsible authority proposes to prepare, modify or review a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

- (a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and
- (b) in doing so, take such measures as it considers appropriate to ensure that—
  - (i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;
  - (ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;
  - (iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan or programme are made; and
  - (iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;
- (c) take into account the results of the public participation in making those decisions; and
- (d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.

(3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under Part 3 of the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004(**11**).

(4) This regulation applies to a relevant plan or programme relating solely to the whole or any part of Northern Ireland.

(5) Any steps taken before the commencement of these Regulations in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

(6) In this regulation—

“public consultees” means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;

“relevant plan or programme” means a general plan or programme relating to—

- (a) planning for new establishments pursuant to Article 13 of the Directive, or
- (b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13 of the Directive; and

“responsible authority” means—

- (a) the authority by which or on whose behalf a relevant plan or programme is prepared; and
- (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.

### **Other planning approvals for projects**

**19.**—(1) Subject to paragraph (4), this regulation applies where consent, permission or other authorisation for a relevant project is sought from the competent authority.

(2) A competent authority must, before deciding to give any consent, permission or other authorisation for a relevant project, take such measures as it considers appropriate to ensure that—

- (a) the public is informed by public notices or other appropriate means, including electronic media where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—
  - (i) the subject of the relevant project;
  - (ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations with Member States in accordance with Article 14(3) of the Directive;
  - (iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;
  - (iv) an indication of the times and places where, or means by which, the relevant information will be made available;
  - (v) details of the period for transmitting comments and questions; and
  - (vi) the nature of possible decisions or, where there is one, the draft decision;
- (b) the Department and the Health and Safety Executive for Northern Ireland are consulted about the project;
- (c) the main reports and advice issued to the competent authority at the time when the public concerned was informed pursuant to paragraph (2)(a) are made available to the public concerned at that time;
- (d) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and
- (e) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.

(3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the competent authority must make available to the public—

- (a) the content of the decision and the reasons on which it is based, including any subsequent updates;
- (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

(4) To the extent that the competent authority is already required by any enactment to take any of the actions set out in paragraphs (2) and (3) of this regulation, those paragraphs do not apply.

(5) In this regulation—

“competent authority” means the council, the planning appeals commission, or as the case may be the Department with responsibility for deciding whether to give a consent, permission or other authorisation referred to in paragraph (1).

“the public concerned” means persons, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and

“relevant project” means development falling within paragraphs 2(a) and (b) of Parts 1 and 2 of Schedule 3 to the General Development Procedure Order.

(6) In this regulation, a reference to giving consent, permission or other authorisation means—

- (a) granting planning permission on an application under Part 3 of the 2011 Act (planning control);
- (b) granting planning permission on an application under section 213 (urgent crown development);
- (c) granting planning permission, or upholding the decision of the council to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the council), on determining an appeal under section 58 (appeals) in respect of such an application;
- (d) granting planning permission under section 145(1)(a) (appeal against enforcement notice – supplementary provisions relating to planning permission);
- (e) making—
  - (i) a special development order under section 32(3)(b) (development orders);
  - (ii) a simplified planning zone scheme under section 33 (simplified planning zones);
  - (iii) an order designating an enterprise zone under article 7 of The Enterprise Zones (Northern Ireland) Order 1981<sup>(12)</sup>
  - (iv) an order under section 73 (orders requiring discontinuance of use or alteration or removal of buildings or works) including an order made under that section by virtue of section 75 (power of the Department to make section 73 orders) which grants planning permission, or confirming any such order under section 74 (confirmation by Department of section 73 orders);
  - (v) an order under section 73 as modified by section 230 (2)(b)(iv) (minerals);
  - (vi) an order made under section 1 of the Harbours Act (Northern Ireland) 1970<sup>(13)</sup>.
- (f) granting hazardous substances consent under section 114 (call in of certain applications for hazardous consent to Department);

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<sup>(12)</sup> S.R. 1981 No. 607

<sup>(13)</sup> 1970 c.1

(g) granting hazardous substances consent under section 145(1)(a) (as applied to hazardous substances contravention notices, and modified, by regulation 21 and Schedule 3)

(7) In relation to any consent, permission or authorisation falling within paragraph (6) which is capable of being varied or modified, the modification or variation is to be treated as if it is a consent, permission or other authorisation for a relevant project for the purposes of this regulation where that modification or variation authorises development falling within paragraph 2(b)(ii) of Part 1 and Part 2 of Schedule 3 to the General Development Procedure Order.

## PART 5

### Enforcement

#### **Hazardous substances contravention notices**

**20.**—(1) A hazardous substances contravention notice shall identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed pursuant to section 162(4)(c) (hazardous substances contravention notice) are all persons having an interest in the land, being an interest which, in the opinion of the council, is materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 162(4) shall be accompanied by a statement setting out—

- (a) the council's reasons for issuing the notice;
- (b) the right of appeal to the planning appeals commission against the notice, and the persons by whom, grounds upon which and time within which, such an appeal may be brought under section 143 (appeal against enforcement notice) as applied by regulation 21.

#### **Appeals against hazardous substances contravention notices**

**21.**—(1) Sections 143 to 145 shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 3.

(2) The provisions of those sections, as so modified are set out in Part 3 of Schedule 3.

#### **Effect of hazardous substances contravention notices, etc.**

**22.**—(1) Sections 146 to 149 shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 3.

(2) The provisions of those sections, as so modified are set out in Part 3 of Schedule 3.

## PART 6

### Electronic Communications

#### **Use of electronic communications**

**23.**—(1) Paragraphs (2) and (3) apply where a person uses electronic communications for any of the following purposes—

- (a) making an application for hazardous substances consent under regulation 5;

- (b) serving notice of appeal against a hazardous substances contravention notice under regulation 21.
- (2) In a case to which this paragraph applies, and except where a contrary intention appears, the person making the application or serving notice of appeal shall be taken to have agreed—
  - (a) to the use of electronic communications for all purposes relating to the application, claim or appeal (as the case may be) which are capable of being effected using such communications;
  - (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, claim or appeal;
  - (c) that the person's deemed agreement under this paragraph shall subsist until that person gives notice in writing that he or she wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by that person in the notice but not less than seven days after the date on which the notice is given.
- (3) In regulation 5—
  - (a) in paragraph 1(c) the requirement that an application for consent shall include a site map is satisfied where the applicant identifies the site on an electronic map provided by the council and for this purpose a map is taken to be provided where the council has published it on its website;
  - (b) in paragraphs (1)(e), (2)(i) or (3)(i) the requirement that an application for hazardous substances consent shall be accompanied by 3 additional copies of the documents required shall not apply.

## PART 7

### Revocation, amendments, savings and transitional provisions

#### **Revocation**

**24.** The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015<sup>(14)</sup> are revoked subject to the savings and transitional provisions set out in this Part.

#### **Interpretation of existing consents**

**25.—(1)** Nothing in this regulation shall affect the operation of section 29(3)(a) of the Interpretation Act (Northern Ireland) 1954.

(2) In this regulation, “relevant consent” means a hazardous substances consent granted before the commencement of these Regulations under which the following are expressly authorised—

- (a) the presence of a category of substance listed in column 1 of Part B of Schedule 2 to the Hazardous Substances Regulations; or
- (b) the presence of a substance named in column 1 of Part A of Schedule 2 to the Hazardous Substances Regulations.

(3) This regulation applies to a relevant consent where the category or substance referred to in paragraph (1)—

- (a) is not contained in Schedule 2 to these Regulations; or
- (b) is differently named or defined under Schedule 2 to these Regulations.

(4) Where this regulation applies references in a relevant consent to a category or substance referred to in paragraph (1) are to be interpreted as if these Regulations had not come into operation.

#### **Notification of other establishments**

**26.**—(1) This regulation applies where—

- (a) hazardous substances consent would be required but for the exemption in regulation 4(13); and
- (b) the council receives from the person in control of the land to which the notice relates a notice in writing which contains—
  - (i) details of the location of the land to which the notice relates and the person in control of the land;
  - (ii) details of the hazardous substances held at the site, including the quantities; and
  - (iii) an explanation of why regulation 4(13) applies.

(2) The council must, as soon as practicable after receiving the notice, send the Health and Safety Executive for Northern Ireland (HSENI) a copy of the notice.

(3) HSENI must, within 8 weeks of receiving notification from the council under paragraph (2), determine whether the notice concerns an establishment within the meaning of the Directive and, if so, notify the council for the area in which the establishment is located.

#### **Amendment of the General Development Procedure Order**

**27.**—(1) The General Development Procedure Order is amended as follows.

(2) In Parts 1 and 2 of Schedule 3, for paragraph 2(b) substitute—

- “(b) where the development—
  - (i) involves the siting of new establishments;
  - (ii) consists of the modification of existing establishments covered by Article 11 of Council Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances; or
  - (iii) involves new developments including transport routes, locations of public use and residential areas in the vicinity of establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident<sup>(15)</sup>”.

#### **Amendment of the Local Development Plan Regulations**

**28.**—(1) The Planning (Local Development Plan) Regulations (Northern Ireland) 2015<sup>(16)</sup> are amended as follows.

(2) For Regulation 14 (additional matters to be taken into account) substitute—

- “**14.**—(1) The other matters that the council must take into account in preparing a local development plan are—
  - (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment by pursuing those objectives through the controls described in Article 13 of the Directive;
  - (b) the need, in the long term—

<sup>(15)</sup> O.J. L. 197, 24.7.2012, p.1 In paragraph 2(b) expressions used in that paragraph have the same meaning as in that Directive.

<sup>(16)</sup> S.R. 2015 No. 62



- (i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;
  - (ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;
  - (iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of the Directive, so as not to increase the risks to human health and the environment.
- (2) In this regulation—
- (a) “the Directive” means Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, and
  - (b) expressions used in paragraph (1) and in the Directive have the same meaning in that paragraph as in the Directive.”.

Sealed with the Official Seal of the Department of the Environment on 24th September 2015



*Angus Kerr*  
A senior officer of the  
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