
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 61

**The Planning (Hazardous Substances)
Regulations (Northern Ireland) 2015**

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

Interpretation

2.—(1) In these Regulations—

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

“buried or mounded vessel” includes a vessel which is only partially buried or mounded;

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

“the Directive” means Council Directive [96/82/EC\(1\)](#) on the control of major-accident hazards involving dangerous substances as amended by Council Directive [2003/105/EC\(2\)](#), and Council Directive [2012/18/EU\(3\)](#);

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

“moveable container” means any container, other than a vessel, designed or adapted to contain hazardous substances;

“vessel” means any container which is affixed to land and which is designed or adapted to contain hazardous substances, and includes a container which forms part of plant or machinery but does not include a pipeline.

(2) In these Regulations—

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

(b) a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 1.

(3) 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—

(1) O.J. No. L10,14.1.1997, p. 13

(2) O.J. No. L345, 31.12.2003, p. 97

(3) O.J. No. L197, 24.7.2012, p. 1-37

(4) [2001 c.9 \(N.I.\)](#) as amended by [2003 c.21](#)

- (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.
- (4) Paragraphs (5) to (8) 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”).
- (5) 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.
- (6) In paragraph (5), “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.
- (7) 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.
- (8) 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 (5).

PART 2

Hazardous Substances, Controlled Quantities and Exemptions

Hazardous substances and controlled quantities

- 3.—(1) Substances, mixtures or preparations—
- (a) specified in column 1 of Part A;
 - (b) falling within a category in column 1 of Part B; or
 - (c) meeting the description in column 1 of Part C,
- 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 while it is being transported from one place to another unless 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.

(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 contained in an exempt pipeline or a service pipe.

(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⁽⁵⁾, without requiring notification under regulation 6(1) of those Regulations by virtue of an exemption under regulation 6(5) of those Regulations.

(6) Hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site.

(7) 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⁽⁶⁾.

(8) The presence of a quantity of a hazardous substance (other than that of a substance numbered 10, 18, 39 and 43 in column 1 of Part A of Schedule 2)—

- (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.

(9) The presence of a substance to which paragraphs (1) to (7) 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.

(10) In this regulation—

- (a) “exempt pipeline” means a pipeline used to convey a hazardous substance to or from a site, but does not include—
 - (i) that part of the pipeline on, over or under a site to which it has an outlet or inlet;
 - (ii) a service pipe;
- (b) “service pipe” means a pipeline used by a person to whom a licence has been granted under Article 8(1) of the Gas (Northern Ireland) Order 1996⁽⁷⁾ to supply gas to an individual customer from a main of that supplier;
- (c) “major incident” means an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of any operation carried out on, over or under land in respect of which there is required to be a hazardous substances consent and leading to serious danger to human health or the environment, immediate or delayed, and involving one or more hazardous substances;
- (d) the expressions “initiator”, “major emission, fire or explosion”, “resulting from uncontrolled developments”, “leading to serious danger to human health or the

⁽⁵⁾ S.R. 1991 No. 509

⁽⁶⁾ 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1981

⁽⁷⁾ S.I. 1996/275 (N.I.2)

environment, immediate or delayed”, “waste land-fill site” and “ionising radiation” have the same meaning as in the Directive.

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 on Form 1;
 - (b) subject to paragraphs (4) and (5) include the information required by the form, a site map and a substance location plan; and
 - (c) be accompanied by 3 additional copies of the form, the map, plan and certificates 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, on Form 2;
 - (b) subject to paragraphs (8) and (9) include the information required by the form, a change of location plan, if required by paragraph (6), and particulars of the consent; and
 - (c) be accompanied by 3 additional copies of the form, the consent, any plan submitted with it and certificates 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 on Form 2;
 - (b) subject to paragraphs (7) to (9) include the information required by the form, a change of control plan, and particulars of the consent; and
 - (c) be accompanied by 3 additional copies of the form, the relevant consent, the change of control plan and certificates required by regulation 7.
- (4) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an ordnance map with a scale of not less than 1 to 2,500, which identifies the land to which the application relates and shows grid lines and ordnance map 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 scale of not less than 1 to 1,250, 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 111 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 1,250, 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 1,250, which identifies each area of the site under separate control after the proposed change of control.

(8) The 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 consent to be supplied shall be a copy of the consent granted on an application under the 2011 Act.

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

(10) 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; and
- (d) 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 Form 3 is appropriate, signed by or on behalf of the applicant.

Council to take account of representations from certain persons

8. 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

9. 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

10. Before determining an application for consent the council shall consult with—
- (a) the Department: and
 - (b) the Health and Safety Executive for Northern Ireland.
 - (c) the Northern Ireland Fire and Rescue Service.

Determination of applications for hazardous substances consent

11. The council shall not determine an application for hazardous substances consent—
- (a) where the application is accompanied by certificate C or D as mentioned in regulation 7, before the end of the period of 14 days from the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate; and
 - (b) before the end of a period of 28 days from the date on which all consultees have been served with a copy of the application.

Notification of decision

12.—(1) Subject to paragraph (3), 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, give notice of its decision on the application to every person who made representations which it was required to take into account under regulation 8.

(3) 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.

(4) 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

13.—(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

14.—(1) 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

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

(2) Regulations 5 to 7 shall apply to the making of such applications as they apply to applications made to a council.

(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

Enforcement

Hazardous substances contravention notices

16.—(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 17.

Appeals against hazardous substances contravention notices

17.—(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.

18.—(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 5

Electronic Communications

Use of electronic communications

19.—(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 17.

(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(b) 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)(c), (2)(c) or (3)(c) the requirement that an application for hazardous substances consent shall be accompanied by 3 additional copies of the documents required shall not apply.

PART 6

Revocations and Transitional Provisions

Revocations

20. The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993(8) are revoked.

Sealed with the Official Seal of the Department of the Environment on 16th February 2015.



Angus Kerr
A senior officer of the Department of the
Environment