

SCOTTISH STATUTORY INSTRUMENTS

2015 No. 181

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

PART 4

Policies and public participation

Policies

21.—(1) In formulating any relevant policy, the Scottish Ministers 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 [^{F1}(with the reference in that Article to Article 5 of the Directive being read as a reference to regulation 5 of the 2015 Regulations)].

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

- (a) the National Planning Framework referred to in section 3A of the 1997 Act ^{M1}; and
- (b) Scottish Planning Policy ^{M2}.

(3) Expressions appearing in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

Textual Amendments

- F1** Words in [reg. 21\(1\)\(b\)](#) inserted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), [regs. 1, 4\(6\)](#) (as amended by [S.S.I. 2020/310](#), [regs. 1, 2\(2\)](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

Marginal Citations

- M1** [Section 3A](#) was inserted by section 1 of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).
M2 Scottish Planning Policy is a statement of the policy of the Scottish Government on land use planning.

Plans and programmes

22.—(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 they consider 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 they consider 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 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 the Environmental Assessment (Scotland) Act 2005 ^{M3}.
- (4) 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 [^{F2}any provision of [^{F3}assimilated] law which implemented] 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 [^{F2}any provision of [^{F4}assimilated] law which implemented] 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.
- (5) This regulation applies to a relevant plan or programme relating solely to the whole or any part of Scotland.
- (6) Any steps taken before the commencement date in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

Textual Amendments

- F2** Words in *reg. 22(4)* inserted (31.12.2020) by *The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (S.S.I. 2019/80)*, regs. 1, **4(7)** (as amended by *S.S.I. 2020/310*, regs. 1, **2(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F3** Word in *reg. 22(4)* substituted (1.1.2024) by *The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374)*, reg. 1(1), **sch. 2 para. 27(2)(a)**

F4 Word in reg. 22(4) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), sch. 2 para. 27(2)(b)

Marginal Citations

M3 2005 asp 15.

Other planning approvals for projects

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

(2) A planning authority or the Scottish Ministers, as the case may be, must, before deciding to give any consent, permission or other authorisation for a relevant project, take such measures as they consider 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, or part of a project, is subject to a national or transboundary environmental impact assessment or to [^{F5}a requirement to provide information by virtue of regulation 20 of the 2015 Regulations];
 - (iii) details of the planning authority or Scottish Ministers responsible for taking the decision, from whom relevant information can be obtained and to whom 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 or questions; and
 - (vi) the nature of possible decisions or, where there is one, the draft decision;
- (b) they consult the—
 - (i) Scottish Environment Protection Agency; and
 - (ii) in relation to a nuclear site, the Office for Nuclear Regulation and, in any other case, the Health and Safety Executive;
- (c) the main reports and advice issued to the planning authority or the Scottish Ministers, as the case may be, at the time when the public concerned was informed pursuant to subparagraph (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 planning authority or the Scottish Ministers, as the case may be, 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; and

- (c) information regarding the right to challenge the validity of the decision and the procedures for doing so.
- (4) To the extent that the planning authority or the Scottish Ministers, as the case may be, are already required by any enactment to take any of the actions set out in paragraphs (2) and (3), those paragraphs do not apply.
- (5) In this regulation—
- “enactment” includes an Act of the Scottish Parliament and subordinate legislation made under such an Act;
- “the public concerned” means persons of whom the planning authority or the Scottish Ministers, as the case may be, are aware, 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 a consent, permission or other authorisation referred to in paragraph (1); and
- “relevant project” means development falling within paragraphs 3, 3A or 4 of Schedule 5 (consultation by the planning authority) to the 2013 Regulations ^{M4}.
- (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 1997 Act (control over development);
 - (b) granting planning permission on an application under section 242A of the 1997 Act (urgent Crown development) ^{M5};
 - (c) granting planning permission on review under section 43A of the 1997 Act (local developments: schemes of delegation) ^{M6} or on an appeal under section 47 of the 1997 Act (right to appeal against planning decisions);
 - (d) granting planning permission under section 92(2)(a) of the 1997 Act (action in relation to purchase notice);
 - (e) directing that planning permission is deemed to be granted under section 57(1) to (2B) of the 1997 Act (development with government authorisation);
 - (f) making—
 - (i) a special development order under section 30(2)(b) of the 1997 Act ^{M7};
 - (ii) a simplified planning zone scheme under section 50 of the 1997 Act;
 - (iii) an order designating an enterprise zone under section 179 of, and paragraph 5(1) of Schedule 32 to, the Local Government, Planning and Land Act 1980 ^{M8};
 - (iv) an order under section 71 of the 1997 Act (order by planning authority requiring discontinuance of use or alteration or removal of buildings or works) ^{M9}, including an order made under that section by virtue of section 73 of that Act (order by Scottish Ministers) which grants planning permission, or confirming any such order under section 72 of that Act (confirmation of section 71 order by Scottish Ministers); or
 - (v) an order under paragraph 1 of Schedule 8 to the 1997 Act (order by planning authority requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 12 of that Schedule (order by Scottish Ministers) which grants planning permission;
 - (g) directing under the following provisions that if an application is made for planning permission it must be granted:—
 - (i) section 92(3) of the 1997 Act (action in relation to purchase notice); or

- (ii) section 31(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (action in relation to listed building purchase notice)^{M10}; or
- (h) directing under section 10(1) to (2A) of the principal Act that hazardous substances consent is deemed to be granted.

(7) In relation to a consent, permission or other authorisation referred to in paragraph (6) which is capable of being varied or modified, the variation or modification 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 variation or modification authorises development falling within paragraph 4 of Schedule 5 to the 2013 Regulations.

Textual Amendments

- F5** Words in [reg. 23\(2\)\(a\)\(ii\)](#) substituted (31.12.2020) by [The Town and Country Planning and Electricity Works \(EU Exit\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2019 \(S.S.I. 2019/80\)](#), regs. 1, **4(8)** (as amended by [S.S.I. 2020/310](#), regs. 1, **2(2)**); 2020 c. 1, **Sch. 5 para. 1(1)**

Marginal Citations

- M4** [Paragraph 3](#) was amended by [S.I. 2014/469](#) and paragraph 3A was inserted by that instrument.
- M5** [Section 242A](#) was inserted by section 92(1) of the [Planning and Compulsory Purchase Act 2004 \(c.5\)](#) and amended by section 54(13) of the [Planning etc. \(Scotland\) Act 2006 \(asp 17\)](#).
- M6** [Section 43A](#) was inserted by section 17 of the [Planning etc. \(Scotland\) Act 2006](#) and amended by [S.S.I. 2013/24](#) and [S.S.I. 2013/26](#).
- M7** [Section 30\(2\)\(b\)](#) was amended by section 54(3)(b) of the [Planning etc. \(Scotland\) Act 2006](#) (“the 2006 Act”).
- M8** 1980 c.65.
- M9** [Section 71](#) was amended by [S.S.I. 2006/243](#) and section 22(3) of the 2006 Act.
- M10** 1997 c.9.

Changes to legislation:

There are currently no known outstanding effects for the The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015, PART 4.