

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (HAZARDOUS SUBSTANCES INQUIRY SESSION PROCEDURE) (SCOTLAND) RULES 2015

SSI 2015/182

Introduction

1. The above instrument was made in exercise of the powers conferred by section 9 of the Tribunals and Inquiries Act 1992 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

2. These Regulations accompany the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the 2015 PHS Regulations), which implement the land use planning elements of Directive 2012/18/EU on the control of major accident hazards involving dangerous substances (the Seveso III Directive). The aims of the Seveso III Directive are to prevent major accidents and to limit the consequences of such accidents for human health and the environment. The latter is the latest version in a series of Directives on this issue.

3. The 2015 PHS Regulations include provisions for appeals relating to hazardous substances consent applications and such applications called-in by the Scottish Ministers for their determination. The intention is to update these procedures and bring them more into line with the procedures in relation to appeals and called-in applications in relation to planning permission.

4. Such cases, where further procedure is required, can involve written submissions, a site inspection, hearing sessions or inquiry sessions or a combination of these. The powers to make the 2015 PHS Regulations can cover such procedures except inquiries procedures. The powers to make inquiries procedures rules in relation to hazardous substances consent, and to amend the existing inquiries procedure rules which currently apply in such cases, are contained in the Tribunals and Inquiries Act 1992 – hence the need for a separate Scottish statutory instrument.

5. The Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015 (the 2015 Inquiries Procedure Rules) do not, and are not required to, implement the land use planning aspects of the Seveso III Directive.

Background

6. In 2009 the Scottish Government modernised the procedures for processing appeals in relation to applications for planning permission and for such applications called-in for determination by Scottish Ministers. The new procedures were primarily to streamline and front load (in terms of provision of information) the procedures and to allow the Scottish Government reporters dealing with such cases more flexibility in processing cases, as described in paragraph 4 above.

7. These 2015 Inquiries Procedures Rules cover the holding of such sessions where either the planning authority or applicant/ appellant requires such a session or the person appointed by Scottish Ministers processing the case considers it necessary. They cover the invitations to such sessions (Rule 4), who is entitled to appear (Rule 5), the arrangements around the date and time (Rule 6) and submission of information (Rule 7), the operation of the sessions themselves (Rule 8), e.g. parties to be represented or appear themselves, deciding the order in which issues will be considered and parties will appear and cross examination, and the ability to appoint an “assessor” (Rule 9) to support the person appointed to consider the case. The current two sets of inquiries procedures rules (both for appointed persons considering appeals and for Scottish Ministers considering non-delegated appeals and called in applications) which apply to hazardous substances cases are amended (Rules 11 and 12) so they will no longer apply from 1 June 2015.

Consultation

8. A public consultation on our proposals to implement the Seveso III Directive, and including draft 2015 PHS Regulations, was published on 10 December 2014 and closed on 2 March 2015. A draft of the 2015 Inquiries Procedure Rules was not included, though the consultation did indicate our intention to draft such procedure rules as part of the new procedures for appeals and called-in applications for hazardous substances consent.

9. A total of 15 consultation responses were received, the majority of which were from Planning Authorities, companies and industry bodies – see table below.

10. Overall, respondents generally understood the need to implement changes in line with the new Directive. There were no comments suggesting fundamental changes at this time to the proposed transposition approach. There were no comments on revised procedures for appeal and called-in applications.

Table 1

Respondent Group	Number of responses
Total Individuals	1
Total organisations	14
Planning Authority	6
Company	4
Industry Body	2
Professional Body	1
Statutory Agency	1
Total	15

11. A consultation analysis has been published and can be viewed at: <http://www.gov.scot/Publications/Recent>

Impact Assessments

12. A Business and Regulatory Impact Assessment (BRIA) has been prepared and an Equalities Impact Assessment (EqIA) and accompany this note. The BRIA recognised the requirement to comply with the Directive and the implications – such as site coming within scope of the planning requirements for the first tie and others dropping out – and the modernising of procedures which were not required by the Seveso III Directive. Six businesses were interviewed and none anticipated significant cost implications arising from the changes. Even an increase of fees of around 100% for hazardous substances consent does not represent a significant cost to business as a whole, there being less than thirty such applications per year.

13. There were no significant issues with the EqIA, the direction of change being towards more public involvement in decision making for example.

Scottish Government
Planning and Architecture Division
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