



# Planning (Hazardous Substances) Act 1990

## 1990 CHAPTER 10

### *Obtaining hazardous substances consent*

#### **6 Hazardous substances consent: general.**

- (1) Hazardous substances consent—
  - (a) may be granted on an application under this Act, or
  - (b) may be deemed to have been granted by virtue of section 11 or 12.
- (2) Without prejudice to the provisions of this Act, 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 interested in the land.

#### **Modifications etc. (not altering text)**

**C1** S. 6 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

#### **Commencement Information**

**II** S. 6 wholly in force at 1.6.1992; s. 6 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2, 3

#### **7 Applications for hazardous substances consent.**

- (1) Provision may be made by regulations with respect to—
  - (a) the form and manner in which applications [<sup>F1</sup>under this Act] 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.

*Status: Point in time view as at 01/10/2006.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Obtaining hazardous substances consent is up to date with all changes known to be in force on or before 07 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) Regulations—

- (a) may require an applicant for hazardous substances consent or the hazardous substances authority or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
  - (b) may require hazardous substances authorities to conduct appropriate consultations 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; or
    - (ii) any stage in such a consultation, is to be completed;
  - (d) may require hazardous substances authorities to determine applications for hazardous substances consent within such time as may be prescribed;
  - (e) may require hazardous substances authorities to give prescribed persons or bodies prescribed information about applications for hazardous substances consent, including information as to the manner in which such applications have been dealt with.
- (3) In subsection (2) above “appropriate consultations”<sup>F2</sup> means consultations with the Health and Safety Executive and with] such persons or bodies as may be prescribed.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

**Textual Amendments**

**F1** Words inserted (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. 1 para. 3](#); [S.I. 1991/2829, art. 3](#)

**F2** Words substituted (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. 1 para. 2\(2\)](#); [S.I. 1991/2829, art. 3](#)

**Modifications etc. (not altering text)**

**C2** S. 7 Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762, art.3](#)

**Commencement Information**

**I2** S. 7 wholly in force at 1.6.1992 see [S.I. 1992/725, art. 3](#); s. 7 in force for certain purposes at 11.3.1992 see [S. I. 1992/725, art. 2](#)

**8 Certificates as to applicant’s status etc.**

- (1) Regulations under this Act 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 one of the following certificates in the prescribed form and signed by or on behalf of the applicant—
- (a) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of any of the land to which the application relates;

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- (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than himself) who, at the beginning of that period, were owners of any of the land to which the application relates;
  - (c) a certificate stating that—
    - (i) the applicant is unable to issue a certificate in accordance with paragraph (a) or (b);
    - (ii) he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) as are specified in the certificate;
    - (iii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
  - (d) a certificate stating that—
    - (i) the applicant is unable to issue a certificate in accordance with paragraph (a);
    - (ii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) but has been unable to do so.
- (2) Where such provision is made any such certificate as is mentioned in subsection (1) (b) or (c) must set out—
- (a) the names of those persons to whom the applicant has given the requisite notice of the application;
  - (b) the addresses at which notice was given to them;
  - (c) the date of service of each such notice.
- (3) Such regulations may require that any such certificate as is mentioned in subsection (1) (c) or (d) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in subsection (1)(a)) been published in a local newspaper circulating in the locality in which the land in question is situated.
- (4) Such regulations may also require that where an application is accompanied by such a certificate as is mentioned in subsection (1)(b),(c) or (d) the hazardous substances authority—
- (a) shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate or, if later, the date of publication of a notice as so mentioned;
  - (b) in determining the application, shall take into account any representations relating to it which are made to them before the end of that period by any person who satisfies them that he is an owner of any land to which the application relates; and
  - (c) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (b).
- (5) Such regulations may also make provision as to who is to be treated as the owner of land for the purposes of any provisions of the regulations.
- (6) If any person—

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- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with those requirements and contains such a statement,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Regulations under this section may make different provision for different cases or descriptions of cases.
- (8) Subject to subsection (5), in this section “owner,” in relation to any land, means a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain, of which not less than seven years remain unexpired.

**Modifications etc. (not altering text)**

**C3** S. 8 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

**Commencement Information**

**I3** S. 8 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 8 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

**9 Determination of applications for hazardous substances consent.**

- (1) Subject to the following provisions of this Act, where an application is made to a hazardous substances authority for hazardous substances consent, that authority—
- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit; or
  - (b) may refuse hazardous substances consent.
- (2) In dealing with such an application the hazardous substances authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—
- (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;
  - (d) to the provisions of the development plan; and
  - (e) to any advice which the Health and Safety Executive <sup>F3</sup> . . . have given following consultations in pursuance of regulations under section 7(2).
- (3) If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (4) It shall be the duty of a hazardous substances authority, 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

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- (c) in respect of each hazardous substance to which it relates, a statement of the maximum quantity allowed by the consent to be present at any one time.

#### Textual Amendments

- F3** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); [S.I. 1991/2829](#), [art. 3](#)

#### Modifications etc. (not altering text)

- C4** [S. 9](#) applied (1.6.1992) by [S.I. 1992/656](#), [reg. 26\(4\)](#)  
**C5** [S. 9](#) Power to apply conferred (10.11.1993) by [1993 c. 28](#), [ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), [art.3](#)  
**C6** [S. 9\(1\)](#): functions of local authority not to be the responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

#### Commencement Information

- I4** [S. 9](#) wholly in force at 1.6.1992 see [S.I. 1992/725](#), [art. 3](#); [s. 9](#) in force for certain purposes at 11.3.1992 see [S. I. 1992/725](#), [art 2](#)

## 10 Power to impose conditions on grant of hazardous substances consent.

- (1) Without prejudice to the generality of section 9(1), a hazardous substances authority may make the grant of hazardous substances consent conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission or 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) the 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.
- (2) [<sup>F4</sup>A hazardous substances authority] may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject.
- (3) It shall be the duty of a hazardous substances authority when granting hazardous substances consent to include in that consent in respect of each hazardous substance to which it relates a statement of all conditions relating to that substance subject to which the consent is granted.

#### Textual Amendments

- F4** Words "A hazardous substances authority" substituted (1.1.1992) for words commencing "An authority" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. 1 para. 2\(3\)](#); [S.I. 1991/2829](#), [art. 3](#)

#### Modifications etc. (not altering text)

- C7** [S. 10](#) Power to apply conferred (10.11.1993) by [1993 c. 28](#), [ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), [art.3](#)

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**C8** S. 10: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), [reg. 2\(1\)](#), [Sch. 1](#)

#### **Commencement Information**

**I5** S. 10 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 10 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## **11 Deemed hazardous substances consent: established presence.**

- (1) Where a hazardous substance was present on, over or under any land at any time within the establishment period hazardous substances consent may be claimed in respect of its presence.
- (2) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used [<sup>F5</sup>while it was so present].
- (3) Subject to subsections (4) to (6), the hazardous substances authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).
- (4) If at the relevant date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this section if notification in respect of the substance was given before that date in accordance with those regulations.
- (5) If at the relevant date such notification was not so required, hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (6) If it appears to the hazardous substances authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—
  - (a) to notify the claimant that in their opinion the claim is invalid; and
  - (b) to give their reasons for that opinion.
- (7) Hazardous substances consent which is deemed to be granted under this section is subject <sup>F6</sup> . . . —
  - (a) [<sup>F7</sup>to the condition that] the maximum aggregate quantity of the substance that may be present—
    - (i) on, over or under the land to which the claim for the consent relates;
    - (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
    - (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,
 at any one time shall not exceed the established quantity;
 

[<sup>F8</sup>, and

    - (b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent.]
- (8) In this section—

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“establishment period” means the period of 12 months immediately preceding the relevant date;

“established quantity” means, in relation to any land—

- (a) where before the relevant date there was a notification in respect of a substance in accordance with any of the Notification Regulations—
- (i) the quantity notified or last notified before that date; or
  - (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,

whichever is the greater;

- (b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period;

“Notification Regulations” means the <sup>M1</sup>Notification of Installations Handling Hazardous Substances Regulations 1982;

“the relevant date” means the date on which Part IV of the <sup>M2</sup>Housing and Planning Act 1986 came into force or, if that Part of that Act is not in force immediately before the date on which this Act comes into force, that date.

“the transitional period” means the period of 6 months beginning with the relevant date.

#### Textual Amendments

- F5** Words “while it was so present” substituted (1.1.1992) for “immediately before the relevant date” by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(a\)](#); S.I. 1991/2829, [art. 3](#)
- F6** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); S.I. 1991/2829, [art. 3](#)
- F7** Words inserted (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(b\)](#); S.I. 1991/2829, [art. 3](#)
- F8** Word “and” and para. (b) commencing “to such other” substituted (1.1.1992) for paras. (b)(c) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(b\)](#); S.I. 1991/2829, [art. 3](#)

#### Modifications etc. (not altering text)

- C9** [S. 11](#): power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art.3](#)  
[S. 11](#) applied (with modifications) (*temp.*) (20.4.1999) by S.I. 1999/981, [reg. 4\(1\)](#)

#### Commencement Information

- I6** [S. 11](#) wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; [s. 11](#) in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art 2

#### Marginal Citations

- M1** [S.I. 1982/1357](#).  
**M2** [1986 c. 63](#).

### <sup>F9</sup>**12 Deemed hazardous substances consent: government authorisation.**

- (1) Where—

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- (a) the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority; and
  - (b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent,
- the department may, on granting that authorisation, also direct that hazardous substances consent shall be deemed to be granted subject to such conditions (if any) as may be specified in the direction.
- (2) On granting a consent under section 36 of the <sup>M3</sup>Electricity Act 1989 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.
- [<sup>F10</sup>(2A) On making an order under section 1 or 3 of the Transport and Works Act 1992 which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]
- (3) The department or, as the case may be, the Secretary of State shall consult the Health and Safety Commission before giving any such direction.
- (4) For the purposes of this section development shall be taken to be authorised by a government department if—
- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
  - (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,
- and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) The provisions of this Act (except section 22) shall apply in relation to any hazardous substances consent deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 20.
- [<sup>F11</sup>(6) A government department or the Secretary of State shall, as respects any hazardous substances consent deemed to be granted by virtue of directions under this section, send to the hazardous substances authority concerned any such information as appears to be required by them for the purposes of a register under section 28.]



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#### Textual Amendments

- F9** S. 12 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**
- F10** S. 12(2A) inserted (1.1.1993) by Transport and Works Act 1992 (c. 42, SIF 102), **s.18**; S.I. 1992/2784, **art. 2, Sch. 1**
- F11** S. 12(6) added (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 5**; S.I. 1991/2829, **art. 3**

#### Modifications etc. (not altering text)

- C10** S. 12 extended (19.9.1995) by 1995 c. 25, ss. 70, 125(2), **Sch. 9 para. 14(2)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**)

#### Commencement Information

- I7** S. 12 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 12 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### Marginal Citations

- M3** 1989 c. 29.

**Status:**

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**Changes to legislation:**

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