



Planning (Hazardous Substances) Act 1990

1990 CHAPTER 10

Secretary of State's powers

20 Reference of applications to Secretary of State.

- (1) The Secretary of State may give directions requiring applications for hazardous substances consent or applications under section 17(1) to be referred to him instead of being dealt with by hazardous substances authorities.
 - (2) A direction under this section—
 - (a) may be given either to a particular hazardous substances authority or to hazardous substances authorities generally; and
 - (b) may relate either to a particular application or to applications of a class specified in the direction.
 - (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
 - (4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- [^{F1}(4B) Subsection (4) does not apply to an application referred to the Welsh Ministers under this section instead of being dealt with by a hazardous substances authority in Wales.]
- (5) The decision of the Secretary of State on any application referred to him under this section shall be final.
 - ^{F2}(6)

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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)

Textual Amendments

- F1** S. 20(4B) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), **Sch. 1 para. 25**
- F2** S. 20(6) repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt.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)

- C1** S. 20 Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), art.3

Commencement Information

- I1** S. 20 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 20 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

21 Appeals against decisions or failure to take decisions relating to hazardous substances.

- (1) Where a hazardous substances authority refuse an application for hazardous substances consent or an application under section 17(1) or an application for any consent, agreement or approval of the authority required by a condition imposed on the grant of such consent, or grant it subject to conditions, the applicant may, if he is aggrieved by their decision, appeal to the Secretary of State.
- (2) A person who has made an application for hazardous substances consent may also appeal to the Secretary of State if the hazardous substances authority have neither—
- given notice to the applicant of their decision on the application; nor
 - given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 20,
- within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority; and for the purposes of this Act in such a case the authority shall be deemed to have decided to refuse the application.
- (3) An appeal under this section must be made by notice served in the prescribed manner within such period as may be prescribed.
- [^{F3}(3A) A notice of appeal under this section must be accompanied by such information as may be prescribed.
- (3B) The power to make regulations under subsection (3A) is exercisable by—
- the Secretary of State, in relation to England;
 - the Welsh Ministers, in relation to Wales.
- (3C) Section 40(3) does not apply in relation to regulations under subsection (3A) made by the Welsh Ministers.
- (3D) Regulations under subsection (3A) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.]
- [^{F4}(3E) Once notice of an appeal under this section to the Welsh Ministers has been served, the application to which it relates may not be varied, except in such circumstances as may be prescribed.

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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)

- (3F) Regulations which make provision under subsection (3E) must provide for an application which is varied to be subject to such further consultation as the Welsh Ministers consider appropriate.]
- (4) The Secretary of State may allow or dismiss an appeal under this section or may reverse or vary any part of the decision of the hazardous substances authority (whether or not the appeal relates to that part of it) and may deal with the application as if it had been made to him in the first instance.
- (5) Before determining an appeal under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- [^{F5}(5B) Subsection (5) does not apply to an appeal against a decision of a hazardous substances authority in Wales.]
- (6) The decision of the Secretary of State on any appeal under this section shall be final.
- ^{F6}(7)
- (8) The Schedule to this Act applies to appeals under this section.

Textual Amendments

- F3** S. 21(3A)-(3D) inserted (6.4.2009 for E., 30.4.2012 for W.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 11 para. 6](#) (with s. 226); S.I. 2009/400, art. 5(d); S.I. 2012/802, art. 2(b)
- F4** S. 21(3E)(3F) inserted (6.9.2015 for specified purposes, 5.5.2017 in so far as not already in force) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), [ss. 47\(4\)](#), [58\(2\)\(b\)\(4\)\(b\)](#); S.I. 2017/546, art. 3(b) (with art. 4)
- F5** S. 21(5B) inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), art. 1(2), [Sch. 1 para. 26](#)
- F6** S. 21(7) 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)

- C2** S. 21 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. 21 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 21 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

[^{F7}**21A Determination by Secretary of State of procedure for certain proceedings**

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in [^{F8}such one or more of the following ways as appear] to the Secretary of State to be [^{F9}... appropriate—
- (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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)

- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—
 - (a) an application referred to the Secretary of State under section 20 instead of being dealt with by a hazardous substances authority in England;
 - (b) an appeal under section 21 against a decision of a hazardous substances authority in England.
- (8) The Secretary of State may by order amend subsection (7) to—
 - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (10) The power to make an order under subsection (8) is exercisable by statutory instrument.
- (11) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.]

Textual Amendments

- F7** S. 21A inserted (6.4.2009 for E.W. for specified purposes) by [Planning Act 2008 \(c. 29\)](#), **ss. 196(3), 241(8)** (with [s. 226](#)); [S.I. 2009/400](#), [art. 3\(j\)](#) (with [art. 6\(2\)](#))
- F8** Words in s. 21A(2) substituted (22.7.2020) by [Business and Planning Act 2020 \(c. 16\)](#), **ss. 20(3)(a), 25(3)(c)**
- F9** Word in s. 21A(2) omitted (22.7.2020) by virtue of [Business and Planning Act 2020 \(c. 16\)](#), **ss. 20(3)(b), 25(3)(c)**

[^{F10}21B. Determination by the Welsh Ministers of procedure for certain proceedings

- (1) The Welsh Ministers must make a determination as to the procedure by which proceedings to which this section applies are to be considered.

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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) A determination under subsection (1) must provide for the proceedings to be considered in such one or more of the following ways as appear to the Welsh Ministers to be appropriate—
 - (a) at a local inquiry;
 - (b) at a hearing;
 - (c) on the basis of representations in writing.
- (3) The Welsh Ministers must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Welsh Ministers must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).
- (6) The Welsh Ministers must publish the criteria which are to be applied in making determinations under subsection (1).
- (7) This section applies to—
 - (a) an application referred to the Welsh Ministers under section 20;
 - (b) an appeal to the Welsh Ministers under section 21.
 - ^{F11}(c) [an appeal to the Welsh Ministers under section 174 of the principal Act (appeal against enforcement notice) as applied by regulation 16 of, and Part 1 of Schedule 4 to, the Planning (Hazardous Substances) (Wales) Regulations 2015 (S.I. 2015/1597 (W. 196)) (appeals against hazardous substances contravention notices).]
- (8) The Welsh Ministers may by order amend subsection (7) to—
 - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies; or
 - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
 - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
 - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.
- (10) No order may be made by the Welsh Ministers under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of the National Assembly for Wales.]

Textual Amendments

- F10** S. 21B inserted (11.11.2014) by [The Town and Country Planning \(Determination of Procedure\) \(Wales\) Order 2014 \(S.I. 2014/2773\)](#), arts. 1(2), **2(3)**
- F11** S. 21B(7)(c) inserted (5.5.2017) by [The Planning \(Hazardous Substances\) \(Determination of Procedure\) \(Wales\) Order 2017 \(S.I. 2017/529\)](#), **art. 2(2)**, reg. 1(2)

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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)

22 Validity of decisions as to applications.

- (1) If any person is aggrieved by any decision of the Secretary of State under section 20 or 21 and wishes to question the validity of that decision on the grounds—
- (a) that it is not within the powers of this Act; or
 - (b) that any of the relevant requirements have not been complied with in relation to that decision,
- he may ^{F12}... make an application to the High Court under this section.

- (2) Without prejudice to subsection (1), if the hazardous substances authority who made the decision on the application to which the proceedings relate or, as the case may be, referred the application wish to question the validity of any such decision as is mentioned in that subsection on any of the grounds there mentioned, the authority may ^{F12}... make an application to the High Court under this section.

[^{F13}(2A) An application under this section may not be made without the leave of the High Court.

- (2B) An application for leave for the purposes of subsection (2A) must be made before the end of the period of six weeks beginning with the day after the date on which the decision to which the application relates is taken.

- (2C) When considering whether to grant leave for the purposes of subsection (2A), the High Court may by interim order suspend the operation of the decision the validity of which the person or authority concerned wishes to question, until the final determination of—
- (a) the question of whether leave should be granted, or
 - (b) where leave is granted, the proceedings on any application under this section made with such leave.]

- (3) On any application under this section [^{F14}(other than an application for leave)] the High Court—
- (a) may by interim order suspend the operation of the decision the validity of which is questioned by the application until the final determination of the proceedings;
 - (b) if satisfied that the decision in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that decision.

- (4) In this section “the relevant requirements”, in relation to any decision, means any requirements of this Act or the [^{F15}principal Act] or of [^{F16}the Tribunals and Inquiries Act 1992], or of any order, regulations or rules made under this Act or under either of those Acts which are applicable to that decision.

- (5) Except as provided by this section, the validity of any such decision as is mentioned in subsection (1) shall not be questioned in any legal proceedings whatsoever.

- (6) Nothing in subsection (5) shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is there mentioned.

Textual Amendments

F12 Words in s. 22(1)(2) omitted (26.10.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\)](#), s. 95(1), [Sch. 16 para. 7\(2\)](#); S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))

Status: Point in time view as at 22/07/2020.

Changes to legislation: Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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)

- F13** S. 22(2A)-(2C) inserted (26.10.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 16 para. 7(3)**; S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F14** Words in s. 22(3) inserted (26.10.2015) by Criminal Justice and Courts Act 2015 (c. 2), s. 95(1), **Sch. 16 para. 7(4)**; S.I. 2015/1778, art. 3(b)(ii) (with art. 4(a))
- F15** Words "principal Act" substituted (1.1.1992) for words "1971 Act" by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 7**; S.I. 1991/2829, **art. 3**
- F16** Words in s. 22(4) substituted (1.10.1992) by Tribunals and Inquiries Act 1992 (c. 53, SIF 127), ss. 18(1), 19(2), **Sch. 3 para. 33**

Modifications etc. (not altering text)

- C3** S. 22 modified by S.I. 1992/656, **reg. 26(5)**
- C4** S. 22 applied (28.9.2004) by Planning and Compulsory Purchase Act 2004 (c. 5), **s. 58(6)** (with s. 111); S.I. 2004/2202, art. 3(a)
- C5** S. 22 modified (E.) (1.6.2015) by The Planning (Hazardous Substances) Regulations 2015 (S.I. 2015/627), regs. 1(1), **23(5)** (with reg. 34)

Commencement Information

- I3** S. 22 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 22 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

Status:

Point in time view as at 22/07/2020.

Changes to legislation:

Planning (Hazardous Substances) Act 1990, Cross Heading: Secretary of State's powers is up to date with all changes known to be in force on or before 14 June 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.