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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1597**

The Planning (Hazardous Substances) (Wales) Regulations 2015

**PART 3**

Hazardous substances consent procedures

**Applications for hazardous substances consent**

5.—(1) Subject to paragraph (2) and regulation 25 (application of the PHSA to hazardous substances authorities), an application for hazardous substances consent must—

- (a) be made to the hazardous substances authority;
- (b) include the name and address of the applicant;
- (c) include a site map and a substance location plan;
- (d) include details of—
  - (i) the location of the land to which the application relates;
  - (ii) the person in control of the land to which the application relates;
  - (iii) each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each relevant substance proposed to be present;
  - (iv) the main activities carried out or proposed to be carried out on the land to which the application relates;
  - (v) how and where each relevant substance is to be kept and used;
  - (vi) how each relevant substance is proposed to be transported to and from the land to which the application relates,
  - (vii) the vicinity of the relevant land, where such details are relevant to the risks or consequences of a major accident; and
  - (viii) the measures taken or proposed to be taken to limit the consequences of a major accident; and
- (e) be accompanied by the notices and certificates required by regulations 6 and 7.

(2) Subject to regulation 25 (application of the PHSA to hazardous substances authorities), an application to which section 13 of the PHSA applies (application for hazardous substances consent without a condition subject to which a previous consent was granted) must—

- (a) be made to the hazardous substances authority;
- (b) include the name and address of the applicant;
- (c) include a change of location plan, if the application relates to a condition restricting the location of a hazardous substance;
- (d) include in relation to any relevant consent, a copy of—
  - (i) the consent, where the relevant consent is a consent granted on an application under the PHSA;

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- (ii) the relevant claim, where the relevant consent is a consent deemed to be granted under section 11 of the PHSA; or
  - (iii) the relevant direction, where the relevant consent is a consent deemed to be granted under section 12;
  - (e) identify any condition previously imposed on the relevant consent which—
    - (i) it is proposed should no longer be imposed on the consent; or
    - (ii) it is proposed should only be imposed in a modified form;
  - (f) for any condition identified under sub-paragraph (e)(i), give the reasons why it should not be imposed;
  - (g) for any condition identified under sub-paragraph (e)(ii)—
    - (i) indicate the proposed modification; and
    - (ii) give the reasons why it should only be imposed in a modified form;
  - (h) describe any relevant changes in circumstances since the date of the relevant consent; and
  - (i) be accompanied by the notices and certificates required by regulations 6 and 7.
- (3) An application under section 17 of the PHSA (application for the continuation of consent following a change of control) must—
- (a) be made to the hazardous substances authority;
  - (b) include the name and address of the applicant;
  - (c) include a change of control plan;
  - (d) include, in relation to any relevant consent, whichever of the documents listed in paragraph (2)(d) is applicable to the relevant consent;
  - (e) state the date on which the change in the person in control of part of the land is to take place, where known;
  - (f) describe the use of each area of the site identified in the change of control plan;
  - (g) describe any relevant changes in circumstances since the relevant consent was granted; and
  - (h) be accompanied by the notices and certificates required by regulations 6 and 7.
- (4) Any application to which this regulation applies and anything required to accompany it must, if requested by the hazardous substances authority, be submitted in triplicate.
- (5) In this regulation—
- “change of control plan” (“*plan newid rheolaeth*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies each area of the site under separate control after the proposed change of control;
- “change of location plan” (“*plan newid lleoliad*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application;
- “relevant consent” (“*cydsyniad perthnasol*”) means the existing hazardous substances consent to which the application relates;
- “site map” (“*map safle*”) is a map, reproduced from, or based on, an Ordnance Survey map with a scale of not less than 1:10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers; and
- “substance location plan” (“*plan lleoliad sylwedd*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies—
- (a) any area of the land 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; and
- (c) access points to and from the land.

(6) Regulations 6 to 13 apply to applications made under section 17 of the PHSA (revocation of hazardous substances consent on change of control of land) as they apply to applications for hazardous substances consent.

### **Publication of notices of applications**

6.—(1) Before making an application for hazardous substances consent to the hazardous substances authority, the applicant must, during the 21 day period immediately preceding the application—

- (a) inform the public by notice published in a local newspaper circulating in the locality in which the land to which the application relates is situated, or by other appropriate means, including electronic communications, of the following matters—
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the hazardous substances authority (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the hazardous substances authority;
  - (v) details of how such representations should be made and the time period for making representations, which must be not less than 21 days beginning with the day after the day on which an application under regulation 5 is sent to the hazardous substances authority;
  - (vi) an indication of the times and places where, or means by which, relevant information will be made available; and
- (b) subject to paragraphs (2) and (3), post a notice containing the information referred to in sub-paragraph (a) on the land to which the application relates for not less than 7 days sited and displayed in such a way as to be easily legible without entering onto the land.

(2) An applicant is not required to comply with paragraph (1)(b) if—

- (a) the applicant has no right of access or other rights in respect of the land which would enable the applicant to post the notice as required; and
- (b) the applicant has taken all reasonable steps to acquire the rights but has failed.

(3) The applicant is not to be treated as having failed to comply with paragraph (1)(b) if the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the 7 days referred to in that paragraph have elapsed, so long as the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement.

(4) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by—

- (a) a copy of the notice referred to in paragraph (1) certified by, or on behalf of, the applicant as having been published in accordance with paragraph (1)(a);

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- (b) where published in a local newspaper, details of the name of the newspaper and the date of its publication;
- (c) where published by other means, details of those other means; and
- (d) the appropriate certificate on Form 1, signed by or on behalf of the applicant.

### **Notification of applications to owners**

7.—(1) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by whichever of certificates A to D set out in Form 2 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 2 must, in the case of an application for hazardous substances consent, be a notice given on Form 3 and must attach a copy of the notice required to be published under regulation 6(1)(a).

### **Inspection of applications**

8. Following receipt of an application under regulation 5, the hazardous substances authority must ensure that a copy of the application is available for inspection at the offices of the hazardous substances authority during the period allowed for making representations pursuant to regulation 6(1).

### **Receipt of applications by hazardous substances authority**

9.—(1) When the hazardous substances authority receive a valid application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, they must, as soon as practicable—

- (a) acknowledge receipt of the application in writing; and
- (b) send a copy of the application to the COMAH competent authority.

(2) Where, in the opinion of the hazardous substances authority, an application received by the authority is not a valid application, the authority must, as soon as practicable, notify the applicant of their opinion, giving their reasons.

(3) For the purposes of this regulation and regulations 10 and 11—

- (a) an application is valid if it complies with regulation 5 and is accompanied by any documents required by regulations 6 and 7; and
- (b) a valid application for hazardous substances consent is to be taken to have been received when—
  - (i) it is lodged with the hazardous substances authority; and
  - (ii) any fee required to be paid in respect of the application has been paid to that authority.

### **Consultation before the grant of hazardous substances consent**

10.—(1) Except where the body or person concerned has notified the hazardous substances authority that they do not wish to be consulted, the authority must, before determining an application for hazardous substances consent, consult—

- (a) the COMAH competent authority;
- (b) the county or county borough council concerned, where that council is not also the hazardous substances authority;
- (c) the community or town council concerned;

- (d) the fire and rescue authority concerned, where that authority is not also the hazardous substances authority;
- (e) the person concerned to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licencing of gas transporters) <sup>M1</sup>;
- (f) the person concerned to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply etc.) <sup>M2</sup>;
- (g) where the land to which the application relates is within 2 kilometres of a royal palace, park or residence, the Secretary of State;
- (h) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (i) where the land to which the application relates is situated within 2 kilometres of—
  - (i) an adjacent county, county borough, or district, the council for that county, county borough or district;
  - (ii) the area of an adjacent fire and rescue authority, that authority; or
  - (iii) an adjacent new town, the development corporation for the new town;
- (j) where it appears to the hazardous substances authority dealing with the application that land in the area of any other hazardous substances authority may be affected, that authority;
- (k) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981 <sup>M3</sup> applies (sites of special scientific interest) or where it appears to the hazardous substances authority dealing with the application that an area of particular natural sensitivity or interest may be affected, in Wales, the Natural Resources Body for Wales or in England, Natural England;
- (l) where the application relates to land in an area of coal working notified to the hazardous substances authority by the Coal Authority, the Coal Authority; and
- (m) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the hazardous substances authority.

(2) The hazardous substances authority must also, before determining an application for hazardous substances consent, consult any other persons, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the application, and who in the authority's opinion are unlikely to become aware of the application through the notices under regulation 6.

(3) When it consults under paragraph (1) or (2) of this regulation, the hazardous substances authority must also, within 7 days of receiving an application—

- (a) notify in writing the body or person concerned that they have received an application for hazardous substances consent and inform them of the following matters—
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the hazardous substances authority (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the hazardous substances authority;

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- (v) details of how such representations should be made and the time period for making representations, which must be not less than 28 days beginning with the day after the day on which the person or body is notified that a valid application has been received by the hazardous substances authority;
  - (vi) an indication of the times and places where, or means by which, relevant information will be made available; and
- (b) ensure that a copy of the application is available for inspection at the offices of the hazardous substances authority during the period or periods allowed for making representations.
- (4) Where a hazardous substances authority is required to consult a body under—
- (a) paragraph (1)(a), or
  - (b) paragraph (1)(k), where it appears to the authority that an area of particular natural sensitivity or interest may be affected,
- the exception in paragraph (1) does not apply.
- (5) In this regulation—
- (a) “area of particular natural sensitivity or interest” (“*ardal o sensitifrwydd naturiol penodol neu o ddiddordeb penodol*”) has the same meaning as it has for the purposes of the Directive;
  - (b) “controlled waste” (“*gwastraff a reolir*”) has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990 <sup>M4</sup> and “waste disposal authority” (“*awdurdod gwaredu gwastraff*”) is to be construed in accordance with section 30(2) <sup>M5</sup> of that Act; and
  - (c) “county” (“*sir*”), “county borough” (“*bwrdeistref sirol*”) and “district” (“*dosbarth*”) have the same meanings as in the Local Government Act 1972 <sup>M6</sup>.

#### Marginal Citations

- M1** 1986 c. 44. Section 7 was substituted by section 5 of the [Gas Act 1995 \(c. 45\)](#) and subsection (2) was amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, the [Utilities Act 2000](#) and by [S.I. 2011/2704](#).
- M2** 1989 c. 29. Section 6 was substituted by section 30 of the [Utilities Act 2000 \(c. 27\)](#), subsection (1)(b) was substituted by section 136(1) of the [Energy Act 2004 \(c. 20\)](#) and subsection (1)(c) was amended by section 197(9) of, and Part 1 of Schedule 23 to, the [Energy Act 2004](#).
- M3** 1981 c. 69. Section 28 was substituted by paragraph 1 of Schedule 9 to the [Countryside and Rights of Way Act 2000 \(c. 37\)](#) and amended by section 105(1) of, and paragraph 79 of Part 1 of Schedule 11 to, the [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#) and paragraph 2 of Part 2 of Schedule 13 to the [Marine and Coastal Access Act 2009 \(c. 23\)](#).
- M4** 1990 c. 43. Section 75(1) was amended by [S.I. 2006/937](#). Section 75(2) was amended by [S.I. 2011/988](#).
- M5** [Section 30\(2\)](#) was amended by section 22(3) of, and paragraph 17(2) of Schedule 9 to, the [Local Government \(Wales\) Act 1994](#). There are other amendments to this section which are not relevant to these Regulations.
- M6** 1972 c. 70.

## **Determination of applications for hazardous substances consent**

**11.**—(1) A hazardous substances authority must not determine an application for hazardous substances consent before the expiry of the period or periods allowed for making representations pursuant to regulations 6(1) and 10(3).

(2) In determining an application for hazardous substances consent, the hazardous substances authority must take into account the results of the consultation undertaken in relation to that application.

(3) Subject to paragraph (1), a hazardous substances authority must, within the period specified in paragraph (4), give the applicant written notice of their decision or notice that the application has been referred to the Welsh Ministers for determination.

(4) The period specified for the purposes of paragraph (3) is—

- (a) a period of 8 weeks from the date when the application is received by the hazardous substances authority; or
- (b) except where the applicant has already given notice of appeal to the Welsh Ministers, such extended period as may be agreed in writing by the applicant and the hazardous substances authority.

(5) When a hazardous substances authority give notice of a decision on an application the notice must, where hazardous substances consent is refused or is granted subject to conditions—

- (a) state, clearly and precisely, their full reasons for the refusal or for any condition imposed; and
- (b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the Welsh Ministers under section 21 of the PHSA within 6 months of the date of the notice of the decision, or such longer period as the Welsh Ministers may at any time allow.

(6) The hazardous substances authority must, as soon as is practicable, inform the following persons of the terms of their decision—

- (a) the Health and Safety Executive;
- (b) where the land to which the decision relates is, or is on, a nuclear site, the Office for Nuclear Regulation;
- (c) the county or county borough council concerned, where that council is not also the hazardous substances authority concerned;
- (d) any other consultees who have made representations to them on the application; and
- (e) any owners who have made representations to them on the application.

(7) The hazardous substances authority must make available for inspection at the offices of the hazardous substances authority—

- (a) the contents of the decision and the reasons on which it is based, including any subsequent notices received from the COMAH competent authority pursuant to paragraph 17 of Schedule 2; and
- (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.

## **Notice of reference of applications to the Welsh Ministers**

**12.** On referring any application to the Welsh Ministers pursuant to a direction under section 20 of the PHSA, a hazardous substance authority must serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Welsh Ministers;

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- (b) setting out the reasons given by the Welsh Ministers for issuing the direction; and
- (c) containing a statement that the Welsh Ministers will, if the applicant so desires, give the applicant an opportunity of appearing before and being heard by a person appointed by the Welsh Ministers for that purpose.

## Appeals

**13.**—(1) Any appeal to the Welsh Ministers under section 21(1) of the PHSA (appeals against decisions relating to hazardous substances) must be made within 6 months of the date of the notice of the decision giving rise to the appeal, or within such longer period as the Welsh Ministers may, at any time, allow.

(2) Any appeal under section 21 of the PHSA (appeals against decisions or failure to take decisions relating to hazardous substances) must—

- (a) be made to the Welsh Ministers on a form obtained from the Welsh Ministers;
- (b) include the information specified in the form; and
- (c) be accompanied by the documents specified in paragraph (3) and the certificate required by paragraph (4).

(3) The documents mentioned in paragraph (2)(c) are—

- (a) the application made to the hazardous substances authority which has occasioned the appeal;
- (b) any notices and certificates required by regulations 6 and 7 which accompanied the application;
- (c) any correspondence with the authority relating to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 21 of the PHSA must not be entertained by the Welsh Ministers unless it is accompanied by whichever of certificates A to D is appropriate in Form 2, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C must, in the case of an appeal under section 21 of the PHSA, be a notice given on Form 4.

(6) The appellant must send a copy of the completed notice of appeal form and accompanying certificate to the hazardous substances authority at the same time as the appeal is made to the Welsh Ministers.

## Period for determination of procedure under sections 20 and 21 of the PHSA

**14.**—(1) For the purposes of section 21B(3) of the PHSA (determination by the Welsh Ministers of procedure for applications under section 20 of the PHSA and appeals under section 21) the prescribed period is seven working days from the relevant date.

(2) In this regulation—

“working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday in Wales; and

“the relevant date” (“*y dyddiad perthnasol*”) means—

- (a) in relation to referrals under section 20<sup>M7</sup> of the PHSA (reference of applications to Welsh Ministers), the day on which the Welsh Ministers receive notice of the referral from the hazardous substances authority; and



- (b) in relation to an appeal under section 21 of the PHSA (appeals against decisions or failure to take decisions relating to hazardous substances), the day on which the Welsh Ministers receive notice of the appeal accompanied by information as may be prescribed.

**Marginal Citations**

**M7** There are amendments to section 20 which are not relevant to this provision.

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