

2017 No. 547 (W. 124)

**TOWN AND COUNTRY
PLANNING, WALES**

**The Planning (Hazardous
Substances) (Wales) (Amendment)
Regulations 2017**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Planning (Hazardous Substances) (Wales) Regulations 2015 (“the 2015 Regulations”).

The main changes are—

(1) amendments to the procedure in relation to applications referred to the Welsh Ministers pursuant to a direction under section 20 of the Planning (Hazardous Substances) Act 1990 (“the PHSA”), including provision for an applicant to submit a full statement of case within a specified timescale if the applicant so chooses (regulation 4 which substitutes regulation 12 of the 2015 Regulations);

(2) amendments to the procedure in relation to appeals under section 21 of the PHSA to require—

- (a) a notice of appeal to be accompanied by a full statement of case; and
- (b) the appellant to send a copy of the full statement of case to the hazardous substances authority (regulation 5 which amends regulation 13 of the 2015 Regulations);

(3) provision under section 21(3E) and (3F) of the PHSA (which were inserted by section 47(4) of the Planning (Wales) Act 2015) to—

- (a) prescribe a circumstance under section 21(3E) in which an application may be varied once notice of appeal has been served; and
- (b) provide for an application which is so varied to be subject to such further consultation as the Welsh Ministers consider appropriate (regulation 6 which inserts regulation 13A into the 2015 Regulations);

(4) amendments to the procedure for appeals against hazardous substances contravention notices to require—

- (a) a full statement of case to be sent to the Welsh Ministers within a specified period; and
- (b) the appellant to send a copy of the notice of appeal and full statement of case to the hazardous substances authority (regulation 7 which amends regulation 17 of, and Part 1 of Schedule 4 to, the 2015 Regulations).

Regulation 8 contains transitional and saving provisions.

The Regulatory Impact Assessment applicable to these Regulations is obtainable from the Welsh Government at: Cathays Park, Cardiff, CF10 3NQ and on the Welsh Government website at www.gov.wales.

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**The Planning (Hazardous
Substances) (Wales) (Amendment)
Regulations 2017**

Made 5 April 2017

*Laid before the National Assembly
for Wales* 11 April 2017

Coming into force 5 May 2017

The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by sections 25 and 40 of the Planning (Hazardous Substances) Act 1990⁽¹⁾ and now exercisable by them⁽²⁾ and the powers conferred on them by section 21 of that Act⁽³⁾ and section 323A of the Town and Country Planning Act 1990⁽⁴⁾.

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- (1) 1990 c. 10. *See* section 39(2) for the meaning of “prescribed”. Section 25 was amended by section 25 of, and paragraph 30 of Schedule 3 to, the Planning and Compensation Act 1991 (c. 34), section 196(4) of, and paragraphs 25 and 28(a) of Schedule 10 to, the Planning Act 2008 (c. 29) (“the 2008 Act”) and article 3 of, and paragraphs 24 and 27(a) of Schedule 1 to, S.I. 2014/2773.(W. 280). Section 40 was amended by section 118(1) of, and paragraph 27 of Schedule 6 to, the Planning and Compulsory Purchase Act 2004 (c. 5).
- (2) The functions of the Secretary of State under those sections were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).
- (3) Section 21 was amended by section 162 of, and paragraph 1 of Part 7 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43) (“the EPA”), section 197 of, and paragraph 6 of Schedule 11 to the 2008 Act, article 3 of, and paragraphs 24 and 26 of Schedule 1 to, S.I. 2014/2773 and section 47(4) of the Planning (Wales) Act 2015 (anaw 4) (“the 2015 Act”).
- (4) 1990 c. 8. Section 323A was inserted by section 50 of the 2015 Act. Section 323A is applied to the Planning (Hazardous Substances) Act 1990 by section 37 of that Act. Section 37 was amended by section 51 of, and paragraphs 23 and 25 of Schedule 5 to, the 2015 Act.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Planning (Hazardous Substances) (Wales) (Amendment) Regulations 2017 and they come into force on 5 May 2017.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations, “the 2015 Regulations” (“*Rheoliadau 2015*”) means the Planning (Hazardous Substances) (Wales) Regulations 2015⁽¹⁾

Amendments to the 2015 Regulations

2. The 2015 Regulations are amended in accordance with the following provisions.

Interpretation

3. In regulation 2(1) at the appropriate place insert—

““full statement of case” (“*datganiad achos llawn*”) means and is comprised of—

(a) a statement in writing containing full particulars of the case—

(i) the applicant proposes to put forward in relation to the application referred to the Welsh Ministers pursuant to a direction under section 20 of the PHSA⁽²⁾; or

(ii) the appellant proposes to put forward in relation to the appeal under section 21 of the PHSA; and

(b) copies of any supporting documents the applicant or the appellant proposes to refer to or put forward in evidence;”.

Reference of applications to the Welsh Ministers

4. For regulation 12 (notice of reference of applications to the Welsh Ministers) and its heading substitute—

“Reference of applications to the Welsh Ministers

12.—(1) On referring any application to the Welsh Ministers pursuant to a direction under section 20 of the PHSA, a hazardous substances

(1) S.I. 2015/1597 (W. 196) to which there are amendments not relevant to these Regulations.

(2) Section 20 was amended by section 162 of, and paragraph 1 of Part 7 of Schedule 16 to, the EPA and article 3 of, and paragraphs 24 and 25 of Schedule 1 to, S.I. 2014/2773.

authority must as soon as reasonably practicable—

- (a) serve on the applicant a notice of reference; and
- (b) send to the Welsh Ministers a copy of the application file.

(2) The hazardous substances authority must send a copy of the notice of reference to the Welsh Ministers at the same time as the notice is sent to the applicant.

(3) An applicant upon whom a notice of reference is served may choose to submit a full statement of case to the Welsh Ministers.

(4) An applicant who so chooses must send—

- (a) the full statement of case so that it is received by the Welsh Ministers within 4 weeks beginning with the day on which the notice of reference is served;
- (b) a copy of the full statement of case to the hazardous substances authority at the same time as it is sent to the Welsh Ministers.

(5) In this regulation—

- (a) “application file” (*“ffeil y cais”*) means the application together with accompanying documents and all correspondence with the hazardous substances authority relating to the application; and
- (b) “notice of reference” (*“hysbysiad o gyfeirio”*) means a notice—
 - (i) informing the applicant that the application has been referred to the Welsh Ministers;
 - (ii) setting out the reasons given by the Welsh Ministers for issuing the direction; and
 - (iii) notifying the applicant that—
 - (aa) if the applicant so chooses, the applicant may submit a full statement of case to the Welsh Ministers;
 - (bb) if the applicant so chooses, the full statement of case must be received by the Welsh Ministers within 4 weeks beginning with the day on which the notice of reference is served; and
 - (cc) a copy of the full statement of case (if applicable) must be sent to the hazardous

substances authority at the same time as it is sent to the Welsh Ministers.”

Appeals

5.—(1) In regulation 13(3)—

- (a) in subparagraph (c) omit “and”;
- (b) at the end of subparagraph (d) for the full stop substitute “; and”;
- (c) after subparagraph (d) insert—
“(e) a full statement of case”.

(2) In regulation 13(6) for “completed notice of appeal form and accompanying certificate” substitute “completed notice of appeal form, accompanying certificate and full statement of case”.

Variation of applications after notice of appeal

6. After regulation 13, insert—

“Variation of applications after notice of appeal

13A.—(1) For the purposes of section 21(3E) of the PHSA(1) the prescribed circumstance is the application to which the appeal relates contains a correctable error.

(2) An application which is varied in the circumstance prescribed in paragraph (1) is subject to such further consultation as the Welsh Ministers consider appropriate.

(3) In this regulation “correctable error” (“*gwall cywiradwy*”) means an error which—

- (a) is corrected in order to ensure consistency in the information contained in the application and the accompanying documents; and
- (b) does not alter the substance of the application.”

Appeals against hazardous substances contravention notices

7.—(1) Regulation 17(1) (appeals: supplementary) is omitted.

(2) Paragraph 2 of Part 1 of Schedule 4 (appeals against hazardous substances contravention notices) is amended as follows—

- (a) for subparagraph (b) substitute—

(1) Section 21(3E) was inserted by section 47(4) of the 2015 Act.

“(b) for subsection (4) there were substituted—

“(4) A notice under subsection (3) must be accompanied by a copy of the hazardous substances contravention notice.

(4A) A person who gives notice under subsection (3) must submit to the Welsh Ministers a full statement of case either—

- (a) when giving the notice, or
- (b) so that it is received by the Welsh Ministers before the end of the period specified in subsection (4B).

(4B) The period specified in this subsection is—

- (a) 7 days beginning with the day on which the notice of appeal under subsection (3) is received by the Welsh Ministers; or
- (b) such longer period as the Welsh Ministers may allow provided that any such longer period is authorised in writing by them before the date stated in the hazardous substances contravention notice as the date on which it is to take effect.

(4C) The appellant must send to the hazardous substances authority that issued the notice, as soon as reasonably practicable, a copy of the notice of appeal and the full statement of case.”;

(b) after subparagraph (c) insert—

“(d) subsection (6) read as follows—

“(6) In this section—

“full statement of case” means and is comprised of—

- (a) a statement in writing specifying the grounds of the appeal, stating the facts on which the appeal is based and containing full particulars of the case the appellant proposes to put forward in relation to the appeal; and
- (b) copies of any supporting documents the appellant proposes to refer to or put forward in evidence;

“relevant occupier” means a person who—

- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and
- (b) continues so to occupy the land when the appeal is brought.”

Transitional and saving provisions

8.—(1) Paragraph (2) applies where any of the following occurs in relation to an application made before these Regulations come into force—

- (a) the application is referred to the Welsh Ministers pursuant to a direction under section 20 of the Planning (Hazardous Substances) Act 1990, or
- (b) an appeal is made.

(2) The 2015 Regulations apply to that application or appeal as though the amendments made by regulations 3 to 6 had not been made.

(3) Where an appeal is made in relation to a hazardous substances contravention notice which was issued before these Regulations come into force, the 2015 Regulations apply to that appeal as though the amendments made by regulation 7 had not been made.

Jane Hutt
One of the Welsh Ministers
5 April 2017