

# Local Government, Housing and Planning Committee

**28<sup>th</sup> Meeting, 2022 (Session 6)**

**Tuesday, 15 November 2022**

**SSI cover note for: SSI 2022/286 Town and Country Planning (Miscellaneous Amendment) Regulations 2022**

## **SSI 2022/286**

**Title of Instrument:** SSI 2022/286 Town and Country Planning (Miscellaneous Amendment) Regulations 2022

**Type of Instrument:** Negative

**Laid Date:** 29 September 2022

**Circulated to Members:** 29 September 2022

**Meeting Date:** 15 November 2022

**Minister to attend meeting:** No

**Motion for annulment lodged:** No

**Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?** No

**Reporting deadline:** 23 November 2022

## **Recommendation**

1. The Committee is invited to consider any issues which it wishes to raise on this instrument.

2. An electronic copy of the instrument is available at: <https://www.legislation.gov.uk/ssi/2022/286/contents/made>

3. Copies of the Scottish Government’s Explanatory and Policy Notes are included in **Annexe A**.

4. The Committee wrote the Scottish Government on 4 November 2022 inviting further information in response to a query raised by the Parliament’s Legal Services Team. The letter and the Minister’s response are attached as an annexe.

## Purpose

5. The Policy Note states that—

(1)The instrument makes amendments to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 by: omitting regulation 28(3)(a)(v) (decision notice) and in schedule 4 (notice for publication in newspaper) in Note 4 for “belongs is a class of development prescribed for the purposes of section 35A(1)” substitute, “is an application in respect of which the applicant was required to comply with section 35B”.

6. The Policy Note further states that the instrument also amends the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 to clarify a rule about how controlled quantities are calculated where two or more hazardous substances are present together but individually the amounts of those substances fall below the usual controlled quantities. The amended provision makes clearer the circumstances in which the rule applies.

## Delegated Powers and Law Reform Committee consideration

7. At its meeting on 1 November 2022 the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.<sup>1</sup>

## Procedure for Negative Instruments

8. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the

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<sup>1</sup> [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 1 November 2022 \(azureedge.net\)](#)

Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

9. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Clerks,  
Local Government, Housing and Planning Committee**

## **Annexe A**

### **Scottish Government Explanatory Note**

These Regulations amend the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the “2013 Regulations”) and the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the “2015 Regulations”) and come into force on 1 December 2022.

Regulation 2 omits regulation 28(3)(a)(v) (decision notice). This provision is no longer required following the amendment of sections 58 (duration of planning permission) and 59 (planning permission in principle) of the Town and Country Planning (Scotland) Act 1997 by section 32 (duration of planning permission) of the Planning (Scotland) Act 2019. Regulation 2 also amends the Notice in schedule 4 of the 2013 Regulations to reflect changes made to section 35A of the Town and Country Planning (Scotland) Act 1997.

Part 2 and schedule 1 (hazardous substances and controlled quantities) of the 2015 Regulations set out the substances which are hazardous substances for the purpose of the Planning (Hazardous Substances) (Scotland) Act 1997 and the controlled quantities of those substances. Regulation 3 amends Note 5 to Parts 1 and 2 of schedule 1 to clarify the “addition rule” in relation to how controlled quantities are calculated where two or more hazardous substances are present together but individually the amounts of those substances fall below the usual controlled quantities. When applying the addition rule, no account is to be taken of substances present within the establishment which exceed the controlled quantity and the rule must be applied to each of three hazard groups categorised in Part 1 of schedule 1 as health, physical and environmental hazards. Regulation 3 also amends Note 7 of Parts 1 and 2 of schedule 1 so that for each hazard group, the lowest controlled quantity for that group should be used. Regulation 4 makes transitional provisions in relation to these changes.

As per purpose above and including Scottish Government Policy Note

## POLICY NOTE

**THE TOWN AND COUNTRY PLANNING (MISCELLANEOUS AMENDMENT)  
(SCOTLAND) REGULATIONS 2022**

**SSI 2022/286**

The above instrument was made in exercise of the powers conferred by Scottish Ministers under:

- (1) sections 34, 43 and 275 of the Town and Country Planning (Scotland) Act 1997; and
- (2) section 3 of the Planning (Hazardous Substances) (Scotland) Act 1997 and all other powers enabling them to do so.

The instrument is subject to negative procedure.

- (1) **The instrument makes amendments to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 by:**  
 omitting regulation 28(3)(a)(v) (decision notice) and in schedule 4 (notice for publication in newspaper) in Note 4 for “belongs is a class of development prescribed for the purposes of section 35A(1)” substitute, “is an application in respect of which the applicant was required to comply with section 35B”.
- (2) **The instrument also amends the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 to clarify a rule about how controlled quantities are calculated where two or more hazardous substances are present together but individually the amounts of those substances fall below the usual controlled quantities. The amended provision makes clearer the circumstances in which the rule applies.**

### **Policy Objectives**

#### **The Town and Country Planning (Development Management Procedure) Regulations 2013<sup>2</sup>**

The changes to The Town and Country Planning (Development Management Procedure) Regulations 2013 (the DMR) are essentially consequential amendments arising from changes introduced by the Planning (Scotland) Act 2019 (the 2019 Act). Regulation 28 of the DMR specifies the content of decision notices on applications for planning permission. Regulation 28 is amended by omitting regulation 28(3)(a)(v) as this provision is no longer required following the amendment of sections 58 (duration of planning permission) and 59 (planning permission in principle) of the Town and Country Planning (Scotland) Act 1997 (the 1997 Act) by section 32 (duration of planning permission) of the 2019 Act.

<sup>2</sup> <https://www.legislation.gov.uk/ssi/2013/155/contents/made>

Currently sections 58 and 59 of the 1997 Act specify duration of planning permission in the legislation itself or in a direction made by the planning authority. Regulation 28(3)(a)(v) requires the effect of the legislation or direction to be included in the decision notice. The changes to sections 58 and 59 of the 1997 Act made by the 2019 Act will mean duration is specified in a condition attached to the planning permission. Requirements to include in decision notices information on conditions attached to planning permission already exist (Section 43(1A) of the 1997 Act), so regulation 28(3)(a)(v) is redundant.

Regulation 2 also amends the Notice in schedule 4 of the 2013 Regulations to reflect changes made to section 35A of the Town and Country Planning (Scotland) Act 1997 by section 18 of the 2019 Act and The Town and Country Planning (Pre-Application Consultation) (Scotland) Amendment Regulations 2021<sup>3</sup> (SSI 2021/99). Section 35A introduced powers to specify exemptions from requirements for pre-application consultation. Such exemptions were specified in SSI 2021/99, which is due to come into force on 1 October 2022, having been postponed due to Coronavirus.

Note 4 in the Notice specified in Schedule 4 of the DMR, on newspaper notices required for certain planning applications, triggers the inclusion of certain wording where pre-application consultation is required. This change to Note 4 accommodates the fact that a PAC exemptions could apply in future under section 35A of the 1997 Act.

### **The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015<sup>4</sup>**

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the 2015 Regulations) implement land-use planning requirements from the European Directive 2012/18/EU (Seveso III Directive). The aim is to prevent major accidents and mitigate the consequences of major accidents through land-use planning, making decisions about the location of major hazard installations and about the development of land around them.

Hazardous substances consent is an important mechanism in the control of major accident hazards. It is designed to regulate the presence of hazardous substances so that they cannot be kept or used at or above specified quantities until the responsible authorities have had the opportunity to assess the risk of an accident and potential consequences for people in the surrounding area and for the environment. The regulations set out the hazardous substances that, when present at or above specified controlled quantities, will require consent for those substances to be held at a site ('establishment'). Sites which wish to hold certain quantities of hazardous substances at or above defined limits must obtain hazardous substance consent from the relevant authority.

Regulation 3 amends the wording in Note 5 to Parts 1 and 2 of Schedule 1 of the 2015 Regulations to clarify the "addition rule". The "addition rule" is the formula

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<sup>3</sup> <https://www.legislation.gov.uk/ssi/2021/99/contents>

<sup>4</sup> <https://www.legislation.gov.uk/ssi/2015/181/contents/made>

expressed to calculate whether hazardous substances consent is required where substances would be present below the controlled quantity, as specified in legislation. The amendment ensures that where two or more hazardous substances are present together, but individually the amounts of those substances fall below the usual controlled quantities, that the rule must be applied. The rule identifies where such substances, albeit in low quantities, together introduce or increase the risk of a major accident hazard.

The rule applies in relation to each of three hazard groups (categorised in Part 1 of Schedule 1 of the 2015 regulations as health, physical and environmental hazards) to assess whether such substances require hazardous substances consent. Regulation 3 also amends Note 7 of Parts 1 and 2 of schedule 1 so that for each hazard group, the lowest controlled quantity for that group should be used.

In the interests of safety, and to provide clarity on when the addition rule must be applied in the presence of hazardous substances, the amendment at Regulation 3 is necessary to accurately reflect the intention of the Seveso Directive.

Regulation 4 makes transitional provision in relation to the above amendment. This allows an opportunity for any necessary consents to be obtained from the relevant authority within a 12 month period.

### **Consultation**

Insofar as these regulations introduce consequential amendments to the DMR relating to coming into force of provisions of the 2019 Act and related regulations, no specific consultation has been carried out.

Contact was made with operators, key agencies and local authorities to advise them of the amendment to clarify the wording of the addition rule in the 2015 Regulations.

### **Impact Assessments**

As these regulations introduce consequential amendments to the DMR relating to coming into force of provisions of the 2019 Act and related regulations, no impact assessments have been carried out in relation to this instrument.

Similarly no significant impact is foreseen for any operators who find they are non-compliant with the 2015 Regulations. There is a 12 month transitional period in order to obtain any necessary consents.

### **Financial Effects**

The Minister for Public Finance, Planning and Community Wealth confirms that no BRIA is necessary as these regulations:

- make consequential amendments to the DMR related to the bringing into force of specific provisions contained in the 2019 Act and related regulations;
- provide clarification on the addition rule formula for assessing whether hazardous substances require consent at an establishment. The regulations do not involve any change in policy.
- The instrument itself has no financial effects on the Scottish Government, local government or on business. Similarly as this amendment provides

clarification to the addition rule formula and not a policy change, no BRIA was required.

Scottish Government  
Directorate for Local Government and Communities

September 2022

**Annexe**

**Letter to the Minister for Public Finance, Planning and Community Wealth regarding subordinate legislation, 4 November 2022.**

Dear Tom,

**The Town and Country Planning (Miscellaneous Amendment) (Scotland) Regulations 2022**

The Local Government, Housing and Planning Committee has been designated lead committee for consideration of the above Scottish Statutory Instrument. The Delegated Powers and Law Reform Committee reported on the instrument yesterday<sup>1</sup> and determined that it did not need to draw the instrument to the Parliament's attention on any of the reporting grounds within its remit. However, the Parliament's Legal Services Team has brought to our attention a query regarding the Policy Note as set out below.

The Policy Note indicates that amendments to the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 are necessary to accurately reflect the intention of European Directive 2012/18/EU (the Seveso III Directive), which was implemented by the 2015 Regulations. The Policy Note explains that the instrument clarifies the application of the "addition rule", which sets out the circumstances in which hazardous substances consent is required where two or more hazardous substances are present but individually in levels below the usual controlled quantity. The amendment would ensure that the addition rule must be applied in such a scenario.

We note that the 2015 Regulations have been in place for seven years and the transition period for the UK withdrawing from the European Union ended on 31 December 2020. We would therefore be grateful if you could provide a summary of how and when the inconsistency with the EU Directive became apparent and of any impact this inconsistency may have had over the last seven years.

The Committee plans to consider this instrument on Tuesday 15 November so it would be helpful if we could receive your response by no later than Wednesday 9 November.

Yours sincerely,

Ariane Burgess, Convener,  
Local Government, Housing and Planning Committee

**Annexe**

**Letter from Mr Arthur, Minister for Public Finance, Planning and Community Wealth, in response to the Committee's letter dated 4 November.**

**The Town and Country Planning (Miscellaneous Amendment) (Scotland) Regulations 2022**

Thank you for your letter of 4 November 2022, in relation to the above Scottish Statutory Instrument (SSI).

This anomaly came to light in 2015 following the coming into force of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 ("the 2015 Regulations"). My officials have since been in dialogue with the UK Government, the devolved administrations and the Health and safety Executive (HSE) as to the need for – and potential effect of – an amendment to the 2015 regulations to clarify this technical matter.

As to potential impact, the Committee may wish to note that the Directive requires management of on-site risks at establishments with hazardous substances. This is provided by the Control of Major Accident Hazards Regulations 2015 (The COMAH Regulations). Both the COMAH Regulations and the 2015 Regulations copy out from the Directive the tables and notes defining substances and their controlled quantities. The wording in the Directive's notes as regards the addition rule works for the COMAH Regulations – i.e. at establishments where no substance is present at or above its controlled quantity, then where other substances present share risk characteristics with each other (are in the same hazard group), the addition rule applies to those other substances. This, where appropriate, would trigger the requirements of the COMAH Regulations to an establishment and its substances despite no substance being present at or above its controlled quantity.

From discussions with HSE, despite the wording in the notes in the Directive and the COMAH Regulations, hazardous substances consent controls should apply to substances to which the addition rule would apply even where an establishment had another substance(s) at or above their controlled quantity which would need such consent. This is to allow specific consideration of any off-site risks in the event of an accident involving those substances to which the addition rule applies. It is, therefore, prudent to implement the SSI to ensure there is clarity and certainty within the 2015 Regulations about how quantities of hazardous substances are calculated and controlled.

The fact that such establishments, and the substances present, would be in the COMAH regime for on-site risk management, and that such sites would require at least one hazardous substances consent under the 2015 Regulations, would in practice have reduced any risk where the addition rule in the 2015 Regulations was not being applied.

The Scottish Government is not aware that this inconsistency has had any practical impact since 2015. The Committee may also wish to note that no substantive comments were raised as a result of targeted engagement with key stakeholders carried out earlier this year to inform them of the forthcoming change

I trust this response is helpful.

**TOM ARTHUR**