

# Hazardous Substances Consent

## 1.0 Relevant legislation

1.1 The relevant legislation regarding Hazardous Substances Consent (HSC) has been identified as follows:

- The Planning (Hazardous Substances) Regulations 2015
- The Town and Country Planning (Development Management Procedure) (England) Order 2015 (Regulation 18 and Schedule 4)
- The Town and Country Planning (Local Planning) (England) Regulations 2012 (Regulation 10(1)(a) and (b))

## 2.0 National Planning Policy Framework (NPPF) (July 2021)

2.1 The relevant paragraphs regarding HSC in the NPPF have been identified as follows:

- Paragraph 2 - EU obligations and statutory requirements
- Paragraph 45 - consulting appropriate bodies when planning, or determining applications, for development around major hazards
- Paragraph 174 (e) - preventing unacceptable risk to development

2.2 The NPPF defines what is meant by major hazards as '*sites and infrastructure, including licensed explosive sites and nuclear installations, around which Health and Safety Executive (and Office for Nuclear Regulation) consultation distances to mitigate the consequences to public safety of major accidents may apply.*'

## 3.0 Warwick District Local Plan 2011-2029

3.1 The relevant policies from Warwick District Council Plan are:

NE5 Protection of Natural Resources:

*'Development proposals will be permitted provided that they ensure that the district's natural resources remain safe, protected, and prudently used. Development proposals will be expected to demonstrate that they;*

*a) do not give rise to soil contamination or air, noise, radiation, light or water pollution where the level of discharge, emissions or contamination could cause harm to sensitive receptors.*

## 4.0 Criteria for hazardous substance consent

4.1 HSC is required for the presence of hazardous substances on, over, or under land unless the quantities of substances are below the controlled quantities listed in Schedule 1 to the Planning (Hazardous Substances) Regulations 2015.

- 4.2 There are additional rules for the aggregation of more than one hazardous substance that may be below the controlled quantities individually but within the same hazard category. The 'Addition Rule' is used in this situation.
- 4.3 The calculation method for this is specified in the Planning (Hazardous Substances) Regulations 2015.
- 4.4 HSC is required for hazardous substances present at any establishment that falls within the scope of the Seveso III Directive. Establishment means '*any installation or collection of installations which are within an area of land under the control of the same person or body*'.
- 5.0 Exemptions**
- 5.1 The exemptions to these requirements are set out in Schedule 2 to the Planning (Hazardous Substances) Regulations 2015.
- 6.0 Roles and responsibility**
- 6.1 Warwick District Council is the hazardous substances authority (as the local planning authority) and determines hazardous substances consent applications as well as enforces the controls.
- 6.2 Where the hazardous substances authority is itself applying for hazardous substances consent it must apply to the Secretary of State.
- 6.3 The COMAH competent authority (Health and Safety Executive (HSE)/Environment Agency (EA)) advises Warwick District Council on the nature and severity of the risk to persons in the vicinity and the local environment arising from the presence of a hazardous substance.
- 6.4 The COMAH competent authority is a statutory consultee and must be consulted by Warwick District Council before hazardous substances consents are granted.
- 6.5 The COMAH competent authority for most cases is the Health and Safety Executive and Environment Agency, acting jointly.
- 6.6 For nuclear sites, the COMAH competent authority is the Office of Nuclear Regulation and the Environment Agency, acting jointly.
- 7.0 Other regimes**
- 7.1 Where there is development associated with the storage or use of hazardous substances, a separate planning permission may also be necessary.
- 7.2 In some cases, an environmental permit may also be required.
- 7.3 To avoid confusion, detailed control over the manner in which a hazardous substance is to be kept or used is best addressed by hazardous substances consent conditions.

## **8.0 Fees**

- 8.1 For applications where no one substance exceeds twice the controlled quantity, currently the fee is £250.
- 8.2 For proposals involving the presence of a substance in excess of twice the controlled quantity, currently the fee is £400.
- 8.3 Where an application is for the removal of conditions attached to an existing consent or for the continuation of a consent upon partial change in ownership of the land, the fee is £200.
- 8.4 If an application crosses local authority boundaries, one fee is paid to the authority whose area is the largest part of the site.

## **9.0 Timescales**

- 9.1 Warwick District Council should provide applicants with a decision within 8 weeks from receipt of a valid application. Alternatively, a decision should be given within any extended period agreed in writing between the applicant and Warwick District Council.

## **10.0 New development close to existing HSC sites**

- 10.1 Warwick District Council must consult the COMAH competent authority and other expert bodies on development proposals where the presence of hazardous sites is relevant.
- 10.2 When the Health and Safety Executive (HSE) are consulted on a new application, it creates a three-zone map and will issue advice to Warwick District Council for or against the granting of the HSC. If granted, the three-zone map will be issued to Warwick District Council who must then consult the HSE on any future planning applications within the consultation distances.

## **11.0 Abandoned consent**

- 11.1 If the substances with consent have not been present for 5 years, Warwick District Council may revoke the consent without needing to pay compensation.

## **12.0 Change of person in control**

- 12.1 If there is a change to the person in control of part of the land, the consent is automatically revoked unless an application for continuation has been made.

## **13.0 Revocation or modification**

- 13.1 Warwick District Council can revoke or modify a consent. This requires confirmation by the Secretary of State, and the council would be liable to pay compensation. Applications for revocation that are subject to confirmation by the Secretary of State should be sent to the Planning Casework Unit.
- 13.2 There are specific circumstances where a consent can be revoked. These are set out in Section 14 of the Planning (Hazardous Substances) Act 1990.

13.3 Where a consent has not been relied on for five years, or the use of the land has changed materially since the consent was granted, it may be revoked without compensation being payable.

#### **14.0 Appeals**

14.1 An appeal can be made to the Secretary of State if Warwick District Council:

- refuses to grant consent;
- refuses an application for a continuation of consent upon change in ownership of part of the land;
- refuses to grant any consent, agreement or approval required by a condition imposed on a consent;
- refuses an application to vary or remove conditions attached to a previous grant of consent;
- grants consent but imposes conditions which are unacceptable to the applicant; or
- fails to reach a decision within the statutory time limit of 8 weeks, or any longer period agreed with the applicant.

14.2 Hazardous substances consent appeals may be made at any time within six months of the decision or, if no decision has been made, within six months from when a decision should have been given.

#### **15.0 Surrendering HSC**

15.1 If an operator wants to give up their consent or reduce the maximum quantity of hazardous substances for which it has consent, it should discuss this with the hazardous substances authority.

15.2 There is no procedure for giving up consent set out in legislation; however, alternative arrangements may be made (e.g. the hazardous substances authority may revoke the consent and make a separate agreement with the operator to waive compensation).

#### **16.0 Enforcement**

16.1 Enforcement of hazardous substances controls is the responsibility of Warwick District Council.

16.2 Warwick District Council must liaise with the COMAH competent authority where contraventions give rise to health and safety or environmental concerns. The COMAH competent authority may consider whether action is also appropriate under Control of Major Accident Hazards Regulations 2015 or other relevant health, safety, or environmental legislation.

#### **17.0 Contacts**

Health and Safety Executive (COMAH competent authority)

Hazardous Substance Consents  
Health and Safety Executive

CEMHD5  
1.2 Redgrave Court  
Merton Road  
Bootle  
Merseyside  
L20 7HS

Email: HazSubCon.CEMHD5@hse.gov.uk

## **18.0 Minor changes/variations to existing HSC**

For changes to an existing consent, an application should be made to the hazardous substances authority to vary or revoke any conditions on a previous consent.

A change in location is not a minor change.

Consent is not required for a minor change where:

- the hazardous substances authority receives written notice from the COMAH competent authority (copied to the person in control of the relevant land) confirming:
- details of the minor change, including details about how substances are to be kept and used;
- that the minor change will not result in a change to consultation zones; and
- that the minor change will not result in a change to the status of the establishment under the Seveso III directive; and
- that any hazardous substances that are held without hazardous substances consent in reliance on this exemption are kept and used in accordance with the details set out in the notice from the COMAH competent authority.

In considering applications the hazardous substances authority can only consider the conditions; it cannot overturn the original decision by refusing consent outright. If the hazardous substances authority decides that the conditions should be varied or removed, it will grant a new consent. If it decides that the conditions should not be changed, the application will be refused, but the original consent will still stand. The same publicity procedures will apply as for applications for a new consent.

### **Step 1 Public notification/advertisement by applicant**

1.0 Before submitting a HSC application, the applicant must inform the public during the 21 day period immediately preceding the submission of an application. Three steps are needed:

- A notice of the application should be published in a local newspaper or by electronic media where it would bring the notice to the attention to the public better than a local newspaper notice would. This must be published within the 21 days before the date on which the application is made.
- A copy of the notice should be published at the application site. This should be easily legible for people without needing to go onto the land. The notice should be displayed for at least 7 days of the 21 day period.
- When the application is made, the applicant will need to certify that this publicity has happened by providing a copy of the notice (verifying that it has been published). A certificate (Form 1 in regulations) should confirm that the site notice was displayed as

required. If the site notice was not displayed through no fault of the applicant, an explanation should be given

- 1.1 The required content of this public notice is set out in Regulation 6 of the Planning (Hazardous Substances) Regulations 2015.
- 1.2 Applicants do not need to own the application site in order to make an application for consent. However, owners should be given the opportunity to comment on the application. Every application must therefore also be accompanied by a signed certificate relating to ownership.
- 1.3 Hazardous substances authorities should not consider applications for hazardous substances consent if they are not accompanied by evidence of the public notification.

#### Step 2 Application submitted to Warwick District Council

- 2.0 Applicants must apply to Warwick District Council for hazardous substances consent.
- 2.1 The application must provide all the relevant information set out in Regulation 5 of the Planning (Hazardous Substances) Regulations 2015.

A template application form has been created by the Health and Safety Executive and is available at: <https://www.hse.gov.uk/landuseplanning/application-forms-hazardous-consent.htm>

#### **ACTIONS REQUIRED**

1. Application form to be adapted and branded for Warwick District Council
2. Process for submitting and receiving applications via the Warwick District Council website needed
3. Application fees need to be published and payment solutions implemented
4. Validation criteria list to be made to reflect requirements of Regulation 5 of the 2015 Regulations.
5. Warwick District Council planning code system to be created e.g. W/HSC/22/0000 or W/22/0000/HSC

#### Step 3 Warwick District Council consults on application

- 3.0 Applications need to be made available to members of the public for inspection and making representations for at least 21 days after the application is received/validated.
- 3.1 Warwick District Council Planning department will send a copy of the application to the COMAH competent authority via the Health and Safety Executive, or in the case of nuclear installations, the Office for Nuclear Regulation. They in turn will forward it to the Environment Agency, the other party that makes up the COMAH competent authority.

- 3.2 The Health and Safety Executive, Environment Agency and Office for Nuclear Regulation will respond separately to consultations.
- 3.3 The Health and Safety Executive advises on risks to people.
- 3.4 The Environment Agency leads on risks to the environment.
- 3.5 For nuclear installations, the Office for Nuclear Regulation advises on risks to people and the Environment Agency leads on risks to the environment.
- 3.6 Other consultees as required by legislation:
- Fire and civil defence authorities,
  - Other relevant planning authorities and public utilities
  - Natural England should be consulted where it appears that an area of particular natural sensitivity or interest may be affected. These include Special Areas of Conservation and Special Protection Areas, Ramsar sites, Sites of Special Scientific Interest (SSSI) or priority habitats.
- 3.7 Warwick District Council must give consultees at least 28 days to comment.
- 3.8 The details of the application will need to be placed on a register of HSC applications which shall be available to anyone who wants to see it.

#### **ACTIONS REQUIRED**

1. Mechanism needed to publish HSC application on Warwick District Council website (confidential information redacted as necessary)
2. Mechanism to receive public and statutory consultee comments on the proposed application, and to be published on the Warwick District Council website.
3. Mechanism needed to notify consultees of an application
4. A public register of HSC applications to be created and made available for inspection
5. Optional – Warwick District Council to place additional notice at/near application site to increase public awareness and ability to comment.

#### **Step 4 Review consultation comments**

- 4.1 Warwick District Council will weigh up all the comments received, including those from the COMAH authority. It will need to take account of local needs and conditions, the local plan, and any other material considerations.
- 4.2 Any advice from the COMAH competent authority that hazardous substances consent should be refused should not be overridden without the most careful consideration.
- 4.3 Where Warwick District Council is minded to grant consent against the COMAH authority's advice, it should notify the COMAH authority and allow an additional 21 days for the competent authority to give further consideration.

- 4.4 During that period the COMAH competent authority will consider whether to request the Secretary of State for Communities and Local Government to call-in the application for determination.

Step 5 Determining the application

- 5.0 Warwick District Council may grant consent, either with or without conditions, or may refuse it.
- 5.1 If it refuses consent or grants it subject to conditions, it should provide full reasons for the decision. This will help the applicant to decide whether or not to contest the decision.
- 5.2 The requirements for making a decision are set out in Section 9 of the Planning (Hazardous Substances) Act 1990 and Regulation 11 of the Planning (Hazardous Substances) Regulations 2015.
- 5.3 Warwick District Council can impose conditions, including how and where substances are kept and the times substances may be present, or requiring permanent removal within a certain time.
- 5.4 Conditions on how a substance is to be kept or used may only be imposed if the Health and Safety Executive (or in the case of nuclear sites, the Office of Nuclear Regulation) has advised that such conditions should be imposed.
- 5.5 Where the COMAH competent authority is considering imposing a condition that restricts the location of a substance within a site, it should try to avoid imposing undue restrictions on relatively small amounts of that substance being located elsewhere in the establishment.
- 5.6 The Secretary of State has the power to call-in an application for his own determination. This will be very much the exception, for example where an application raises issues of more than local importance. Where an application is called-in, the hazardous substances authority must inform the applicant.