

The Planning (Hazardous Substances) Regulations 1992

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STATUTORY INSTRUMENTS

1992 No. 656

TOWN AND COUNTRY PLANNING, ENGLAND AND WALES

The Planning (Hazardous Substances) Regulations 1992

Made 11th March 1992

Laid before Parliament 11th March 1992

Coming into force 1st June 1992

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The Secretary of State for the Environment, as respects England, and the Secretary of State for Wales, as respects Wales, in the exercise of the powers conferred on them by sections 4, 5(1), 7, 8, 11(2),(7), 17(2), 21(2),(3), 24(4), 25, 26A, 28(1), 30, 39(2) and 40(1) of the Planning (Hazardous Substances) Act 1990^[1], and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) Regulations 1992 and shall come into force on 1st June 1992.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
"the Act" means the Planning (Hazardous Substances) Act 1990;

"buried or mounded vessel" includes a vessel which is only partially buried or mounded;

"moveable container" means any container designed or adapted to contain hazardous substances other than a vessel;

"vessel" means any container designed or adapted to contain hazardous substances which is affixed to the land, and includes a container which forms part of plant or machinery which is affixed to the land but does not include a pipeline.

(2) In these Regulations—

(a) a reference to a section is a reference to that section of the Act, unless there is a contrary indication;

(b) a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 2.

(3) Part 4, Form 8 and Schedule 3 (deemed consents) shall be construed in accordance with regulation 16.

(4) Schedule 1 (hazardous substances and controlled quantities) shall be construed in accordance with Part D of that Schedule.

(5) References to sections of the principal Act^[2] mentioned in regulations 18, 20, 21 and 22 (enforcement) shall, in those sections and these Regulations, be construed as references to those sections as modified by these Regulations in relation to hazardous substances control.

PART 2

HAZARDOUS SUBSTANCES, CONTROLLED QUANTITIES AND EXEMPTIONS

Hazardous substances and controlled quantities

3.—(1) Subject to paragraph (2), the substances specified in column 1 of Schedule 1 are hazardous substances for the purposes of the Act.

(2) A substance which is controlled waste, as defined by section 75(4) of the Environmental Protection Act 1990^[3], or radioactive waste, as defined in section 18(4) of the Radioactive Substances Act 1960^[4], is not a hazardous substance for the purposes of the Act.

(3) The quantity specified in column 2 of Schedule 1 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the Act.

Exemptions

4.—(1) Hazardous substances consent is not required for the temporary presence of a hazardous substance during the period between it being unloaded from one means of transport

and loaded onto another while it is being transported from one place to another.

(2) Hazardous substances consent is not required for the presence of a hazardous substance contained in an aerosol dispenser if—

(a) the capacity of the dispenser does not exceed 1000 millilitres; or

(b) the dispenser—

(i) does not contain a substance or mixture of substances which is flammable within the meaning of paragraph 2 of Part III of Schedule 1 to the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984^[5]; and

(ii) does not contain a substance numbered 7, 8, 18, 21, 22, 24, 25, 27, 29, 30, 33, 34 or 65 in column 1 of Schedule 1 or, if it does, the aggregate quantity of that substance contained in aerosol dispensers with a capacity in excess of 1000 millilitres on the relevant site is less than the controlled quantity for that substance.

(3) Hazardous substances consent is not required for the presence of a hazardous substance contained in an exempt pipe-line or a service pipe.

(4) Hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency until the expiry of the period of 14 days beginning with the day on which it was so unloaded; and for the purpose of this paragraph a substance shall be treated as having been unloaded from a craft in an emergency if—

(a) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985^[6] (directions by Secretary of State to harbour master) applied; or

(b) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2 of the Dangerous Substances in Harbour Areas Regulations 1987^[7], without requiring notification under paragraph (1) of regulation 6 of those regulations by virtue of an exemption under paragraph (5) of that regulation.

(5) Where hazardous substances consent is deemed to have been granted under section 11 for the presence of substance number 40 in column 1 of Schedule 1, consent is not required for the presence of an additional quantity of that substance not exceeding one third of the established quantity provided that all the conditions set out in Schedule 3 and applying to that substance under the deemed consent are also complied with in relation to the additional quantity present.

(6) The presence of a substance to which paragraphs (1), (2), (3) and (4) apply shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the Act or these Regulations.

(7) In this regulation—

(a) "exempt pipe-line" means a pipe-line used to convey a hazardous substance to or from a site, but does not include—

(i) that part of the pipe-line on, over, or under a site to which it has an outlet or inlet;

(ii) a service pipe;

(b) "service pipe" means a pipe-line used by a public gas supplier (within the meaning of section 7(1) of the Gas Act 1986^[8]) to supply gas to an individual consumer from a main of that supplier.

PART 3

EXPRESS CONSENT

Applications for hazardous substances consent

5.—(1) Subject to paragraph (2) and regulation 26, an application for hazardous substances consent shall—

- (a) be made to the hazardous substances authority on Form 1;
- (b) include the information specified in the form, a site map, and a substance location plan;
- (c) be accompanied by 3 copies of the form, the map and plan submitted with it and the notices and certificates required by regulations 6 and 7.

(2) Subject to regulation 26, an application to which section 13 applies (application for hazardous substances consent without a condition subject to which a previous consent was granted) shall—

- (a) be made to the hazardous substances authority on Form 2;
- (b) include the particulars specified in the form, a change of location plan, if required by paragraph (6), and particulars of the relevant consent;
- (c) be accompanied by 3 copies of the form, the relevant consent, any plan submitted with it and the notices and certificates required by regulations 6 and 7.

(3) An application under section 17 (application for the continuation of consent following a change of control) shall—

- (a) be made to the hazardous substances authority on Form 2;
- (b) include the particulars specified in the form, a change of control plan, and particulars of the relevant consent;
- (c) be accompanied by 3 copies of the form, the relevant consent, the change of control plan and the notices and certificates required by regulations 6 and 7.

(4) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies—

- (a) any area of the site 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;
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which section 13 applies which relates to a condition restricting the location of a hazardous substance, and shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

(7) The change of control plan required by paragraph (3) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control.

(8) The relevant consent referred to in paragraphs (2)(b) and (3)(b) is the existing hazardous substances consent which applies to the hazardous substance to which the

application applies; and the particulars of the relevant consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under the Act, a copy of the relevant claim, in the case of a consent deemed to be granted under section 11 or a copy of the relevant direction, in the case of a consent deemed to be granted under section 12.

(9) Where an application referred to in paragraphs (2) or (3) relates to more than one relevant consent, particulars of each such consent shall be included in the application.

(10) Regulations 6 to 13 shall apply to applications made under section 17 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 shall, during the 21 day period immediately preceding the application—

(a) publish in a local newspaper circulating in the locality in which the land to which the application relates is situated a notice of the application on Form 3; and

(b) subject to paragraphs (3) and (4), post that notice on the land for not less than 7 days during that 21 day period, sited and displayed in such a way as to be easily legible without entering onto the land.

(2) The notice required by paragraph (1) shall invite representations on the application to be made to the hazardous substances authority within 21 days of the publication or posting of the notice, as the case may be.

(3) An applicant shall not be required to comply with paragraph (1)(b) if—

(a) he has no right of access or other rights in respect of the land which would enable him to post the notice as required; and

(b) he has taken all reasonable steps to acquire such rights but has failed.

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

(5) An application for hazardous substances consent shall 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 a local newspaper in accordance with paragraph (1)(a) and specifying the name of the newspaper and the date of its publication; and

(b) the appropriate certificate on Form 4, signed by or on behalf of the applicant.

Notification of applications to owners

7.—(1) An application for hazardous substances consent shall not be entertained by the hazardous substances authority unless it is accompanied by which ever of certificates A to D set out in Form 5 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 5 shall, in the case of an application for hazardous substances consent, be a notice given on Form 6 and shall invite any owner on whom the notice is served to make representations on the application to the hazardous substances authority within 21 days of service of the notice.

Inspection of applications

8. The applicant shall make a copy of the application available for inspection at a place within the locality of the application site during the period or periods allowed for making representations pursuant to regulation 6(2) and 7(2).

Receipt of applications by hazardous substances authority

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

(2) Where, in the opinion of the hazardous substances authority, the application is invalid, the authority shall, 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, an application for hazardous substances consent shall be taken to have been received when each of the following events has occurred—

- (a) the application form has been served on the hazardous substances authority;
- (b) any certificate or documents required by regulations 6 and 7 have been served on that authority; and
- (c) any fee required to be paid in respect of the application has been paid to that authority and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment.

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 shall, before determining an application for hazardous substances consent, consult—

- (a) the Health and Safety Executive;
- (b) the district or London borough council or county council concerned, where that council is not also the hazardous substances authority;
- (c) the parish or community council concerned;
- (d) the fire and civil defence authority concerned, where that authority is not also the hazardous substances authority;
- (e) the National Rivers Authority;
- (f) the public gas supplier concerned;
- (g) the electricity board concerned;
- (h) where the land to which the application relates is within 2 kilometres of a royal palace, park or residence, the Secretary of State;
- (i) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (j) where the land to which the application relates is situated within 2000 metres of—
 - (i) an adjacent county, district or London borough, the council for that county, district or London borough;
 - (ii) the area of an adjacent fire authority and civil defence authority, that authority;
 - (iii) an adjacent new town, the development corporation for the new town;
- (k) 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;
- (l) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981^[9] applies (sites of special scientific interest), in England, the Nature Conservancy Council or, in Wales, the Countryside Council for Wales;

(m) where the application relates to land in an area of coal working notified to the hazardous substances authority by the British Coal Corporation, that Corporation;

(n) 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) Where, under this regulation, a hazardous substances authority is required to consult in respect of an application, they shall, unless a copy of the application has been served on the consultee by the applicant, serve the consultee with a copy of the application within 7 days of its receipt by the authority.

(3) In paragraph (1)(n), "controlled waste" has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990 and "waste disposal authority" shall be construed in accordance with section 30(2) of that Act.

Determination of applications for hazardous substances consent

11.—(1) A hazardous substances authority shall not determine an application for hazardous substances consent before the expiry of—

(a) the period or periods allowed for making representations pursuant to regulation 6(2) and 7(2); and

(b) where the authority is required to consult under regulation 10, a period of 28 days beginning with the date on which the consultee is served with a copy of the application, or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served.

(2) Subject to paragraph (1), a hazardous substances authority shall, within the period specified in paragraph (3), give the applicant written notice of their decision or notice that the application has been referred to the Secretary of State for determination by him.

(3) The period specified for the purposes of paragraph (2) is—

(a) a period of 8 weeks from the date when the application is received by the hazardous substances authority;

(b) except where the applicant has already given notice of appeal to the Secretary of State, such extended period as may be agreed in writing by the applicant and the hazardous substances authority; or

(c) where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured, the appropriate period specified in (a) or (b) above calculated without regard to any time between the date when the authority sent the applicant written notice of the dishonouring of the cheque and the date when the authority are satisfied that they have received the full amount of the fee.

(4) When a hazardous substances authority give notice of a decision on an application the notice shall, 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;

(b) include a statement to the effect that if the applicant is aggrieved by the decision he may appeal to the Secretary of State under section 21 within 6 months of the date of the notice of the decision, or such longer period as the Secretary of State may at any time allow.

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

- (a) the Health and Safety Executive;
- (b) the district or London borough council or county council, where that council is not the hazardous substances authority concerned;
- (c) any other consultees who have made representations to them on the application; and
- (d) any owners who have made representations to them on the application.

Notice of reference of applications to the Secretary of State

12. On referring any application to the Secretary of State pursuant to a direction under section 20, a hazardous substance authority shall serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Secretary of State;
- (b) setting out the reasons given by the Secretary of State for issuing the direction; and
- (c) containing a statement that the Secretary of State will, if the applicant so desires, give the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

Appeals

13.—(1) An appeal to the Secretary of State under section 21 shall be made within 6 months of—

- (a) the date of the notice of the decision giving rise to the appeal; or
 - (b) in the case of an appeal under section 21(2), the expiry of the period specified in regulation 11(3),
- or within such longer period as the Secretary of State may, at any time, allow.

(2) An appeal under section 21 shall—

- (a) be made to the Secretary of State on a form obtained from him;
- (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 shall not be entertained by the Secretary of State unless it is accompanied by which ever of certificates A to D is appropriate set out in Form 5, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C shall, in the case of an appeal under section 21, be a notice given on Form 7.

(6) The appellant shall 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 Secretary of State.

PART 4

DEEMED CONSENT

Claim for deemed consent

14.—(1) A claim for deemed consent under section 11 shall—

- (a) be made to the hazardous substances authority on Form 8;
- (b) include the information specified by the form, a site map, and, where applicable, a moveable container storage area plan and a vessel location plan for each hazardous substance included in the claim;
- (c) be accompanied by 3 copies of the form and the map and any plan submitted with it.

(2) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the claim relates and shows National Grid lines and reference numbers.

(3) The moveable container storage area plan required by paragraph (1)(b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where the hazardous substance has been stored in moveable containers at any time during the establishment period.

(4) The vessel location plan required by paragraph (1)(b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where the hazardous substance has been present in a vessel at any time during the establishment period; provided that—

(a) no point on the boundary of the area so identified shall be more than 75 metres away from—

(i) a building which is or was within the area and which at any time during the establishment period contained a vessel in which the substance was present;

(ii) plant and machinery (other than pipe work) which is or was affixed to land within the area and which, at any time during the establishment period whilst it was so affixed, was used for an industrial process involving the substance; or

(iii) a vessel which is or was located outside a building and within the area and in which, at any time during the establishment period whilst it was so located, the substance was present;

(b) no area identified in accordance with this paragraph shall overlap with any other area so identified in respect of the same substance.

Conditions on deemed consent

15. The conditions set out in Schedule 3 are the prescribed conditions for the purposes of section 11(7)(b).

Interpretation of deemed consent provisions

16.—(1) For the purpose of paragraph (3) of regulation 14 and the condition set out in paragraph 7(1) of Schedule 3, no account shall be taken of the storage of a hazardous substance in moveable containers in an area, if the quantity of the substance so stored in that area does not exceed 10% of the substance's controlled quantity.

(2) For the purpose of the 75 metre limit in paragraph (4)(a) of regulation 14, where a petroleum — spirit licence under the Petroleum (Consolidation) Act 1928^[10] applying to the site was in force at any time during the establishment period, the reference to a vessel in which the hazardous substance was present shall, in relation to hazardous substance number 71 in column 1 of Schedule 1, include any vessel identified in the licence.

(3) For the purpose of paragraph (4) of regulation 14 and the conditions set out in paragraphs 1 to 6 of Schedule 3, and for the purpose of completing Table C in Form 8, no

account shall be taken of the presence in a vessel of a hazardous substance if the quantity present in the vessel does not exceed 10% of the substance's controlled quantity.

(4) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, and for the purpose of completing Table C in Form 8, a hazardous substance shall not be treated as being present in a vessel at other than ambient temperature by virtue only of—

(a) the heating of the substance to maintain its fluidity during seasonal variations in temperature; or

(b) any cooling effect resulting from the vaporisation of the substance during the withdrawal of vapour from the vessel; or

(c) the presence of the substance at above or below ambient temperature on entry into the vessel, if the temperature of the substance is allowed to move to ambient temperature upon entry.

(5) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, and for the purpose of completing Table C in Form 8, a hazardous substance shall not be treated as being present at above atmospheric pressure unless the pressure at which it is present exceeds 1.5 bar absolute.

(6) For the purpose of the conditions set out in paragraphs 1 to 5 of Schedule 3, no account shall be taken of an increase in pressure during the operation of a pressure relief system.

(7) In Schedule 3 and Table C in Form 8 "vessel area" means an area identified in a vessel location plan in accordance with paragraph (4) of regulation 14.

(8) In Schedule 3, references to a column of Table C refer to the relevant column of Table C of the form on which the claim for deemed consent is made which applies to the relevant hazardous substance and vessel area.

PART 5

ENFORCEMENT

Hazardous substances contravention notices

17.—(1) A hazardous substances contravention notice shall identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed pursuant to section 24(4)(c) (other persons to be given notice) are all persons having an interest in the land which in the opinion of the authority issuing the notice is materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 24(4) shall be accompanied by a statement setting out—

(a) the hazardous substances authority's reasons for issuing the notice;

(b) the right of appeal to the Secretary of State against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought under section 174 of the principal Act.

Appeals against hazardous substances contravention notices

18.—(1) Sections 174, 175(3), (6), 176 and 177^[11] of the principal Act shall apply to appeals against hazardous substances contravention notices, subject to the modifications set

out in Part 1 of Schedule 4.

(2) The provisions of those sections, as modified under paragraph (1), are set out in Part 5 of Schedule 4.

Appeals: supplementary

19.—(1) A person who appeals against a hazardous substances contravention notice shall, at the same time as notice of the appeal is given or sent to the Secretary of State under section 174(3) of the principal Act, serve on the hazardous substances authority a copy of the notice of appeal and accompanying material required by section 174(4) of that Act.

(2) The hazardous substances authority shall, within 28 days of being served with the notice of appeal, serve on the Secretary of State and on the appellant a statement—

- (a) setting out their submissions in relation to each ground of appeal; and
- (b) indicating whether they would be prepared to grant hazardous substances consent for the presence on, over or under the land of any quantity of the hazardous substance to which the hazardous substances contravention notice relates and, if so, particulars of the conditions, if any, which they would wish to impose on such consent.

(3) The hazardous substances authority shall, within that 28 day period, give notice of the appeal to occupiers of properties in the locality of the site to which the hazardous substances contravention notice relates.

Effect of hazardous substances contravention notices, etc

20.—(1) Sections 178 to 181^[12] of the principal Act shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 4.

(2) The provisions of those sections, as modified under paragraph (1), are set out in Part 5 of Schedule 4.

Enforcement register

21.—(1) Section 188^[13] of the principal Act (register of enforcement and stop notices) shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 3 of Schedule 4.

(2) The provisions of that section, as modified under paragraph (1), are set out in Part 5 of Schedule 4.

Validity

22.—(1) Sections 285 and 289^[14] of the principal Act shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 4 of Schedule 4.

(2) Section 25(2) is subject to any order under section 289(4A) of the principal Act, as applied by paragraph (1).

(3) The provisions of sections 285 and 289 of the principal Act, as modified under paragraph (1), are set out in Part 5 of Schedule 4.

PART 6

CONSENTS REGISTER

Consents register

23.—(1) The register required by section 28(1) shall be kept in 6 parts—

- (a) Part 1 shall contain a copy of every application for hazardous substances consent made to the hazardous substances authority and not finally determined;
- (b) Part 2 shall contain, in respect of every application for hazardous substance consent made to the hazardous substances authority—
 - (i) a copy of the application;
 - (ii) particulars of any direction given under section 20;
 - (iii) the decision (if any) of the authority, including details of any conditions subject to which consent was granted and the date of the decision;
 - (iv) the reference number, date and effect of any decision of the Secretary of State, whether on a reference under section 20 or on an appeal under section 21;
- (c) Part 3 shall contain a copy of every order revoking or modifying hazardous substances consent made by the hazardous substance authority and the date and effect of any confirmation by the Secretary of State in accordance with section 15.
- (d) Part 4 shall contain, in respect of every hazardous substances consent deemed to be granted under section 11(3), a copy of the relevant claim form;
- (e) Part 5 shall contain a copy of every hazardous substance consent deemed to be granted by virtue of a direction given by a Government Department under section 12;
- (f) Part 6 shall contain a copy of any direction under section 27 sent to the authority by the Secretary of State.

(2) Where the Secretary of State grants hazardous substances consent under section 177 of the principal Act on the determination of an appeal against a hazardous substances contravention notice, the hazardous substances authority for the land covered by the consent shall enter the date and effect of that decision in Part 2 of the register.

(3) The register shall include an index to enable any person to trace an entry in the register.

(4) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(5) The register shall be kept at the principal office of the hazardous substances authority.

(6) For the purpose of paragraph (1)(a), an application shall not be treated as finally determined unless—

- (a) it has been decided by the hazardous substances authority (or the period specified in regulation 11(3) has expired without their giving a decision) and the period specified in regulation 13(1) has expired without any appeal having been made to the Secretary of State;
- (b) it has been referred to the Secretary of State under section 20 or an appeal has been made to the Secretary of State under section 21, the Secretary of State has issued his decision and the period of 6 weeks specified in section 22(1) has expired without any application having been made to the High Court under that section;
- (c) an application has been made to the High Court under section 22 and the matter has been determined, either by final dismissal of the application by a Court or by the quashing of the Secretary of State's decision and the issue of a fresh decision (without a further application under the said section 22 being duly made); or
- (d) it has been withdrawn by the applicant before being determined or an appeal has been withdrawn by the applicant before the Secretary of State has issued his decision.

PART 7

MISCELLANEOUS

Fees for applications

24.—(1) Subject to paragraph (3), a fee shall be payable to a hazardous substances authority on an application for hazardous substances consent as follows—

- (a) if section 13(1) applies (new consent without previous conditions), £200;
- (b) if section 13(1) does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400;
- (c) in all other cases, £250;

(2) Subject to paragraph (3), a fee shall be payable to a hazardous substances authority on an application for the continuation of hazardous substances consent under section 17(1) of £200.

(3) Where applications relating to the same site are made to two or more hazardous substances authorities, a fee shall be payable only to the authority in whose area the largest part of the site is situated and the amount payable shall be the amount that would have been payable if application had fallen to be made to one authority in relation to the whole site.

(4) Any fee due in respect of an application shall accompany the application when it is made to the hazardous substances authority.

(5) Any fee paid pursuant to this regulation shall be refunded if the application is rejected as invalidly made.

Fees for deemed applications

25.—(1) Subject to paragraph (4), a fee shall be paid to the Secretary of State in every case where an application for hazardous substances consent is deemed to have been made by virtue of section 177(5) of the principal Act (in consequence of an appeal under section 174 of that Act against a hazardous substances contravention notice) by every person who has made a valid appeal against the relevant hazardous substances contravention notice and whose appeal has not been withdrawn before the date on which the Secretary of State issues a notice under paragraph (3).

(2) Subject to paragraph (6), the fee payable shall be the amount which would be payable under regulation 24 if the application were an application to which that regulation applied.

(3) The fee due shall be paid at such time as the Secretary of State may in the particular case specify by notice in writing to the appellant.

(4) This regulation shall not apply where the appellant had—
(a) before the date when the hazardous substances contravention notice was issued, applied to the hazardous substances authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid to the authority the fee payable in respect of that application; or
(b) before the date specified in the notice as the date on which it is to take effect, made an appeal to the Secretary of State against the refusal of the hazardous substances authority to grant such consent,
and at the date when the relevant notice was issued that application or, in the case of an appeal made before that date, that appeal, had not been determined.

(5) Any fee paid in respect of the deemed application shall be refunded to the appellant by the Secretary of State if—

(a) the Secretary of State declines jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the requirements of subsections (1) to (3) of section 174 of the principal Act;

(b) the Secretary of State dismisses the relevant appeal in exercise of his powers under section 176(3)(a) of the principal Act (on the grounds that the appellant has failed to comply with section 174(4) of that Act);

(c) the Secretary of State allows the relevant appeal and quashes the relevant hazardous substances contravention notice in exercise of his powers under section 176(3)(b) of the principal Act (on the grounds that the hazardous substances authority have failed to comply with regulation 19(2) of these Regulations);

(d) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which notice in writing of the withdrawal is received by the Secretary of State and—

(i) the date (or in the event of postponement, the latest date) appointed for the holding of an inquiry or hearing into that appeal; or

(ii) in the case of an appeal which is being dealt with by written representations, the date (or in the event of postponement, the latest date) appointed for the inspection of the site to which the notice relates;

(e) the hazardous substances authority withdraws the relevant hazardous substances contravention notice before it takes effect, or the Secretary of State decides that the notice is a nullity;

(f) the Secretary of State allows the relevant appeal on any of the grounds set out in section 174(2)(b) to (e) of the principal Act; or

(g) the Secretary of State allows the relevant appeal on the ground that the notice is invalid, or that it contains a defect, error or misdescription which cannot be corrected under section 176(1)(a) of the principal Act.

(6) Where a hazardous substances contravention notice is varied under section 176(1) of the principal Act otherwise than to take account of a grant of hazardous substances consent under section 177(1), and the fee calculated in accordance with paragraph (2) would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable shall be that lesser amount and any excess amount already paid shall be refunded.

(7) In determining a fee under paragraph (6) no account shall be taken of any change in fees which takes effect after the making of the deemed application.

Application of the Act to hazardous substances authorities

26.—(1) Any application by a hazardous substances authority for hazardous substances consent shall be made to the Secretary of State.

(2) Regulations 5 to 8 shall apply to the making of such applications as they apply to applications made to a hazardous substances authority.

(3) For the purpose of regulation 23, an application made to the Secretary of State by a hazardous substances authority shall be treated as an application made to the hazardous substances authority and referred to the Secretary of State under section 20.

(4) Section 9 (other than subsection (2)(e)) shall apply in relation to an application made to the Secretary of State by a hazardous substances authority as it applies in relation to an

application made to a hazardous substances authority.

(5) For the purpose of section 22, a decision of the Secretary of State on an application made to him by a hazardous substances authority shall be treated as a decision under section 20.

Michael Heseltine

Secretary of State for the Environment

11th March 1992

David Hunt

Secretary of State for Wales

11th March 1992

SCHEDULE 1

Regulation 3

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART A

TOXIC SUBSTANCES

Column 1

Hazardous substances

Column 2

Controlled quantities

(in tonnes, unless

otherwise stated)

1. Acetone Cyanohydrin (2-Cyanopropan-2-ol)	200
2. Acrolein (2-Propenal)	200
3. Acrylonitrile	20
4. Allyl alcohol (2-Propen-1-ol)	200
5. Allylamine	200
6. Ammonia (anhydrous or as solution containing more than 50% by weight of ammonia)	100
7. Arsenic trioxide, Arsenious (III) acid and salts	1
8. Arsine (Arsenic hydride)	1
9. Bromine	40
10. Carbon disulphide	20
11. Chlorine	10
12. Ethylene dibromide (1,2-Dibromoethane)	50
13. Ethyleneimine	50

14. Formaldehyde (>90%)	50
15. Hydrogen chloride (liquefied gas)	250
16. Hydrogen cyanide	20
17. Hydrogen fluoride	10
18. Hydrogen selenide	1
19. Hydrogen sulphide	50
20. Methyl bromide (Bromoethane)	200
21. Methyl isocyanate	150 kilograms
22. Nickel tetracarbonyl	1
23. Nitrogen oxides	50
24. Oxygen difluoride	1
25. Pentaborane	1
26. Phosgene	750 kilograms
27. Phosphine (Hydrogen phosphide)	1
28. Propyleneimine	50
29. Selenium hexafluoride	1
30. Stibine (Antimony hydride)	1
31. Sulphur dioxide	20
32. Sulphur trioxide (including the sulphur trioxide content in oleum)	15
33. Tellurium hexafluoride	1
34. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1 kilogram
35. Tetraethyl lead	50
36. Tetramethyl lead	50

PART B

HIGHLY REACTIVE SUBSTANCES AND EXPLOSIVE SUBSTANCES

Column 1

Hazardous substances

Column 2

Controlled quantities

(in tonnes, unless otherwise stated)

37. Acetylene (Ethyne) when a gas subject to a pressure not exceeding 620 millibars above that of the atmosphere, and not otherwise deemed to be an explosive by virtue of Order in Council No 30^[15] as amended by the Compressed Acetylene Order 1947^[16], or when contained in a homogeneous porous substance in cylinders in accordance with Order of Secretary of State No 9^[17], made under the Explosives Act 1875^[18] 50

38. Ammonium nitrate and mixtures containing ammonium nitrate where the nitrogen content derived from the ammonium nitrate exceeds 28% of the mixture by weight other than—

- (i) mixtures to which the Explosives Act 1875 applies;
- (ii) ammonium nitrate based products manufactured chemically for use as fertiliser which comply with Council Directive 80/876/EEC^[19]; or
- (iii) compound fertilisers.

500

39. Aqueous solutions containing more than 90 parts by weight of ammonium nitrate per 100 parts by weight of solution 500

40. Ammonium nitrate based products manufactured chemically for use as fertilisers which comply with Council Directive 80/876/EEC and compound fertilisers where the

nitrogen content derived from the ammonium nitrate exceeds 28% of the mixture by weight

	1000	
41. 2,2-Bis(tert-butylperoxy)butane (>70%)	5	
42. 1,1-Bis(tert-butylperoxy)cyclohexane (>80%)		5
43. tert-Butyl peroxyacetate (>70%)	5	
44. tert-Butyl peroxyisobutyrate (>80%)	5	
45. tert-Butyl peroxyisopropylcarbonate (>80%)		5
46. tert-Butyl peroxy maleate (>80%)	5	
47. tert-Butyl peroxy pivalate (>77%)	5	
48. Cellulose nitrate other than—		
(i) cellulose nitrate to which the Explosives Act 1875 applies; or		
(ii) solutions of cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and the solution contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution		
	50	
49. Dibenzyl peroxydicarbonate (>90%)	5	
50. Diethyl peroxydicarbonate (>30%)	5	
51. 2,2-Dihydroperoxypropane (>30%)	5	
52. Di-isobutyryl peroxide (>50%)	5	
53. Di-n-propyl peroxydicarbonate (>80%)	5	
54. Di-sec-butyl peroxydicarbonate (>80%)	5	
55. Ethylene oxide	5	
56. Ethyl nitrate	50	
57. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%)		5
58. Hydrogen	2	
59. Liquid Oxygen	500	
60. Methyl ethyl ketone peroxide (>60%)	5	
61. Methyl isobutyl ketone peroxide (>60%)		5
62. Peracetic acid (>60%)	5	
63. Propylene oxide	5	
64. Sodium chlorate	25	
65. Sulphur dichloride	1	

PART C

FLAMMABLE SUBSTANCES (UNLESS SPECIFICALLY NAMED IN PARTS A AND B)

<i>Column 1</i>	<i>Column 2</i>
<i>Hazardous substances</i>	<i>Controlled</i>
<i>quantities</i>	<i>(in tonnes,</i>

unless otherwise stated)

66. Liquefied petroleum gas, such as commercial propane and commercial butane, and any mixtures thereof, when held at a pressure greater than 1.4 bar absolute 25

67. Liquefied petroleum gas, such as commercial propane and commercial butane, and any mixture thereof, when held under refrigeration at a pressure of 1.4 bar absolute or less

68. Gas or any mixture of gases which is flammable in air, when held as a gas
15
69. A substance or any mixture of substances, which is flammable in air, when held above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute 25
70. A liquefied gas or any mixture of liquefied gases, which is flammable in air and has a boiling point of less than 0°C (measured at 1 bar absolute), when held under refrigeration or cooling at a pressure of 1.4 bar absolute or less 50
71. A liquid or any mixture of liquids not included in entries 68 to 70 above, which has a flash point of less than 21°C 10,000

PART D

INTERPRETATION

In this Schedule—

- (a) references to percentages are references to parts by weight of the substance per 100 parts by weight of the solution;
- (b) "compound fertiliser" means a fertiliser containing ammonium nitrate and phosphate or potash;
- (c) Part C does not include a substance which is within Part A or Part B;
- (d) a substance, or any mixture of substances, shall only be treated as a hazardous substance by virtue of satisfying a description in entry number 37, 66, 67, 68, 69 or 70 when it is in a state in which it satisfies the description;
- (e) the controlled quantity of 25 tonnes in entry 69 refers, in the case of a mixture of substances, to the quantity of substances within that mixture held above their boiling point (measured at 1 bar absolute);
- (f) the controlled quantity of 50 tonnes in entry 70 refers, in the case of a mixture of substances, to the quantity of substances within that mixture having boiling points below 0°C.

SCHEDULE 2

Form 1

PRESCRIBED FORMS, NOTICES AND CERTIFICATES

(omitted)

SCHEDULE 3

Regulation 15

DEEMED CONSENT CONDITIONS

Below ambient temperature vessel conditions

1. A hazardous substance shall only be present at below ambient temperature in a vessel in a vessel area if—
- (a) it was present at below ambient temperature in a vessel in that vessel area at any time during the establishment period;
- (b) the vessel in which it is present does not have a greater capacity than that specified in column 1 of Table C; and
- (c) the pressure at which it is present does not exceed—

(i) atmospheric pressure, if the substance was not present at above atmospheric pressure at below ambient temperature in a vessel in that vessel area at any time during the establishment period; or

(ii) the pressure specified in column 2 of Table C, in any other case.

Ambient temperature vessel conditions

2. A hazardous substance shall only be present at ambient temperature in a buried or mounded vessel in a vessel area if—

(a) it was present at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period;

(b) the buried or mounded vessel in which it is present does not have a greater capacity than that specified in column 3 of Table C; and

(c) the pressure at which it is present in the buried or mounded vessel does not exceed—

(i) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period; or

(ii) the pressure specified in column 4 of Table C, in any other case.

3. A hazardous substance shall only be present at ambient temperature in a non-buried or non-mounded vessel in a vessel area if—

(a) it was present at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period;

(b) the non-buried or non-mounded vessel in which it is present does not have a greater capacity than that specified in column 5 of Table C; and

(c) the pressure at which it is present in the non-buried or non-mounded vessel does not exceed—

(i) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period; or

(ii) the pressure specified in column 6 of Table C, in any other case.

Above ambient temperature vessel conditions

4. A hazardous substance shall only be present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in a vessel area if—

(a) it was present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period;

(b) the vessel in which it is present does not have a greater capacity than that specified in column 7 of Table C; and

(c) the pressure at which it is present does not exceed—

(i) atmospheric pressure, if the substance was not present at above atmospheric pressure at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or

(ii) the pressure specified in column 8 of Table C, in any other case.

5. A hazardous substance shall only be present at above its boiling point at 1 bar absolute in a vessel area if—

(a) it was present at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period;

(b) the temperature at which it is present does not exceed the temperature specified in column 9 of Table C;

(c) the vessel in which it is present does not have a greater capacity than that specified in column 10 of Table C; and

(d) the pressure at which it is present does not exceed—

(i) atmospheric pressure, if the substance was not present at above atmospheric pressure at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or

(ii) the pressure specified in column 11 of Table C, in any other case.

Vessel location condition

6. A hazardous substance shall not be present in a vessel outside of a vessel area.

Moveable container storage area conditions

7.—(1) A hazardous substance shall only be stored in moveable containers in an area identified in a moveable container storage area plan for that substance in accordance with regulation 14(3).

(2) The quantity of a hazardous substance stored in such an area shall not exceed twice the maximum quantity of the substance stored in moveable containers in that area at any time during the establishment period.

(3) A hazardous substance shall not be stored in such an area in a moveable container with a capacity in excess of—

(a) 10% of the substance's controlled quantity, if it was not stored in a moveable container with a capacity in excess of 10% of that quantity in that area at any time during the establishment period; or

(b) the capacity of the largest moveable container in which it was stored during that period in that area, in any other case.

SCHEDULE 4

Regulations 18, 20 21 and 22

ENFORCEMENT — MODIFICATION OF THE PRINCIPAL ACT

PART 1

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

1. In section 174 of the principal Act (appeals against enforcement notice)—

(a) in subsection (1), for "an enforcement notice" substitute "a hazardous substances contravention notice";

(b) for subsection (2) substitute—

" (2) An appeal may be brought on any of the following grounds—

(a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;

(b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;

(c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control;

(d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;

(e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;

(f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed." ;

(c) in subsection (3)(a), for "enforcement notice" substitute "hazardous substances contravention notice";

(d) for subsection (4) substitute—

" (4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

(a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and

(b) setting out the appellant's submissions in relation to each ground of appeal." ;

(e) in subsection (5), after "does not" and "failed" insert "in that statement" and omit "within the prescribed time" and "within that time";

(f) in subsection (6), for "enforcement notice" substitute "hazardous substances contravention notice".

2. In section 175 of the principal Act (appeals — supplementary provisions)—

(a) in subsection (3), for "local planning authority" substitute "hazardous substances authority";

(b) in subsection (6), for "any other provisions of this Act" substitute "section 25(1) of the Planning (Hazardous Substances) Act 1990".

3. In section 176 of the principal Act (general provisions relating to determination of appeals)—

(a) in subsection (1)—

(i) for "enforcement notice" in both places where it occurs, substitute "hazardous substances contravention notice";

(ii) for "local planning authority" substitute "hazardous substances authority";

(b) in subsection (3)—

(i) in paragraph (a) omit "within the prescribed time";

(ii) for paragraph (b) substitute—

"(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 19(2) of the Planning (Hazardous Substances) Regulations 1992." ;

(c) in subsections (4) and (5), for "enforcement notice" substitute "hazardous substances contravention notice".

4. In section 177 of the principal Act (grant or modification of planning permission on appeal against enforcement notice)—

(a) for subsection (1) substitute—

" (1) On the determination of an appeal under section 174, the Secretary of State may—

(a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;

(b) discharge any condition subject to which hazardous substances consent was granted." ;

(b) omit subsections (1A) and (1B);

(c) for subsection (2) substitute—

" (2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990." ;

(d) in subsection (3), for "planning permission" in both places where it occurs substitute "hazardous substances consent" and for "Part III" substitute "the Planning (Hazardous Substances) Act 1990";

(e) in subsection (4) omit "or limitation" in both places where it occurs;

(f) for subsection (5) substitute—

" (5) Where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control." ;

(g) in subsection (5A), for "section 303" substitute "section 26A of the Planning (Hazardous Substances) Act 1990";

(h) in subsections (6) and (7), for "planning permission" substitute "hazardous substances consent";

(i) for subsection (8) substitute—

" (8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for hazardous substances consent made to the hazardous substances authority." .

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES, ETC.

5. In section 178 of the principal Act (execution and cost of works required by enforcement notices)—

(a) for "an enforcement notice" in each place where it occurs substitute "a hazardous substances contravention notice";

(b) for "local planning authority" in each place where it occurs substitute "hazardous substances authority";

(c) in subsection (2) for "breach of planning control" in both places where it occurs substitute "contravention of hazardous substances control";

(d) in subsection (4) for "the enforcement notice" substitute "the hazardous substances contravention notice";

(e) after subsection (6) insert—

" (7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken." .

6. In section 179 (offence where enforcement notice not complied with)—

(a) for subsection (1) substitute—

" (1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice." ;

(b) in subsection (2) for "the owner of the land" substitute "a person" and for "an enforcement notice" substitute "a hazardous substances contravention notice";

(c) omit subsections (4) and (5);

(d) in subsection (6) omit "or (5)";

(e) in subsection (7)(a) for "enforcement notice" substitute "hazardous substance contravention notice".

7. In section 180 (effect of planning permission etc. on enforcement or breach of condition notice)—

(a) for subsection (1) substitute—

" (1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent."

(b) omit subsection (2);

(c) in subsection (3), for "enforcement notice or breach of conditions notice" substitute "a hazardous substances contravention notice".

8. For section 181 (enforcement notice to have effect against subsequent development) substitute—

" (1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Sections 178 and 179 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so." .

PART 3

REGISTERS

9. In section 188 of the principal Act (register of enforcement and stop notices)—

(a) for subsections (1) and (2) substitute—

" (1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them—

(a) the address of the land to which the notice relates;

(b) the date of service of copies of the notice;

(c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;

(d) the date specified in the notice as the date on which it is to take effect;

(e) the date and effect of any variation of the notice;

(f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority."

PART 4

VALIDITY

10. In section 285 of the principal Act (validity of enforcement notices and similar notices)—

(a) in subsection (1), for "an enforcement notice" substitute "a hazardous substances contravention notice";

(b) in subsection (2), for "enforcement notice" in each place where it occurs substitute "hazardous substances contravention notice";

(c) omit subsections (3) and (4).

11. In section 289 of the principal Act (appeals to the High Court relating to enforcement notices etc.)—

(a) in subsections (1), (4A) and (5A) for "an enforcement notice" in each place where it occurs substitute "a hazardous substances contravention notice" and in subsections (1) and (4A) for "local planning authority" in each place where it occurs substitute "hazardous substances authority";

(b) omit subsections (2) and (4B).

PART 5

SECTIONS OF THE PRINCIPAL ACT AS MODIFIED

174.—(1) A person having an interest in the land to which a hazardous substances contravention notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) An appeal may be brought on any of the following grounds—

- (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
- (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- (c) that these matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
- (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
- (f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed.

(3) An appeal under this section shall be made either—

- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the hazardous substances contravention notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

- (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
- (b) setting out the appellant's submissions in relation to each ground of appeal.

(5) If, where more than one ground is specified in that statement, the appellant does not in that statement give information required under subsection (4)(b) in relation to each of those grounds the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed in that statement to give such information.

(6) In this section "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.

175.—(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the hazardous substances authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under section 25(1) of the Planning (Hazardous Substances) Act 1990.

176.—(1) On an appeal under section 174 the Secretary of State may—
(a) correct any defect, error or misdescription in the hazardous substances contravention notice; or
(b) vary the terms of the hazardous substances contravention notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the hazardous substances authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—
(a) may dismiss an appeal if the appellant fails to comply with section 174(4); and
(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 19(2) of the Planning (Hazardous Substances) Regulations 1992.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the hazardous substances contravention notice under paragraph (b) of that subsection, he need not comply with section 175(3).

(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

177.—(1) On the determination of an appeal under section 174, the Secretary of State may—

(a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;

(b) discharge any condition subject to which hazardous substances consent was granted.

(2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990.

(3) The hazardous substances consent that may be granted under subsection (1) is any hazardous substances consent that might be granted on an application under the Planning (Hazardous Substances) Act 1990.

(4) Where under subsection (1) the Secretary of State discharges a condition he may substitute another condition for it, whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.

(5A) Where—

(a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 26A of the Planning (Hazardous Substances) Act 1990 in respect of the application deemed to be made by virtue of the appeal; and

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(6) Any hazardous substances consent granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of hazardous substances consent or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for hazardous substances consent made to the hazardous substances authority.

178.—(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period for compliance with the notice, the hazardous substances authority may—

(a) enter the land and take the steps; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a copy of a hazardous substances contravention notice has been served in respect of any contravention of hazardous substances control—

(a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and

(b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the hazardous substances authority in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) Regulations made under this Act may provide that—

(a) section 276 of the Public Health Act 1936, (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);

(b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and

(c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a hazardous substances contravention notice.

(4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936

may include adaptations and modifications for the purpose of giving the owner of land to which a hazardous substances contravention notice relates the right, as against all other persons interested in the land, to comply with the requirements of the hazardous substances contravention notice.

(5) Regulations under subsection (3) may also provide for the charging on the land of any expenses recoverable by a hazardous substances authority under subsection (1).

(6) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken.

179.—(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.

(2) Where a person is in breach of a hazardous substances contravention notice he shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(6) An offence under subsection (2) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the subsection in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

(a) a person charged with an offence under this section has not been served with a copy of the hazardous substances contravention notice; and

(b) the notice is not contained in the appropriate register kept under section 188,
it shall be a defence for him to show that he was not aware of the existence of the notice.

(8) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £20,000; and

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

180.—(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice shall cease to have effect so far

as inconsistent with that consent.

(3) The fact that a hazardous substances contravention notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

181.—(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Sections 178 and 179 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.

188.—(1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them—

- (a) the address of the land to which the notice relates;
- (b) the date of service of copies of the notice;
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority.

(3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

285.—(1) The validity of a hazardous substances contravention notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(2) Subsection (1) shall not apply to proceedings brought under section 179 against a person who—

(a) has held an interest in the land since before the hazardous substances contravention notice was issued under that Part;

(b) did not have a copy of the hazardous substances contravention served on him under that Part; and

(c) satisfies the court—

(i) that he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and

(ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.

289.—(1) Where the Secretary of State gives a decision in proceedings on an appeal under Part VII against a hazardous substances contravention notice the appellant or the hazardous substances authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

(3) At any stage of the proceedings on any such appeal as is mentioned in subsection (1), the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

(4) A decision of the High Court on a case stated by virtue of subsection (3) shall be deemed to be a judgment of the court within the meaning of section 16 of the Supreme Court Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

(4A) In proceedings brought by virtue of this section in respect of a hazardous substances contravention notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the hazardous substances authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.

(5) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—

(a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and

(b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of a hazardous substances contravention notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.

(6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

(7) In this section "decision" includes a direction or order, and references to the giving of a decision shall be construed accordingly.

Notes:

[1] 1990, c. 10; relevant amendments are made by paragraphs 2, 3 and 4 of Schedule 13, and Part VII of Schedule 16, to the Environmental Protection Act 1990 (c. 43) and by paragraphs 13 and 30 of Schedule 3 to the Planning and Compensation Act 1991 (c. 34). Section 26A was inserted by paragraph 9 of Schedule 13 to the Environmental Protection Act 1990. See section 39(2) and section 336(1) of the Town and Country Planning Act 1990 (c. 8) for the definition of "prescribed". [back](#)

[2] The "principal Act" is the Town and Country Planning Act 1990 (c. 8); see section 39(1) of the Planning (Hazardous Substances) Act 1990. [back](#)

[3] 1990 c. 43. [back](#)

[4] 1960 c. 34. [back](#)

[5] S.I. 1984/1244. [back](#)

[6] 1985 c. 22. [back](#)

[7] S.I. 1987/37. [back](#)

[8] 1986 c. 44. [back](#)

[9] 1981 c. 69. [back](#)

[10] 1928 c. 32 (18 & 19 Geo 5). back

[11] Section 174 was amended by section 6(1) of, and paragraph 22 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 176 was amended by paragraph 23 of that Schedule; and section 177 was amended by section 6(3) of, and paragraph 24 of Schedule 7 to, that Act. back

[12] Section 178 was amended by section 7 of, and paragraph 25 of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34); section 179 was substituted by section 8 of that Act; section 180 was substituted by paragraph 26 of Schedule 7 to that Act; and section 181 was amended by paragraph 27 of that Schedule. back

[13] Section 188 was amended by paragraph 30 of Schedule 7 to the Planning and Compensation Act 1991. back

[14] Section 285 was amended by paragraph 41 of Schedule 7 to the Planning and Compensation Act 1991; and section 289 was amended by section 6 of that Act. back

[15] S.R. & O. 1937/54. back

[16] S.R. & O. 1947/805. back

[17] S.R. & O. 1919/869. back

[18] 1875 c. 17. back

[19] OJ No L250, 23.9.80, p. 7. back