
STATUTORY INSTRUMENTS

1993 No. 323 (S.31)

TOWN AND COUNTRY PLANNING, SCOTLAND

**The Town and Country Planning (Hazardous
Substances) (Scotland) Regulations 1993**

Made - - - - - *18th February 1993*

Laid before Parliament *8th March 1993*

Coming into force - - - *1st May 1993*

The Secretary of State in exercise of the powers conferred on him by sections 56C(3) to (6), 56D(1), (2), (4), (5) and (6), 56DA, 56K(3), 56N (1), 97B(10) and (12) and 257A of the Town and Country Planning (Scotland) Act 1972(a), and section 38 of the Housing and Planning Act 1986(b), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 and shall come into force on 1st May 1993.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Town and Country Planning (Scotland) Act 1972;

“the 1986 Act” means the Housing and Planning Act 1986;

“buried or mounded vessel” includes a vessel which is only partially buried or mounded;

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- (a) 1972 c. 52; sections 56C, 56D, 56K, 56N, 97B and 257A were inserted by the Housing and Planning Act 1986 (c. 63) (“the 1986 Act”), sections 35 and 36 and Schedule 7, Part II, paragraph 4; section 56D was amended by the Environmental Protection Act 1990 (c. 43) (“the 1990 Act”), Schedule 13, paragraphs 11(3) and (4); section 56N(1) was amended by the 1990 Act, Schedule 13, paragraph 11(9) and Schedule 16, Part VII; section 97B(10) was amended by the 1990 Act, Schedule 13, paragraph 11(11); section 56DA was inserted by the 1990 Act, Schedule 13, paragraph 11(5).
- (b) 1986 c. 63; section 38 was amended by the Environmental Protection Act 1990, Schedule 13, paragraph 12.

“controlled quantity” shall be construed in accordance with regulation 3(3);

“established quantity” has the same meaning as in section 38(10) of the 1986 Act;

“established period” has the same meaning as in section 38(10) of the 1986 Act;

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

“neighbouring land” means—

- (a) where storage or use of hazardous substances is to take place within a building (hereinafter referred to as “the storage building”),
 - (i) every other separately owned or occupied unit within the storage building, and
 - (ii) land which is conterminous with or within 4 metres of the boundary of land for which hazardous substances consent is applied, but only if any part of the first mentioned land is within 90 metres of storage building;

and

- (b) where storage or use of hazardous substances is to take place otherwise than within a building, land which is conterminous with or within 4 metres of the boundary of land for which hazardous substances consent is applied, but only if any part of the first mentioned land is within 90 metres of the area to be used for such storage or use;

and where any unit of a building which is divided into separate units is, in term of this definition, itself “neighbouring land”, then every other unit within that building shall also be treated as “neighbouring land” for the purposes of these regulations, irrespective of the distance of that other unit from the storage building, the area to be used for storage or use, or the land for which hazardous substances consent is applied;

and, for the purposes of this definition, where a road falls within the distance of 4 metres measured from the boundary of the land for which hazardous substances consent is applied, the width of such road shall be disregarded in calculating that distance unless the road is more than 20 metres in width, and the term “land” shall include any building thereon.

“planning authority” shall be construed in accordance with section 172 of the Local Government (Scotland) Act 1973(c);

“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) Any reference to a numbered regulation or Schedule is a reference to a regulation or, as the case may be, the Schedule bearing that number in these Regulations, and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the regulation or Schedule in which the reference appears.

(3) Any reference in these Regulations—

- (a) to a numbered form shall be construed as a reference to the correspondingly numbered form in Schedule 2, or a form substantially to the like effect;
- (b) to a section shall be construed as a reference to that section of the Act unless there is a contrary intention.

(4) References to sections of the Act mentioned in regulations 19, 20, 21, 22 and 23 (enforcement) shall, in relation to hazardous substances control, be construed in those sections and in these Regulations as references to those sections as modified by these Regulations.

(5) Part 4 of these Regulations, Form 12 and Schedule 3 (deemed consents shall be construed in accordance with regulation 17.

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

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^(d), or radioactive waste, as defined in section 18(4) of the Radioactive Substances Act 1960^(e), 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 its being unloaded from one means of transport and loaded onto another, while 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^(f); 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 pipeline 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^(g) (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

^(d) 1990 c. 43.
^(e) 1960 c. 34.

Regulations 1987(**h**), 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 38 of the 1986 Act 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 of 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(**i**) 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), an application to a planning authority for hazardous substances consent shall—

- (a) be made on Form 1;
- (b) include the information specified in the form, a site map, and a substance location plan; and
- (c) be accompanied by 3 copies of the form, the map and plan submitted with it and by the notices and certificates required by regulations 6, 7 and 8.

(2) An application to the planning authority under section 56H(**j**) (grants of hazardous substances consent without compliance with conditions previously attached) shall—

- (a) be made on Form 2;
- (b) include the information specified in the form, a change of location plan, if required by paragraph (6), and particulars of the relevant consent; and
- (c) be accompanied by 3 copies of the form, the relevant consent, any plan submitted with the form and by the notices and certificates required by regulations 6, 7 and 8.

(3) An application to the planning authority under section 56K(**k**) (provisions as to effect of hazardous substances consent and change of control of land) shall—

- (a) be made on Form 2;

(j) Section 56H of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990 (c. 43), Schedule 13, paragraph 11(8).

(k) Section 56K of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

- (b) included the information specified in the form, a change of control plan and particulars of the relevant consent; and
 - (c) be accompanied by 3 copies of the form, the relevant consent, the change of control plan and by the notices and certificates required by regulations 6, 7 and 8.
- (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; and
 - (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 56H applies and where the condition which was previously applied restricted the location of the hazardous substance. Any such plan shall be 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)(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 each area of the site under separate control after the proposed change of control.
- (8) The “relevant consent” referred to in paragraphs (2) and (3) 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 38 of the 1986 Act or a copy of the relevant direction, in the case of a consent deemed to be granted under section 56G(1).
- (9) Where an application referred to in paragraph (2) or (3) applies to more than one relevant consent, particulars of each such consent shall be included in the application.
- (10) Regulations 6 to 14 shall apply to applications made under section 56K as they apply to applications for hazardous substances consent.

Neighbour notification

6.—(1) Subject to the following paragraphs, and applicant for hazardous substances consent under regulation 5 shall notify each of those persons holding and interest in neighbouring land as specified in paragraph (2) who has not been served, in accordance with regulation 8(2) with notice of the application, by sending each of them—

- (a) a notice of the application in the form set out in Form 3—
 - (i) stating that the application, plans and maps relating to it may be inspected in the register kept by the planning authority;
 - (ii) stating the address at which the application may be inspected in accordance with regulation 9; and

(1) Section 56G of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(7).

- (iii) inviting representations to be made to the planning authority during the period of 21 days beginning with the date of the notice; and
- (b) a plan showing the situation or location of the land to which the application relates.
- (2) The persons holding a notifiable interest in neighbouring land are—
 - (a) in the case of lands and heritages entered in the valuation roll at the date of the application, the persons appearing in the valuation roll in force at that time as being the owners, lessees and occupiers of those lands and heritages; and
 - (b) in the case of lands and heritages not entered in the valuation roll at the date of the application, the owners and occupiers of those lands and heritages.
- (a) The notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(a)—
 - (i) in each case where the name and address of the owner, lessee or occupier can be ascertained from the valuation roll, shall be sent to such person at his address as entered in the valuation roll;
 - (ii) where information as to the owner, lessee or occupier of neighbouring land or of any premises contained or included in neighbouring land cannot be ascertained from the valuation roll, shall be sent addressed to “the Owner” at such land or premises, where the name of the owner cannot be ascertained, to “the Lessee” at such land or premises where the name of the lessee cannot be ascertained and to “the Occupier” at such land or premises where the name of the occupier cannot be ascertained;
- (b) the notification in accordance with paragraph (1) of a person holding a notifiable interest in neighbouring land in terms of paragraph (2)(b) shall be sent addressed in each case to “the Owner”, and “the Occupier” at each address of the premises contained or included in the neighbouring land.
- (4) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of the certificates set out in Forms 4 to 7 is appropriate, stating—
 - (a) that notification has been carried out under paragraphs (1) to (3)
 - (i) in the case of lands and heritages entered in the valuation roll, detailing as appropriate —
 - (aa) the names and addresses of those persons having a notifiable interest in neighbouring land who have been notified under paragraphs (1), (2)(a) and (3)(a)(i), with details of their interest, namely that of an owner, lessee or occupier, as the case may be; and
 - (bb) the addresses of the premises in respect of which the owner of the lessee or the occupier has been notified in accordance with paragraphs (1), (2)(a) and 3(a)(ii), with details as to whether the notification was sent addressed to “the Owner”, to “the Lessee” or to “the Occupier”, or to any or all of them; and
 - (ii) in the case of lands and heritages not entered in the valuation roll, listing the addresses of the premises in respect of which the owners and occupiers have been notified in accordance with paragraphs (1), (2)(b) and (3)(b); or
 - (b) that no notification under paragraphs (1) to (3) is required; or
 - (c) that it is not possible to carry out notification because there are no premises on the neighbouring land to which the notification can be sent.

Publication of notices of applications

7.—(1) Before making an application for hazardous substances consent to the planning authority, the applicant shall, during the 21 day period immediately preceding the application publish in a newspaper circulating in the locality in which the land to which the application relates is situated a notice of the application in the form set out in Form 8.

(2) The notice required by paragraph (1) shall invite representations on the application to be made to the planning authority within 21 days of the publication of the notice.

(3) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by a copy of the notice referred to in paragraph (1), certified by, or on behalf of, the applicant as having been published in a newspaper in accordance with paragraph (1) and specifying the name of the newspaper and the date of its publication.

Notification of applications to owners

8.—(1) An application for hazardous substances consent shall not be entertained by the planning authority unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the applicant.

(2) The required notice referred to in certificates B and C of Form 9 shall, in the case of an application for hazardous substances consent, be a notice given of Form 10 and shall invite any owner on whom the notice is served to make representations on the application to the planning authority within 21 days of service of the notice.

Inspection of applications

9. The applicant shall make a copy of the application available for inspection at a place within the locality of the land to which the application relates during the period or periods allowed for making representations pursuant to regulations 6(1)(a)(iii), 7(2) and 8(2).

Procedure on receipt of applications by planning authority

10.—(1) When the planning 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 substances consent, they shall, as soon as practicable, send to the applicant a written acknowledgement of receipt.

(2) Where, in the opinion of the planning 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 11 and 12, the date on which the application for hazardous substances consent is received shall be taken to be the date on which the last of the following events occurred—

- (a) the application form has been received by the planning authority;
- (b) any certificates or documents required by regulations 6, 7 and 8 have been received by that authority; and
- (c) any fee required to be paid in respect of the application has been paid to that authority.

Consultation before the grant of hazardous substances consent

11.—(1) Except where the consultee has notified the planning authority in writing that it does 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 Regional or District council concerned, where that council is not also the planning authority;
- (c) Scottish Natural Heritage(m);
- (d) the community council concerned;
- (e) the fire and civil defence authority concerned, where that authority is not also the planning authority;
- (f) the river purification authority for the area concerned;
- (g) the public gas supplier concerned;
- (h) the electricity company concerned;
- (i) where the land to which the application relates is within 2 kilometres of a royal palace park or residence the Secretary of State;
- (j) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (k) where the land to which the application relates is situated within 2000 metres of—
 - (i) an adjacent Region or District, the council for that Region or District;
 - (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;
- (l) where it appears to the planning authority dealing with the application that land in the area of any other planning authority may be affected, that authority;
- (m) where the application relates to land in an area of coal working or former or proposed coal working notified to the planning 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 planning authority.

(2) Where, under this regulation, a planning 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 this regulation—

“consultee” means any body listed in paragraph (1)(a)—(n);

“controlled waste” has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990(n);

“river purification authority” means a river purification board established under section 135 as read with section 135A of the Local Government (Scotland) Act 1973(o) or an island council;

“waste disposal authority” means a district or island council exercising their functions as a disposal authority under Part I of the Control of Pollution Act 1974(p) or as a waste disposal authority under Part II of the Environmental Protection Act 1990.

Determination of applications for hazardous substances consent

12.—(1) A planning 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(1)(a) (iii), 7(2) and 8(2); and

- (b) where the authority is required to consult under regulation 11, 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), the period within which a planning authority shall give notice to an applicant of their decision on an application for hazardous substances consent or referral of the application to the Secretary of State or regional planning authority, shall be two months, commencing on the date of receipt of the application or (except where the applicant has already given notice of appeal to the Secretary of State) such extended period as may be agreed upon in writing between the applicant and planning authority.
- (3) When a planning authority give notice of a decision on an application for hazardous substances consent the notice shall be in writing and where hazardous substances consent is refused or is granted subject conditions—
 - (a) state the reasons for that decision; and
 - (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 33(q) within 6 months of the date of the notice of the decision.
- (4) The planning 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 Regional or District council, where that council is not the planning authority;
 - (c) every other consultee (as defined in regulation 11(3)) who has made representation to them on the application;
 - (d) every owner who has made representations to them on the application; and
 - (e) every person holding a notifiable interest in neighbouring land who has made representations to them on the application.

Notice of reference of applications to the Secretary of State or regional planning authority

13. On referring any application to the Secretary of State under section 32(r) or to a regional planning authority under section 179 of the Local Government (Scotland) Act 1973(s), a planning authority shall serve on the applicant notice—

- (a) of the terms of the direction given in accordance with section 32;
- (b) of any reasons given by the Secretary of State or, as the case may be, such authority;
- (c) that the application has been referred to the Secretary of State or, as the case may be, such authority; and
- (d) in the case of an application referred to the Secretary of State, that the Secretary of State will, if the applicant so desires, afford to the applicant an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose, and that the decision of the Secretary of State on the application will be final.

(r) Section 32 of the Act has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.
(s) Section 179 was substituted by the Local Government and Planning (Scotland) Act 1982 (c. 43), Schedule 3, paragraph 24 and amended by the 1986 Act, Schedule 11, paragraph 61; section 179 has effect in relation to applications for hazardous substances consent by virtue of section 56F of the Act.

Appeals

14.—(1) An appeal to the Secretary of State under section 33 or 34 shall be made within 6 months of—

- (a) in the case of an appeal under section 33 (appeal against refusal of consent or against grant of consent subject to conditions) the date of the notice of the decision giving rise to the appeal; or
- (b) in the case of an appeal under section 34 (failure to give decision)(t) the expiry of the period specified in regulation 12(2).

(2) An appeal under section 33 or 34 shall—

- (a) be made to the Secretary of State by lodging with him a notice of appeal; and
- (b) be accompanied by a copy of each of the documents specified in paragraph (3) and by the certificate required by paragraph (4).

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

- (a) the application made to the planning authority which has occasioned the appeal;
- (b) any notices and certificates required by regulations 6, 7 and 8 which accompanied the application;
- (c) any correspondence with the authority relation to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 33 or 34 shall not be entertained by the Secretary of State unless it is accompanied by whichever of certificates A to D set out in Form 9 is appropriate, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C of Form 9 shall, in the case of and appeal under section 33 or 34, be a notice given on Form 11.

(6) The appellant shall send a copy of the completed notice of appeal form and accompanying documents and certificate to the planning authority at the same time as the appeal is made to the Secretary of State.

PART 4

DEEMED CONSENT

Claim for deemed consent

15.—(1) A claim for deemed consent under section 38 of the 1986 Act shall—

- (a) be made to the planning authority on Form 12;
- (b) include the information specified in 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; and
- (c) be accompanied by 3 copies of the form and of 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, and Ordnance Survey map with a scale of not less than 1 to 100,000 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) not 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

16. The conditions set out in Schedule 3 are the prescribed conditions for the purposes of section 38(9)(b) of the 1986 Act^(u).

Interpretation of deemed consent provisions

17.—(1) For the purpose of paragraph (3) of regulation 15 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 15, where a petroleum - spirit licence under the Petroleum (Consolidation) Act 1928^(v) 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 15 and the conditions set out in paragraphs 1 to 6 of Schedule 3, and for the purpose of completing Table C in Form 12, 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 12, 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

^(u) Section 38(9)(b) was amended by the Environmental Protection Act 1990, Schedule 13, paragraph 12(3)(b).

^(v) 1928 c. 32.

- (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 12, 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 12, “vessel area” means an area identified in a vessel location plan in accordance with paragraph (4) of regulation 15.

(8) In Schedule 3, references to Table C refer to Table C as set out in Form 12 (in Schedule 2) and 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 that applies to the relevant hazardous substance and vessel area.

PART 5

ENFORCEMENT

Hazardous substances contravention notices

18.—(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 97B(4)(b) (other persons on whom notice is to be served)(w) are all persons having an interest in the land to which the application relates who in the opinion of the authority issuing the notice are materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 97B(4) shall be accompanied by a statement setting out—

- (a) the planning authority’s reasons for issuing the notice; and
- (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 85(x).

Appeals against hazardous substances contravention notices

19.—(1) Section 85 (other than subsections (2B),(3),(5A) and (5B)) 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 section 85 which apply to such appeals, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

Appeals: supplementary

20.—(1) A person who appeals against a hazardous substances contravention notice shall, at the same time as notice of the appeal is given to the Secretary of State under section 85(2), send to the planning authority a copy of the notice of appeal and accompanying material required by section 85(2A).

(w) Section 97B(4)(b) of the Act was inserted by section 36 of the 1986 Act.

(2) The planning authority shall, within 28 days of receiving the notice of appeal, give to the Secretary of State and to 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 condition, if any, which they would wish to impose on such consent.

(3) The planning authority shall, within that 28 day period, give notice of the appeal to persons holding a notifiable interest (as described in regulation 6(2)) in neighbouring land to that land to which the hazardous substances contravention notice relates.

Effect of hazardous substances contravention notices, etc

21.—(1) Sections 86 (other than subsections (4) and (5))(y), 88(z), 89(aa) and 89A (other than subsection (2))(ab) 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 sections 86, 88, 89 and 89A which apply to such notices, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

Enforcement register

22.—(1) Section 87A(ac) (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 section 87A, as modified in accordance with paragraph (1), are set out in Part 5 of Schedule 4.

Validity

23. Section 231(ad) (as read with section 233(3))(ae) shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 4 of Schedule 4.

(y) Section 86 was substituted by the Planning and Compensation Act 1991, section 40.

(z) Section 88(1) was amended by the Local Government (Scotland) Act 1973 (“the 1973 Act”), section 172(2) and by the Planning and Compensation Act 1991 (“the 1991 Act”), Schedule 19, Part IV; subsection (1A) was inserted by the Local Government and Planning (Scotland) Act 1982 (“the 1982 Act”), Schedule 2, paragraph 23(a); subsection (2) was amended by the 1973 Act, section 172(2) and by the 1991 Act, Schedule 13, paragraph 23; subsections (3)-(5) were substituted by the 1982 Act, Schedule 2, paragraph 23(b); subsection (6) was inserted by the 1991 Act, section 39.

(aa) Section 89(1), (3) and (4) was amended by the Planning and Compensation Act 1991, Schedule 13, paragraph 24; section 89(4) was also amended by virtue of the Criminal Procedure (Scotland) Act 1975 (c. 21) section 289G (as inserted by the Criminal Justice Act 1982 (c. 48) section 54).

(ab) Section 89A was replaced (after earlier insertion) by the Planning and Compensation Act 1991, Schedule 13, paragraph 25.

(ac) Section 87A was inserted by the Local Government and Planning (Scotland) Act 1982, sections 44 and 69(2) and amended by the Planning and Compensation Act 1991, Schedule 13, paragraph 22.

(ad) Section 231 was amended as follows: by the Town and Country Planning (Minerals) Act 1981 (c. 36), Schedule 2, paragraph 8; by the Local Government and Planning (Scotland) Act 1982 (c. 43), sections 47(c) and 69(2), Schedule 2, paragraph 35(a) and (b) and Schedule 4, Part I; by the 1986 Act, Schedule 6, Part IV, paragraph 4, Schedule 7, Part II, paragraph 2, and Schedule 11, paragraph 50; and by the Planning and Compensation Act 1991, Schedule 13, paragraph 33 and Schedule 12, paragraph 22.

(ae) Section 233(3) was amended by the 1986 Act, Schedule 12, Part IV.

PART 6

CONSENTS REGISTER

Consents register

24.—(1) The register which every planning authority is required to keep under section 56N(1)(af) shall be in 6 parts as follows—

- (a) Part 1 shall contain a copy of every application for hazardous substances consent submitted to the planning authority and not finally determined;
 - (b) Part 2 shall contain in respect of every application for hazardous substances consent made to the planning authority—
 - (i) particulars of the application including the name and address of the applicant, the date of the application, brief particulars of the presence of a hazardous substance which requires the consent;
 - (ii) particulars of any direction given under section 32 of the Act as applied by section 56F;
 - (iii) the date and effect of the decision, if any, of the planning authority in respect of the application;
 - (iv) the date and the effect of any decision of the Secretary of State in respect of the application on appeal or on a reference under section 32;
 - (v) the Secretary of State's decision in respect of a deemed application for hazardous substances consent on an appeal to him under section 85 against a hazardous substances contravention notice and the date and effect of the Secretary of State's decision;
 - (c) Part 3 shall contain a copy of every order revoking or modifying hazardous substances consent made by the planning authority and the date and effect of and confirmation by the Secretary of State in accordance with section 56J(5)(ag);
 - (d) Part 4 shall contain, in respect of every hazardous substances consent deemed to be granted under section 38(5), a copy of the relevant claim form;
 - (e) Part 5 shall contain a copy of every hazardous substances consent deemed to be granted by virtue of a direction given by a Government Department under section 56G;
 - (f) Part 6 shall contain a copy of any direction under section 56M(ah) sent to the authority by the Secretary of State.
- (2) The register shall include an index to enable any person to trace an entry in the register.
- (3) Every entry in the register shall be made within 14 days of the relevant information being available to the planning authority.
- (4) The register for their area shall be kept at the office of every planning authority.

(af) Section 56N of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(9) and Schedule 16, Part VII.

PART 7

MISCELLANEOUS

Fees for applications

25.—(1) Subject to paragraph (3), the fee which shall be payable to a planning authority with an application for hazardous substances consent shall be as follows—

- (a) if section 56H applies (new consent without previous conditions), £200;
- (b) if section 56H(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 any other case, £250;

(2) Subject to paragraph (3), a fee shall be payable to a planning authority on an application for the continuation of hazardous substances consent under section 56K(2) of £200.

(3) Where applications relating to the same site are made to 2 or more planning 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 planning authority.

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

Fees for deemed applications

26.—(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 85(7) (in consequence of an appeal against a hazardous substances contravention notice) by every person who has made a valid appeal against the relevant hazardous substances contravention notice.

(2) Subject to paragraph (6), the fee payable shall be the amount which would be payable under regulation 25 if the application were an application to which that regulation applied.

(3) The fee due shall accompany the written notice of the relevant appeal to the Secretary of State.

(4) This regulation shall not apply where the appellant had—

- (a) before the date on which the hazardous substances contravention notice was issued, applied to the planning authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid 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 under section 33,

and at the date on which the relevant notice was issued that application or, in the case of an appeal made before the date on which the enforcement notice is to take effect, that appeal had not been determined.

(5) Any fee paid in respect of the deemed application shall be refunded to the appellant 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) and (2) of section 85;
- (b) where the Secretary of State under section 85(2C)—

- (i) dismisses the appeal on the grounds that the appellant has failed to comply with subsection (2A) within the time prescribed under subsection (2B)(a) of that section; or
 - (ii) allows the appeal and quashes the enforcement notice on the grounds that the planning authority failed to comply with any requirement imposed by virtue of paragraph (b), (c) or (e) of subsection (2B) of that section;
 - (c) 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 way of written submissions the date or, in the event of postponement, the latest date appointed for the inspection of the site to which the notice relates;
 - (d) where the planning authority withdraws the relevant enforcement notice before it takes effect or if the Secretary of State considers that there was no subject matter to appeal against since the purported enforcement notice had no legal effect; of
 - (e) the Secretary of State allows the relevant appeal on any of the grounds set out in section 85(1)(b) to (e).
- (6) Where a hazardous substances contravention notice is varied under section 85(5) otherwise than to take account of a grant of hazardous substances consent under that section, and the fee calculated in accordance with paragraph (2) would have 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.

Applications by a planning authority

- 27.**—(1) Any application by a planning authority for hazardous substances consent shall be made to the Secretary of State.
- (2) Regulations 5 to 9 shall apply to the making of such applications as they apply to applications made to a planning authority.
- (3) For the purpose of regulation 24, an application made to the Secretary of State by a planning authority shall be treated as an application made to the planning authority and referred to the Secretary of State under section 32, as applied by section 56F(**ai**).
- (4) Section 56E (other than subsection(2)(e))(**aj**) shall apply in relation to an application made to the Secretary of State by a planning authority as it applies in relation to an application made to a planning authority.
- (5) For the purpose of section 233(**ak**), a decision of the Secretary of State on an application made to him by a planning authority shall be treated as a decision under section 32 as applied by section 56F.

(**ai**) Section 56F of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 16, Part VII.

(**aj**) Section 56E of the Act was inserted by section 35 of the 1986 Act and amended by the Environmental Protection Act 1990, Schedule 13, paragraph 11(6) and Schedule 16, Part VII.

(**ak**) Section 233 was amended by the 1986 Act, Schedule 12, Part IV.

St. Andrew's House, Edinburgh
18th February 1993

Allan Stewart
Parliamentary Under Secretary of State, Scottish
Office

SCHEDULE 1

Regulations 2(6) and 3

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART A TOXIC SUBSTANCES

(1) Hazardous substances	(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 oxide	50

(1) Hazardous substances	(2) Controlled quantities
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. Stibine (Antimony hydride)	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

(1) Hazardous substances	(2) Controlled quantities (in tonnes, unless otherwise stated)
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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(**al**) as amended by the Compressed Acetylene Order 1947(**am**), or when contained in a homogeneous porous substance in cylinders in accordance with Order of Secretary of State No 9(**an**), made under the Explosives Act 1875(**ao**)

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;

(1) Hazardous substances	(2) Controlled quantities
(ii) ammonium nitre based products manufactured chemically for use as fertiliser which comply with Council Directive 80/876/EEC (ap); or	
(iii) compound fertilisers	
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 (>80%)	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—	50
(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	
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

(1) Hazardous substances	(2) Controlled quantities
54. Di-sec-butyl peroxydicarbonate (>80%)	5
55. Ethylene oxide	5
56. Ethyl nitrate	56
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 PART A OR PART B)

(1) Hazardous substances	(2) Controlled quantities (in tonnes, 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	50
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	50

(1)	(2)
Hazardous substances	Controlled quantities
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	

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

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 substance, 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

Regulations 5, 6, 7, 8, 14 and 15

PREScribed FORMS, NOTICES AND CERTIFICATES

Form 1 **The Town and Country Planning (Scotland) Act 1972—Section 56D(1)** **The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—Regulation 5(1)** **Application for Hazardous Substances Consent**

1. Applicant (BLOCK LETTERS)
Address

Tel No

Agent (if any) to whom correspondence should be sent (BLOCK LETTERS)
Address

Tel No

Contact

2. Address or location of application site

3. Substance(s) covered by application

Name of substance	Entry number in Schedule 1 to the 1993 Regulations	Maximum quantity proposed to be present (in tonnes)*

*or kilograms in the case of substance with entry number 21, 26 or 34

4. Manner in which substance(s) to be kept and used

Provide the following information for each substance covered by the application (referring to the substance location plan where appropriate)

(a) Insert substance entry number in column (1) below and tick whichever of columns (2) and (3) is appropriate:

(1) Substance Entry Number	(2) Storage Only	(3) Stored and involved in industrial process

Highest
design pressure
(bar absolute)

Highest
vessel design
temperature(°C)

Max Capacity
(cubic metres)

Mounded
(yes/no)

Buried
(yes/no)

Installed above
ground
(yes/no)

Entry No
substance(s) to be
stored in vessel

Panel No*

FORM 2The Town and Country Planning (Scotland) Act 1972—Sections 56H and 56K
The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—
Regulation 5(2) or (3)

Application for either: (tick appropriate box)

☐

Hazardous Substances Consent without condition(s) attached to previous consent (section 56H)

OR

☐

Continuation of Hazardous Substances Consent following a change in control of part of the land (section 56K)

1. Applicant (BLOCK LETTERS)

Address

Tel No

Agent (if any) to whom correspondence should be sent (BLOCK LETTERS)

Address

Tel. No.

Contact

2. Address or location of Application Site

3. Substances covered by application

Name of substance	Entry number in Schedule 1 to the 1993 Regulations	Maximum quantity proposed to be present (in tonnes)*
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*or kilograms in the case of substance with entry number 21, 26 or 34

4. In the case of an application for hazardous substances consent(s) without a condition attached to a previous consent (section 56H)

(a) identify the condition(s) previously attached which it is intended should not be attached to the consent, or should be attached only in a modified form (in the latter case, indicate the proposed modification)–

(b) give the reasons why the condition(s) referred to in (a) should not be attached or should be attached only in a modified form–

(c) describe any relevant changes in circumstances since the previous consent was granted–

5. In the case of a change in the description of the site (a) describe the change

(b) describe the change

6. Additional information. For this application, provide a copy of the Plans. For this application, provide a copy of the Plans.

Give any other information relevant to the application.

I/We* hereby declare that the information provided is true and correct.

Signed.....

On behalf of.....
(insert appropriate name)

Date

FORM 3 **The Town and Country Planning (Scotland) Act 1972** **The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—Regulation 6(1)** Notification of and information on application for hazardous substances consent/continuation of hazardous substances consent*

Notification of and information on application for hazardous substances consent/continuation of hazardous substances consent*

Address or location of application site.....

NOTICE is hereby given that–

1. Application is being made to–

(a) (BLOCK LETTERS) Council

by (b) (BLOCK LETTERS) (the applicant)
for hazardous substances consent/continuation of hazardous substances consent* to

(c)

2. A copy of a plan showing the situation or location of the land to which the application relates is attached.

3. The application, plans, maps and other documents submitted may be inspected at all reasonable hours in the Register of Applications for Hazardous Substances Consent kept by the planning authority at

(d) and also at

(e)
during the period of 21 days beginning with the date of this notice.

4. Any person who wishes to make representations to the above mentioned council about the application should make them in writing within that period to the council at the address of the planning authority shown on the application.

Signed.....

*On behalf of (BLOCK LETTERS)
(insert applicant's name if signed by agent)

.....

Date

.....

NOTES

- (a) Insert name of planning authority.
- (b) Insert name of applicant.
- (c) Insert brief details of the consent being sought.
- (d) Insert address of planning authority.
- (e) Insert other address in the locality at which plans etc may be inspected. (The applicant is required to make the application available for inspection at a place within the locality of the site to which the application relates.)

*delete where inappropriate

FORM 4The Town and Country Planning (Scotland) Act 1972The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993Certificate under Regulation 6(4)(a)(i)

Certificate under Regulation 6(4)(a)(i)

I hereby certify that—

(1) *I have/the applicant has in accordance with regulation 6(1), (2)(a), (3)(a)(i) and (4)(a)(i)(aa) of the above Regulations sent the requisite notice to each of the persons holding a notifiable interest in neighbouring land, together with a plan showing the location of the land to which the application relates.

The names and addresses of all of those persons who have been notified, with a note of their interest (being that of owner, lessee or occupier) are as follows:

Name	Address	Interest (as owner lessee or occupier)
------	---------	--

(2) *I have/the applicant has in accordance with regulation 6(1), (2)(a), (3)(a)(ii) and (4)(a)(i)(bb) of the above regulations sent the requisite notices to the addresses set out below, being addressed to the owner, the lessee or the occupier or to any or all of them as the case may be, together with a plan showing the location of the land to which the application relates.

* Owner

* Lessee (Address)

* Occupier

* Owner

* Lessee (Address)

* Occupier

* Owner

* Lessee (Address)

* Occupier

Signed.....

Name of applicant (BLOCK LETTERS)

Address

If signature is not that of applicant, insert below name and address of signatory, and capacity in which he acts.

Name (BLOCK LETTERS)

Address

Capacity

Date

*delete where inappropriate

FORM 5 **The Town and Country Planning (Scotland) Act 1972** **The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993** Certificate under Regulation 6(4)(a)(ii)

Certificate under Regulation 6(4)(a)(ii)

I hereby certify that—

*I have/the applicant has in accordance with regulation 6(1), (2)(b), (3)(b) and (4)(a)(ii) of the above Regulations sent the requisite notices addressed to the owners and occupiers who hold notifiable interests in neighbouring land at the addresses of the premises as listed below, together with a plan showing the location of the land to which the application relates. Addresses to which requisite notices sent are as follows—

..... (Address)
 (Address)

Signed.....

Name of Applicant (BLOCK LETTERS)

Address

If signature is not that of applicant, insert below name and address of signatory and capacity in which he acts.

Name (BLOCK LETTERS)

Address

Capacity

Date

*delete where inappropriate

FORM 6 **The Town and Country Planning (Scotland) Act 1972** **The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993** Certificate under Regulation 6(4)(B)

Certificate under Regulation 6(4)(b)

***I/The applicant hereby *certify/certifies that no notification is required in accordance with regulation 6(1) to (3) of the above Regulations since there are no parties holding a notifiable interest in neighbouring land.**

Signed.....

Name of Applicant (BLOCK LETTERS)

Address

If signature is not that of applicant, insert below name and address of signatory and capacity in which he acts.

Name (BLOCK LETTERS)

Address

Capacity

Date

*delete where inappropriate

FORM 7The Town and Country Planning (Scotland) Act 1972The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993Certificate under Regulation 6(4)(c)

Certificate under Regulation 6(4)(c)

***I/The applicant hereby *certify/certifies that it has not been possible for me/the applicant* to carry out notification in terms of regulation 6(1) to (3) of the above Regulations because there are no premises on the neighbouring land to which the notification can be sent.**

Signed.....

Name of Applicant (BLOCK LETTERS)

Address

If signature is not that of applicant, insert below name and address of signatory and capacity in which he acts.

Name (BLOCK LETTERS)

Address

Capacity

Date

*delete where inappropriate

FORM 8The Town and Country Planning (Scotland) Act 1972The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—Regulation 7Notice of

Application for Hazardous Substances Consent/Continuation of Hazardous Substances Consent*

I/the applicant* give notice that (a) (BLOCK LETTERS)
is applying to the (b)
for hazardous substances consent/the continuation of hazardous substance consent* to permit (c)....

.....
in respect of (d)

.....
A copy of the application may be inspected at (e)

.....
during all reasonable hours until (f)

Representations may be made about this application by writing to the (b)

.....
at (g)

.....
by (f)

Signed:

*on behalf of (BLOCK LETTERS)

(Insert applicant's name if signed by agent)

Date

Notes

- (a) Insert applicant's name.
- (b) Insert name of planning authority to whom the application is to be made.
- (c) Insert brief details of the consent being sought.
- (d) Insert address or location of the site to which the application relates.
- (e) Insert address at which the application may be inspected. (The applicant is required to make the application available for inspection at a place within the locality of the site to which the application relates.)
- (f) Insert date giving a period of not less than 21 days, beginning with the date when the notice is published.
- (g) Insert address of planning authority to whom the application is to be made.

*delete where inappropriate

FORM 9The Town and Country Planning (Scotland) Act 1972The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993

Certificates A–D in terms of Regulation 8(1) or 14(4)*

Certificate A

I certify that:

at the beginning of the period of 21 days ending with the date of the accompanying application/appeal* nobody, except the applicant/appellant*, was the owner(a) of any part of the land to which the application/appeal* relates.

Signed.....

*On behalf of (BLOCK LETTERS)
(insert applicant's name if signed by agent)

Date

Certificate B

I certify that:

I have/the applicant has/the appellant has* given the required notice(b) to everyone, other than the applicant/appellant*, who, at the beginning of the period of 21 days ending with the date of the accompanying application/appeal, was the owner(a) of any part of the land to which the application/appeal* relates, as listed below.

Owner's name	Address at which notice was served	Date on which notice was served
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Signed.....

*On behalf of (BLOCK LETTERS)
(insert applicant's name if signed by agent)

Date

Certificate C

I certify that:

I/the applicant/the appellant* cannot issue a Certificate A or B in respect of the accompanying application/appeal*.

I have/the applicant/the appellant has* given the required notice(b) to the persons specified below, being persons who at the beginning of the period of 21 days ending with the date of the application/appeal*, were owners(a) of any part of the land to which the application/appeal* relates.

Owner's name	Address at which notice was served	Date on which notice was served
--------------	---------------------------------------	------------------------------------

I have/the applicant/the appellant has* taken all reasonable steps to find out the names and addresses of the remaining owners(a) of the land, or of a part of it, but have/has* been unable to do so. These steps were as follows:

(c)
.....
.....
.....

Signed.....

*On behalf of
(insert applica

Date

Certificate D

I certify that:

I/the appl
cation/ap
I have/the
of everyon
with the c
application
(c)

Signed.....

*On behalf of
(insert applica

Date

Notes

- (a) Own
- utile
- (b) In ac
- (c) Insert

FORM 10The Town and Country Planning (Scotland) Act 1972The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—Regulation 8(2)Notice of Application for Hazardous Substances Consent/Continuation of Hazardous Substances Consent*

("Required Notice" to owner(a) for Purposes of Certificate B or C of Form 9)

To (b) (BLOCK LETTERS).....
at (c)

I/the applicant* give notice that

(d) (BLOCK LETTERS)
is applying to the

(e)
for hazardous substances consent/the continuation of hazardous substances consent* to permit

(f)
.....

in respect of (g)
.....

A copy of the application may be inspected at

(h)
.....

within 21 days of the service of this notice.

Representations may be made about this application by writing to the (i)
.....

at (j)
.....

within 21 days of the service of this notice.

Signed.....

*On behalf of (BLOCK LETTERS)
(insert applicant's name if signed by agent)

Date

Notes

- (a) Owner means a person who, in respect of any part of the land, is the proprietor of the dominium utile or is the lessee under a lease thereof where not less than seven years remain unexpired.
- (b) Insert name of owner to whom notice addressed.
- (c) Insert address of owner to whom notice addressed.
- (d) Insert name of applicant.
- (e) Insert name of Council to whom the application is to be made.
- (f) Insert brief details of the consent being sought.
- (g) Insert address of location of the application site.
- (h) Insert address at which the application may be inspected.
- (i) Insert name of Council to whom representations may be made.
- (j) Insert address of Council to whom representations may be made.

*delete where inappropriate

FORM 11 The Town and Country Planning (Scotland) Act 1972 The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993—Regulation 14(5)

("Required Notice" to owner(a) for Purposes of Certificate B or C of Form 9)

Notice of Appeal

To (b) (BLOCK LETTERS).....
at (c)

I/the appellant* give notice that
(d) (BLOCK LETTERS)
having applied to the (e).....
for hazardous substances consent/the continuation of hazardous substances consent* to permit
(f)

in respect of (g)

is appealing to the Secretary of State for Scotland:—
against the decision of the (e)
on the failure of the (f) to give notice of a decision*

Representations may be made to the Secretary of State about this appeal in writing to the Chief Reporter,
Scottish Office Inquiry Reporter's Unit, 2 Greenside Lane, Edinburgh, EH1 3AG within 21 days of
the date of service of this notice.

Signed.....

*On behalf of (BLOCK LETTERS)
(insert applicant's name if signed by agent)

Date

Notes

- (a) Owner means a person who, in respect of any part of the land, is the proprietor of the dominium utile or is the lessee under a lease thereof where not less than seven years remain unexpired.
- (b) Insert name of owner to whom notice addressed.
- (c) Insert address of owner to whom notice addressed.
- (d) Insert name of applicant.
- (e) Insert name of Council to whom the application was made.
- (f) Insert brief details of the consent sought.
- (g) Insert address of location of the application site.

*Delete where inappropriate

**FORM 12The Housing and Planning Act 1986—Section 38The Town and Country Planning
(Hazardous Substances) (Scotland) Regulations 1993—Regulation 15Claim for Deemed
Consent**

Part 1 – Claimant and Site

Claimant (BLOCK LETTERS)
Address

Tel No

Agent (if any) to whom correspondence should be sent (BLOCK LETTERS)
Address

Tel No

Contact

Full postal address or location of land to which the claim relates.

General description of activities carried on at the site during the establishment period.

Part 2 – Substances for which consent is being claimed and established quantity

Table A

To be completed for substances notified to HSE(a) under NIHHS(b) before the relevant date(c)

(1) Name of Substance(s) present during establishment period(d)	(2) Entry number in Schedule 1 to the 1993 Regulations(e)	(3) Quantity last notified to HSE before the relevant date	(4) Quantity notified before start of the establishment period (if applicable)	(5) Established quantity (f)
--	---	--	--	------------------------------------

Notes for Part 2 – Table A

- (a) "HSE" stands for Health and Safety Executive.
- (b) "NIHHS" stands for the Notification of Installations Handling Hazardous Substances Regulations 1982 (S.I. 1982/1357).
- (c) The relevant date is 1st May 1993.
- (d) The establishment period is the 12 month period immediately preceding the relevant date.
- (e) The 1993 Regulations means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (S.I. 1993/323).

Table B

To be completed for substances notified to HSE(a) under NIHHS(b) before the relevant date(c)

(1)
Name of
Substance(s)
present during
establishment
period

Notes for Part 2

- (a) "NIHHS" stands for the Notification of Installations Handling Hazardous Substances Regulations 1982 (S.I. 1982/1357).
- (b) The relevant date is 1st May 1993.
- (c) The relevant date is 1st May 1993.
- (d) The establishment period is the 12 month period immediately preceding the relevant date.
- (e) The 1993 Regulations means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (S.I. 1993/323).
- (f) The established quantity is the quantity of the substance that is present during the establishment period.

Part 3 – Movement of substances

For each substance notified to HSE(a) under NIHHS(b) before the relevant date(c)

- (a) the name of the substance

- (b) the quantity of the substance

DEEMED CONSENT CONDITIONS

Below ambient temperature vessel conditions

1. A hazardous substance shall be present at below ambient temperature in a vessel in a vessel area only 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 be present at ambient temperature in a buried or mounded vessel in a vessel area only 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 be present at ambient temperature in a non-buried or non-mounded vessel in a vessel area only 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 be present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in a vessel area only 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 be present at above its boiling point at 1 bar absolute in a vessel area only 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 a vessel area.

Moveable container storage area conditions

7.—(1) A hazardous substance shall be stored in moveable containers only in an area identified in a moveable container storage area plan for that substance in accordance with regulation 15(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.

ENFORCEMENT—MODIFICATIONS OF THE ACT

PART I

APPEALS AGAINST HAZARDOUS
SUBSTANCES CONTRAVENTION NOTICES

1. In section 85 of the Act (appeals against enforcement notice)—

(a) for subsection (1) there shall be substituted:—

“(1) A person on whom a hazardous substances contravention notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice 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 97B(4) of this Act;
- (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 97B(5)(b) of this Act falls short of what should reasonably be allowed.”

(b) in subsection (2)(a), for “enforcement notice” there shall be substituted “hazardous substances contravention notice”;

(c) for subsection (2A) there shall be substituted—

“(2A) A notice under subsection (2) of this section shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement in writing

—

- (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.”

(d) subsection (2B) shall be omitted;

(e) in subsection (2C)—

- (i) in paragraph (a) the words “within the time prescribed under subsection (2B)(a) above” shall be omitted;

(ii) for paragraph (b) there shall be substituted—

“(b) may allow an appeal and quash the hazardous substances contravention notice if the planning authority fail to comply with regulation 20(2)

of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.”

- (f) subsection (3) shall be omitted;
- (g) in subsection (4)(a)(i) and ii), for the words “enforcement notice” there shall be substituted the words “hazardous substances contravention notice”;
- (h) for subsection (5)(a)—(d) there shall be substituted—
 - “(5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the hazardous substances contravention notice and 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;
 - (b) discharge any condition subject to which hazardous substances consent was granted.”
- (i) subsections (5A) and (5B) shall be omitted;
- (j) for subsections (6), (6A), (6B) and (7) there shall be substituted
 - “(6) In considering whether to grant hazardous substances consent under subsection (5) of this section, the Secretary of State shall have regard to the considerations specified in section 56E(2) of this Act.
 - (6A) Any hazardous substances consent that may be granted under subsection (5) of this section is any hazardous substances consent that might be granted on an application under Part IV of this Act.
 - (6B) Where under subsection (5) of this section the Secretary of State discharges a condition he may substitute for it any other condition or limitation.
 - (7) Where an appeal against a hazardous substances contravention notice is brought under this section, 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 and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect:—
 - (a) any hazardous substances consent granted thereunder shall be treated as granted on the said application;
 - (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the Secretary of State’s decision shall be final; and
 - (c) for the purposes of section 56N of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with application for hazardous substances consent made to the planning authority.”
- (k) in subsection (7A)(b) for the words from “section 87” to “Act 1980” there shall be substituted the words “section 56DA of this Act”; and
- (l) in subsection (10) for the words “an enforcement notice” there shall be substituted the words “a hazardous substances contravention notice”.

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES, ETC.

2. In section 86 (offence where enforcement notice not complied with)—
 - (a) for subsection (1) there shall be substituted—

“(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any step required by the notice to be taken has 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 are in breach of the notice.”
 - (b) in subsection (2) for the words “the owner of the land” there shall be substituted the words “a person”;
 - (c) subsections (4) and (5) shall be omitted;
 - (d) in subsection (6) the words “or (5)” shall be omitted;
 - (e) in subsection (7)(a) for the words “enforcement notice” there shall be substituted the words “hazardous substances contravention notice”.
3. In section 88 of the Act (execution and cost of works required by enforcement notice)—
 - (a) for the words “an enforcement notice” in each place where they occur there shall be substituted the words “a hazardous substances contravention notice”;
 - (b) in subsection (2) for the words “breach of planning control” in both places where they occur there shall be substituted the words “contravention of hazardous substances control”.
4. For section 89 (enforcement notice to have effect against subsequent development) there shall be substituted—
 - “(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.
 - (2) Without prejudice to subsection (1) of this section, where a provision of a hazardous sub-stances 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) of this section, where a provision of a hazardous sub-stances 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) A person who, without the grant of hazardous substances consent in that behalf, is responsible for the presence of a hazardous substance on land in contravention of the requirements of a hazardous substances contravention notice as described in subsection (2) or (3) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
5. In section 89A (effect of planning permission etc on enforcement or breach of condition notice)

 - (a) for subsection (1) there shall be substituted:—

“(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) subsection (2) shall be omitted;
- (c) in subsection (3), for the words “an enforcement notice or breach of condition notice” there shall be substituted the words “a hazardous substances contravention notice”.

PART 3

REGISTERS

6. For subsection (1) of section 87A of the Act (register of waste land, enforcement and stop notices) there shall be substituted—

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

- (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 planning authority.

(1D) The register shall be kept at the principal office of the planning authority.”

PART 4

VALIDITY

7. In section 231(3) of the Act (validity of development plans and certain orders, decisions and directions) there shall be inserted at the appropriate place—

“(ff) any decision of the Secretary of State on an appeal to him against a hazardous substances contravention notice;”

PART 5

ANNOTATED TEXT OF SECTIONS 85, 86, 87A, 88, 89 AND 89A OF THE ACT AS MODIFIED BY SCHEDULE 4 (PARTS 1-3) TO THESE REGULATIONS

Appeal against enforcement notice

85.—(1) A person on whom a hazardous substances contravention notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice 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 97B(4) of this Act;
- (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 97B(5)(b) of this Act falls short of what should reasonably be allowed.

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

- (a) by giving written notice of 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.

(2A) A notice under subsection (2) of this section shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement in writing—

- (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.

(2B) This subsection is omitted]

(2C) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with subsection (2A) above; and
- (b) may allow an appeal and quash the hazardous substances contravention notice if the planning authority fail to comply with regulation 20(2) of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.

(2D) Subject to subsection (2C) above, the Secretary of State shall, if either the planning authority or the appellant so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.

(3) This subsection is omitted]

(4) On an appeal under this section—

- (a) the Secretary of State may—
 - (i) correct any defect, error or misdescription in the hazardous substances contravention notice; or
 - (ii) 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 planning authority; and
 - (b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 84(2) of this Act to be served with the 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.
- (5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the hazardous substances contravention notice and 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;
 - (b) discharge any condition subject to which hazardous substances consent was granted.
- [(5A) & (5B) These subsections are omitted]
- (6) In considering whether to grant hazardous substances consent under subsection (5) of this section, the Secretary of State shall have regard to the considerations specified in section 56E(2) of this Act.
- (6A) Any hazardous substances consent that may be granted under subsection (5) of this section is any hazardous substances consent that might be granted on an application under Part IV of this Act.
- (6B) Where under subsection (5) of this section the Secretary of State discharges a condition he may substitute for it any other condition or limitation.
- (7) Where an appeal against a hazardous substances contravention notice is brought under this section, 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 and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect
- (a) any hazardous substances consent granted thereunder shall be treated as granted on the said application;
 - (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the Secretary of State's decision shall be final; and
 - (c) for the purposes of section 56N of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for hazardous substances consent made to the planning authority.
- (7A) Where—
- (a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;
 - (b) any fee is payable under regulations made by virtue of section 56DA of this Act 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.

(9) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

(10) The validity of a hazardous substances contravention notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) to (e) of subsection (1) of this section.

Offence where enforcement notice not complied with

86.—(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any step required by the notice to be taken has 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 are in breach of the notice.

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

(3) In proceedings against any person for an offence under subsection (2) of this section, 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.

[(4) and (5) These subsections are omitted.]

(6) An offence under subsection (2) of this section 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 87A of this Act, 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.

Register of waste land, enforcement and stop notices

87A.—(1) Every planning authority shall, in respect of each hazardous substances contravention notice issued by them, keep an enforcement register containing the following information—

(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 planning authority.

(1D) The register shall be kept at the principal office of the planning authority.

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

Execution and cost of works required by enforcement notice

88.—(1) If, within the period specified in a hazardous substances contravention notice for compliance therewith, or within such extended period as the planning authority may allow, any steps required by the notice to be taken have not been taken, the planning authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so; and if that person, having been entitled to appeal to the Secretary of State failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken in accordance with the notice by the planning authority.

(1A) In computing the amount of the expenses which may be recovered by them under subsection (1) above, a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.

(2) Any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with a hazardous substances contravention notice served in respect of any contravention of hazardous substances control and any sums paid by the owner or lessee of any land under subsection (1) of this section in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken, shall be recoverable from the person by whom the contravention of hazardous substances control was committed.

(3) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a hazardous substances contravention notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.

(4) A planning authority taking steps under subsection (1) above may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal by the planning authority; and where such materials have been sold the planning authority shall, after deducting therefrom any expenses recoverable by them from the owner, pay him the proceeds of such sale.

(5) Where a planning authority seek, under subsection (1) above, to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—

- (a) he is receiving the rent in respect of that land merely as a trustee, tutor, curator, factor or agent of some other person; and
- (b) he has not, and since the date of the service on him of the demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the authority,

his liability shall be limited to the total amount of the money which he has or has had in his hands as aforesaid; but a planning authority who by reason of the foregoing provisions of this subsection have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

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

Enforcement notice to have effect against subsequent development

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

(2) Without prejudice to subsection (1) of this section, 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) of this section, 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) A person who, without the grant of hazardous substances consent in that behalf, is responsible for the presence of a hazardous substance on land in contravention of the requirements of a hazardous substances contravention notice as described in subsection (2) or (3) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Effect of planning permission, etc. on enforcement or breach of condition notice

89A.—(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.

(2) This subsection is omitted].

(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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made principally under the Town and Country Planning (Scotland) Act 1972 (“the Act”), as amended by the Housing and Planning Act 1986, the Environmental Protection Act 1990 and the Planning and Compensation Act 1991, and come into force on 1st May 1993. The Act

provides that the presence at or above the controlled quantity of a hazardous substance on, over or under land requires hazardous substances consent.

These Regulations set out—

- (1) the list of substances which are hazardous substances for the purposes of the Act and the controlled quantities of those substances (regulation 3 and Schedule 1);
- (2) prescribed forms, notices and certificates (Schedule 2);
- (3) exemptions from the need for hazardous substances consent (regulation 4);
- (4) the procedure for an application for hazardous substances consent (regulations 5 to 14);
- (5) the procedure for a claim for deemed hazardous substances consent and the conditions which will apply to such consent in addition to those set out in the Act (regulations 15 to 17 and Schedule 3);
- (6) the procedure for enforcement of hazardous substances control (regulations 18 to 23);
- (7) the enforcement provisions of the Act, as modified by these Regulations (Schedule 4);
- (8) the form of the Consents Register required under the Act (regulation 24);
- (9) the fee payable with an application for hazardous substances consent (regulations 25 and 26);
- (10) the procedure for applications by a planning authority (regulation 27).