STATUTORY RULES OF NORTHERN IRELAND

2015 No. 344

PLANNING

The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015

Made - - - -	*24th September 2015*
Coming into operation	*16th October 2015*

The Department of the Environment is a designated [M1] Department for the purposes of section 2(2) of the European Communities Act 1972 [M2] ("the 1972 Act") in relation to the prevention and limitation of the effects of accidents involving dangerous substances.

The Department of the Environment makes the following Regulations, in exercise of the powers conferred on it by section 2(2) and paragraph 1A of Schedule 2 to the 1972 Act and by sections 8(5)(c), 9(6)(c), 108(4) and (5), 109(1), (2) and (4), 111, 115(7), 116(3), 162(4), (10) and (12), 223 and 247(1) of the Planning Act (Northern Ireland) 2011 [M3].

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for the references in these Regulations to Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures [M4], to be construed as references to that instrument as amended from time to time.

Marginal Citations

M1 S.I. 1998/1750.

M2 1972 c. 68: section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)

M3 2011 c.25 (N.I.) see **section 250(1)** for definition of "the Department" and "prescribed".

M4 O.J. 353, 31.12.2008, p.1.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015 and shall come into operation on 16th October 2015.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 [M5] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

"the 2011 Act" means the Planning Act (Northern Ireland) 2011;

"the CLP Regulation" means Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1907/2006**[**[F1]as it had effect immediately before IP completion day**]** ;

"consent" means consent required under section 108 of the 2011 Act;

[[F2]"the Department" means the Department for Infrastructure;**]**

"the Directive" means Council Directive 2012/18/EU of the European Parliament and of the Council [M6] on the control of major-accident hazards involving dangerous substances, **[**[F3]as it had effect immediately before exit day,**]** ;

[[F4]"the EIA Directive" means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as it had effect immediately before exit day;**]**

"the General Development Procedure Order" means the Planning (General Development Procedure) Order (Northern Ireland) 2015 [M7];

"the Hazardous Substances Regulations" means the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 [M8];

"electronic communication" has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001 [M9];

[[F5]"major accident" has the same meaning as in regulation 2 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015.**]**

(3) In these Regulations

(a) a reference to a section is a reference to that section of the 2011 Act.

(b) references to the CLP Regulation are references to that Regulation as amended from time to time;

(c) expressions appearing both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive

(4) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

(a) the expression "address" includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person

to provide a name or address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;

(b) references to forms, maps, plans, notices or other documents or copies of such things include references to such documents or copies of them in electronic form.

(5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, map, plan, notice or other document to any other person ("the recipient").

(6) The requirement shall be taken to be fulfilled where the application or other document transmitted by means of electronic communication is—

(a) capable of being accessed by the recipient;

(b) legible in all material respects; and

(c) sufficiently permanent to be used for subsequent reference.

(7) In paragraph (6), "legible in all material respects" means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(8) Where the electronic communication is received by the recipient outside the recipient's business hours, it shall be taken to have been received on the next working day; and for this purpose "working day" means a day which is not a Saturday, Sunday or a public holiday.

(9) A requirement in these Regulations that any application or other document should be in writing is fulfilled where the document meets the criteria in paragraph (6).

Textual Amendments

F1 Words in reg. 2(2) inserted (31.1.2020) by The Planning (Environmental Assessments and Technical Miscellaneous Amendments) (EU Exit) Regulations (Northern Ireland) 2020 (SR2020/300), regs. 1(2), **2(2)**

F2 Words in reg. 2(2) inserted (27.3.2019) by The Planning (Miscellaneous Amendments) Regulations (Northern Ireland) 2019 (S.R. 2019/24), regs. 1, **8(2)**

F3 Words in reg. 2(2) substituted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F4 Words in reg. 2(2) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F5 Words in reg. 2(2) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M5 1954 c 33 (N.I.)

M6 O.J. No. L 197, 24.7.2012, p. 1

M7 S.R. 2015 No. 72

M8 S.R. 2015 No. 61

M9 2001 c.9 (N.I.) as amended by 2003 c.21

PART 2

Hazardous Substances, Controlled Quantities and Exemptions

Hazardous substances and controlled quantities

3.—(1) Substances, mixtures or preparations—

(a) falling within a category in column 1 of Part 1,

(b) specified in column 1 of Part 2 or,

(c) meeting the description in column 1 of Part 3,

of Schedule 2 and present as raw materials, products, by-products, residues or intermediates are hazardous substances for the purposes of the 2011 Act.

(2) The quantity specified in column 2 of Schedule 2 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the 2011 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 to another, including if it is in directly related intermediate temporary storage, while it is being transported from one place to another unless—

(a) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance; or

(b) in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

(2) Hazardous substances consent is not required for the presence of a hazardous substance in, on, over or under land at military establishments, installations or storage facilities.

(3) Hazardous substances consent is not required for the presence of a hazardous substance where it is being transported in a pipeline, including a pumping station, outside of any land in respect of which—

(a) there is a hazardous substances consent for any substance; or

(b) (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

(4) Subject to paragraph (5), hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other seagoing craft in an emergency until the expiry of a period of 14 days beginning with the day on which it was so unloaded.

(5) For the purposes of paragraph (4) a substance shall be treated as having been unloaded from a craft in an emergency if 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 Area Regulations (Northern Ireland) 1991 [M10], without requiring notification under regulation 6(1) of those Regulations by virtue of an exemption under regulation 6(5) of those Regulations.

(6) Subject to paragraph (7), hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage.

(7) The exemption in paragraph (6) does not apply to a hazardous substance present in—

(a) a site used for the storage of metallic mercury pursuant to **[**[F6]Article 13(1) of Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, as it had effect immediately before IP completion day;**]**;

(b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;

(c) chemical and thermal processing operations and storage relating to those operations;

(d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

(8) Hazardous substances consent is not required for the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965 [M11].

(9) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes, except where present in connection with the matters referred to in paragraphs 7(b) to (d).

(10) Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of—

(a) the offshore exploration and exploitation of minerals, including hydrocarbons; or

(b) the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.

(11) Hazardous substances consent is not required for the presence of an explosive within the meaning of regulation 2(1) of The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 [M12] in relation to which a licence is required and has been granted by the Department of Justice under Regulation 11(3) of those Regulations.

(12) Hazardous substances consent is not required where an explosives licence within the meaning of regulation 2(1) of the Explosives in Harbour Areas Regulations (Northern Ireland) 1995 [M13] has been issued.

(13) Hazardous substances consent is not required in relation to a hazardous substance which is on, over or under any land ("the relevant substance") if—

(a) the relevant substance was present on, over or under the land at any time during the establishment period;

(b) hazardous substances consent was not required for the presence of the relevant substance at the time it was present during the establishment period; and

(c) hazardous substances consent would have been required for the presence of the relevant substance had these Regulations been in operation at that time.

(14) Paragraph (13) does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any one time during the establishment period.

(15) The presence of a substance to which paragraphs (1) to (14) 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 2011 Act or these Regulations.

(16) The presence of a quantity of a hazardous substance—

(a) in a location where it cannot act as a initiator of a major accident hazard elsewhere on the relevant site; and

(b) which is equal to or less than two per cent of the relevant controlled quantity for that substance,

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 2011 Act or these Regulations.

(17) Where the conditions in paragraph (18) are met, hazardous substances consent is not required for a relevant minor change.

(18) The conditions are that—

(a) before the relevant minor change occurs, the council receives from the Health and Safety Executive for Northern Ireland (HSENI) notice in writing (which has been copied to the person in control of the land to which the hazardous substances consent in question relates) confirming—

(i) details of the relevant minor change, including details about how substances are to be kept and used;

(ii) that the relevant minor change will not result in a safety hazard change;

(iii) that the relevant minor change will not result in a lower-tier establishment becoming an upper-tier establishment or vice-versa; and

(b) that any hazardous substances that are held without hazardous substances consent in reliance on this exemption are kept and used in accordance with the details set out in the notice from HSENI.

(19) In this regulation—

"establishment period" means the period of 12 months ending on—

(a) the commencement of these Regulations; or

(b) (if later) the date on which the hazardous substances consent was first required for the relevant substance;

"relevant minor change" means a change to the quantity or type of hazardous substances present on, over or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for this regulation;

"safety hazard change" means a change to an area notified to the Department by HSENI for the purposes of paragraphs 2(a) of Schedule 3 Part 1 or Part 2 to the General Development Procedure Order, where that change results in—

(a) that area encompassing any area which it did not previously encompass; or

(b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

Textual Amendments

F6 Words in reg. 4(7)(a) substituted (31.12.2020) by The Planning (Environmental Assessments and Technical Miscellaneous Amendments) (EU Exit) Regulations (Northern Ireland) 2020 (SR 2020/300), regs. 1(2), **2(3)**

Marginal Citations

M10 S.R. 1991 No. 509

M11 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1981

M12 S.R. 2006 No. 425

M13 S.R. 1995 No. 87

PART 3

Consent

Application for hazardous substances consent

5.—(1) Subject to paragraph (2), an application for consent shall—

(a) be made to the council ;

(b) include the name and address of the applicant;

(c) include a site map and a substance location plan;

(d) include details of—

(i) the location of the land to which the application relates;

(ii) the person in control of the land to which the application relates;

(iii) each hazardous substance for which consent is sought ("relevant substance"), including the maximum quantity of each relevant substance proposed to be present;

(iv) the main activities carried out or proposed to be carried out on the land to which the application relates;

(v) how and where each relevant substance is to be kept and used;

(vi) how each relevant substance is proposed to be transported to and from the land to which the application relates;

(vii) the vicinity of the land to which the application relates, where such details are relevant to the risks or consequences of a major accident; and

(viii) the measures taken or proposed to be taken to limit the consequences of a major accident; and

(e) be accompanied by 3 additional copies of the application, map, plan and the certificate required by regulation 7.

(2) An application to which section 111 (grant of hazardous substances consent without compliance with conditions previously attached) applies shall—

(a) be made to the council or, as the case may be, the Department;

(b) include the name and address of the applicant;

(c) include a change of location plan, if the application relates to a condition restricting the location of a hazardous substance;

(d) include a copy of the consent;

(e) identify any condition previously imposed on the relevant consent which—

(i) it is proposed should no longer be imposed on the consent; or

(ii) it is proposed should only be imposed in a modified form;

(f) for any condition identified under paragraph (e)(i), give the reason why it should not be imposed;

(g) for any condition identified under paragraph (e)(ii)—

(i) indicate the proposed modification; and

(ii) give the reasons why it should only be imposed in a modified form;

(h) describe any relevant changes in circumstances since the date of the relevant consent; and

(i) be accompanied by 3 additional copies of the application, the change of location plan, consent and the certificate required by regulation 7.

(3) An application under section 116(2) (effect of hazardous substances consent and change of control of land) shall—

(a) be made to the council ;

(b) include the name and address of the applicant;

(c) include a change of control plan;

(d) include a copy of the consent;

(e) state the date on which the change of person in control of part of the land is to take place, where known;

(f) describe the use of each area of the site identified in the change of control plan;

(g) describe any relevant changes in circumstances since the relevant consent was granted;

(h) include the certificate required by regulation 7; and

(i) be accompanied by 3 additional copies of the application, change of control plan, consent and certificate.

(4) In this regulation—

"change of control plan" is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies each area of the site under separate control after the proposed change of control;

"change of location plan" is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application;

"relevant consent" means the existing hazardous substances consent to which the application relates;

"site map" is a map reproduced from, or based on, an Ordnance Survey map with a scale of not less than 1 to 2,500, which identifies the land to which the application relates and shows National Grid lines and reference numbers; and

"substance location plan" is a plan of the land to which the application relates drawn to a scale of not less than 1 to 1,250, which identifies—

(a) any area of the land intended to be used for 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.

(5) Regulations 6 to 13 shall apply to applications made under sections 111 and 116(2) as they apply to applications for consent.

Modifications etc. (not altering text)

C1 Reg. 5 applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Advertisement of notices of applications

6.—(1) Where an application for consent is made to the council, the council shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which

the application relates is situated and, where the council maintains a website for the purpose of advertisement, by publication of the notice on the website.

(2) A notice under paragraph (1) shall state—

(a) the name of the applicant;

(b) brief details of the consent being sought;

(c) the address or location of the application site;

(d) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment **[**[F7](which have the same meaning as in any provision of retained EU law which implemented the EIA Directive)**]** ;

[[F8](da) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;**]**

(e) that the council (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;

(f) that representations (including comments or questions) may be made to the council;

(g) details of how such representations should be made and the time period for making representations, being a date not less than 21 days after the date of publication of the notice;

(h) the place and times at which and the period during which copies of the application may be inspected by the public.

Textual Amendments

F7 Words in reg. 6(2)(d) substituted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(3)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F8 Reg. 6(2)(da) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(3)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C2 Reg. 6 applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Certificates to accompany applications

7. An application for consent or an appeal against the refusal of such an application or against the imposition of a condition on such a consent shall not be entertained by the council or, as the case may be the planning appeals commission, unless it is accompanied by whichever of the certificates A to D set out in the form in Schedule 1 is appropriate, signed by or on behalf of the applicant.

Modifications etc. (not altering text)

C3 Reg. 7 applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Inspection of applications

8. Following receipt of an application under Regulation 5, the council must ensure that a copy of the application is available for inspection at its offices during the period allowed for making representations pursuant to regulation 6(2).

Modifications etc. (not altering text)

C4 Reg. 8 applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Council to take account of representations from certain persons

9. Where an application for consent is accompanied by a certificate C or D as mentioned in regulation 7, the council, in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to any of the land to which the application relates, he or she is such a person as is described in paragraphs (a) to (c) of Certificate C.

Persons to be treated as in actual possession of land

10. For the purposes of any provision of these Regulations a person shall be treated as in actual possession of land if that person is entitled to one of the following estates in land namely—

(a) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate; or

(b) a tenancy of which not less than 40 years remains unexpired.

Consultations before determining applications for hazardous substances consent

11.—(1) Before determining an application for consent the council shall consult with—

(a) the Department **[**[F9]of Agriculture, Environment and Rural Affairs**]** ;

(b) the Health and Safety Executive for Northern Ireland; and

(c) the Northern Ireland Fire and Rescue Service.

(2) The council must also, before determining an application for hazardous substances consent, consult any other persons, including any non-governmental organisation promoting environmental protection, who are affected or likely be affected by, or have an interest in, the application, and who in the council's opinion are unlikely to become aware of the application through the notices under regulation 6.

(3) When consulting under paragraph (1) or (2) of this regulation, the council must within 7 days—

(a) notify in writing the body or person concerned that they have received an application for hazardous substances consent and inform them of the following matters;

(i) a description of the proposal and the address or location of the land to which the application relates;

(ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment **[**[F10](which have the same meaning as any provision of retained EU law which implemented the EIA Directive)**]** ;

[F11(iia) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;]

(iii) that the council (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;

(iv) that representations (including comments or questions) may be made to the council;

(v) details of how such representations should be made and the time period for making representations which must not be less than 28 days beginning with the day after the day on which the person or body is notified that an application has been received by the council;

(vi) the place and times at which and the period during which copies of the application may be inspected by the public; and

(b) ensure that a copy of the application and any information, plans and other documents contained in or accompanying it is available for inspection at its offices during the period or periods allowed for making representations.

Textual Amendments

F9 Words in reg. 11(1) inserted (9.5.2016) by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116), regs. 1, **2(2)**

F10 Words in reg. 11(3)(a)(ii) substituted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(4)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F11 Reg. 11(3)(a)(iia) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(4)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

Modifications etc. (not altering text)

C5 Reg. 11 applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Determination of applications for hazardous substances consent

12.—(1) The council shall not determine an application for hazardous substances consent before the expiry of the period or periods allowed for making representations under regulations 6(2) and 11(3).

(2) In determining an application for hazardous substances consent, the council must take into account the results of consultations held in relation to that application.

Modifications etc. (not altering text)

C6 Reg. 12(2) applied (with modifications) by S.R. 2015/344, **reg. 16(2)** (as substituted 9.5.2016 by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116)S.R. 2016/116, **regs. 1**, 2(3))

Notification of decision

13.—(1) Subject to paragraph (6), for the purposes of section 115(7) (appeals) the prescribed period by which the council must give notice to the applicant of its decision on the application or give notice that the application has been referred to the Department under section 114 (call in of certain applications for hazardous substances consent to Department) is 8 weeks from the date when the application is received by the council.

(2) The council or, as the case may be, the Department shall, as soon as is practicable, inform every person who made representations which it was required to take into account under regulation 9 of its decision on the application.

(3) When the council gives the applicant notice of its decision on an application, the notice must, where hazardous substances consent is refused or is granted subject to conditions—

(a) state, clearly and precisely, the full reasons for the refusal or for any condition imposed; and

(b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the planning appeals commission in accordance with section 115.

(4) The council or, as the case may be, the Department shall, as soon as is practicable, inform the following of the terms of their decision—

(i) the Health and Safety Executive for Northern Ireland; and

(ii) any other consultees who have made representations to them on the application.

(5) The council must make available for inspection at its offices—

(i) the content of the decision and the reasons on which it is based, including any subsequent updates; and

(ii) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

(6) Where a section 235 (national security) certificate is issued the prescribed period is 8 weeks from the date on which that notice is issued to the council or, as the case may be, the Department.

(7) In this regulation a "section 235 certificate" means a certificate issued by the Secretary of State under section 235(1) or by the Department of Justice under section 235(4).

Applications to the Department for consent to execute works without compliance with conditions previously attached

14.—(1) Where an application under section 111 is required to be made to the Department then for the purpose of considering representations made in respect of that application the Department may cause a public local inquiry to be held by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(2) Where a public local inquiry is not held under paragraph (3), the Department must, before determining the application, serve a notice on the applicant and the appropriate council indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service of the notice), the applicant or the council so requests in writing, the Department shall afford to each of them an opportunity of appearing before and being heard by—

(a) the planning appeals commission; or

(b) a person appointed by the Department for the purpose.

(3) In determining an application under section 111 the Department must, where any inquiry or hearing is held, take into account any report of the planning appeals commission or a person appointed by the Department for the purposes of the inquiry or hearing, as the case may be.

(4) The decision of the Department on an application under section 111 shall be final.

Call in of certain applications for hazardous substances consent to the Department

15. On referring any application for hazardous substances consent to the Department pursuant to a direction under section 114 (call in of certain applications for hazardous substances consent to the Department), a council must serve on the applicant a notice—

(a) informing the applicant that the application has been referred to the Department; and

(b) setting out the reasons given by the Department for issuing the direction.

Application of the 2011 Act to councils

16.—(1) Any application by a council for hazardous substances consent shall be made to the Department.

[[F12](2) Regulations 5 to 8, 11 and 12(2) shall apply to the making of such applications as they apply to applications made to the council subject to the modification that a reference to "the council" is to be read as a reference to "the Department".**]**

(3) Section 110 (determination of applications for hazardous substances consent), (other than subsection (2)(e)) shall apply in relation to an application made to the Department by a council as it applies in relation to an application made to a council.

(4) A decision of the Department on an application made to it by a council shall be treated as a decision under section 114.

Textual Amendments

F12 Reg. 16(2) substituted (9.5.2016) by The Planning (Hazardous Substances) (No.2) (Amendment) Regulations (Northern Ireland) 2016 (S.R. 2016/116), regs. 1, **2(3)**

PART 4

Policies and public participation

Policies

17.—(1) In formulating any relevant policy, the Department must ensure that the following matters are taken into account—

(a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and

(b) the matters referred to in Article 13(2) of the Directive **[**[F13](with the reference in sub-paragraph (c) of that paragraph of that Article to Article 5 being read as a reference to regulation 5 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015)**]** .

(2) In this regulation, "relevant policy" means—

(a) any policy referred to in section 1(1) (general functions of department with regard to development of land); and

(b) any policy referred to in section 8(5)(b) (plan strategy) and 9(6)(b) (local policies plan).

Textual Amendments

F13 Words in reg. 17(1)(b) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(5)**; 2020 c. 1, Sch. 5 para. 1(1)

Plans and programmes

18.—(1) Subject to paragraph (3) this regulation applies where a responsible authority proposes to prepare, modify or review a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

(a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and

(b) in doing so, take such measures as it considers appropriate to ensure that—

(i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;

(ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;

(iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan or programme are made; and

(iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;

(c) take into account the results of the public participation in making those decisions; and

(d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.

(3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under Part 3 of the Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004 [M14].

(4) This regulation applies to a relevant plan or programme relating solely to the whole or any part of Northern Ireland.

(5) Any steps taken before the commencement of these Regulations in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

(6) In this regulation—

"public consultees" means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;

"relevant plan or programme" means a general plan or programme relating to—

(a) planning for new establishments pursuant to**[**[F14]any provision of retained EU law which implemented**]** Article 13 of the Directive, or

(b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to **[**[F14]any provision of retained EU law which implemented**]** Article 13 of the Directive; and

"responsible authority" means—

(a) the authority by which or on whose behalf a relevant plan or programme is prepared; and

(b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.

Textual Amendments

F14 Words in reg. 18(6) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(6)**; 2020 c. 1, Sch. 5 para. 1(1)

Marginal Citations

M14 S.R. 2004 No. 280

Other planning approvals for projects

19.—(1) Subject to paragraph (4), this regulation applies where consent, permission or other authorisation for a relevant project is sought from the competent authority.

(2) A competent authority must, before deciding to give any consent, permission or other authorisation for a relevant project, take such measures as it considers appropriate to ensure that—

(a) the public is informed by public notices or other appropriate means, including electronic media where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—

(i) the subject of the relevant project;

(ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment **[**[F15]"(which have the same meaning as in any provision of retained EU law which implemented the EIA Directive)**]** ;

[[F16](iia) where applicable, the fact that the project to which the proposal relates is one in respect of which the council or, as the case may be, the Department is required to consult any state under any provision of retained EU law which implemented the EIA Directive or which is subject to consultations between Member States in accordance with Article 14(3) of the Directive;**]**

(iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;

(iv) an indication of the times and places where, or means by which, the relevant information will be made available;

(v) details of the period for transmitting comments and questions; and

(vi) the nature of possible decisions or, where there is one, the draft decision;

(b) **[**[F17]the Department of Agriculture, Environment and Rural Affairs**]** and the Health and Safety Executive for Northern Ireland are consulted about the project;

(c) the main reports and advice issued to the competent authority at the time when the pubic concerned was informed pursuant to paragraph (2)(a) are made available to the public concerned at that time;

(d) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and

(e) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.

(3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the competent authority must make available to the public—

(a) the content of the decision and the reasons on which it is based, including any subsequent updates;

(b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

(4) To the extent that the competent authority is already required by any enactment to take any of the actions set out in paragraphs (2) and (3) of this regulation, those paragraphs do not apply.

(5) In this regulation—

"competent authority" means the council, the planning appeals commission, or as the case may be the Department with responsibility for deciding whether to give a consent, permission or other authorisation referred to in paragraph (1).

"the public concerned" means persons, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and

"relevant project" means development falling within paragraphs 2(a) and (b) of Parts 1 and 2 of Schedule 3 to the General Development Procedure Order.

(6) In this regulation, a reference to giving consent, permission or other authorisation means—

(a) granting planning permission on an application under Part 3 of the 2011 Act (planning control);

(b) granting planning permission on an application under section 213 (urgent crown development);

(c) granting planning permission, or upholding the decision of the council to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the council), on determining an appeal under section 58 (appeals) in respect of such an application;

(d) granting planning permission under section 145(1)(a) (appeal against enforcement notice – supplementary provisions relating to planning permission);

(e) making—

(i) a special development order under section 32(3)(b) (development orders);

(ii) a simplified planning zone scheme under section 33 (simplified planning zones);

(iii) an order designating an enterprise zone under article 7 of The Enterprise Zones (Northern Ireland) Order 1981 [M15]

(iv) an order under section 73 (orders requiring discontinuance of use or alteration or removal of buildings or works) including an order made under that section by virtue of section 75 (power of the Department to make section 73 orders) which grants planning permission, or confirming any such order under section 74 (confirmation by Department of section 73 orders);

(v) an order under section 73 as modified by section 230 (2)(b)(iv) (minerals);

(vi) an order made under section 1 of the Harbours Act (Northern Ireland) 1970 [M16].

(f) granting hazardous substances consent under section 114 (call in of certain applications for hazardous consent to Department);

(g) granting hazardous substances consent under section 145(1)(a) (as applied to hazardous substances contravention notices, and modified, by regulation 21 and Schedule 3)

(7) In relation to any consent, permission or authorisation falling within paragraph (6) which is capable of being varied or modified, the modification or variation is to be treated as if it is a consent, permission or other authorisation for a relevant project for the purposes of this regulation where that modification or variation authorises development falling within paragraph 2(b)(ii) of Part 1 and Part 2 of Schedule 3 to the General Development Procedure Order.

Textual Amendments

F15 Words in reg. 19(2)(a)(ii) substituted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(7)(a)**; 2020 c. 1, Sch. 5 para. 1(1)

F16 Reg. 19(2)(a)(iia) inserted (31.1.2020) by The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 (S.I. 2018/1235), regs. 1(2), **8(7)(b)**; 2020 c. 1, Sch. 5 para. 1(1)

F17 Words in reg. 19(2)(b) substituted (27.3.2019) by The Planning (Miscellaneous Amendments) Regulations (Northern Ireland) 2019 (S.R. 2019/24), regs. 1, **8(3)**

Marginal Citations

M15 S.R. 1981 No. 607

M16 1970 c.1

PART 5

Enforcement

Hazardous substances contravention notices

20.—(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 162(4)(c) (hazardous substances contravention notice) are all persons having an interest in the land, being an interest which, in the opinion of the council, is materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 162(4) shall be accompanied by a statement setting out—

(a) the council's reasons for issuing the notice;

(b) the right of appeal to the planning appeals commission against the notice, and the persons by whom, grounds upon which and time within which, such an appeal may be brought under section 143 (appeal against enforcement notice) as applied by regulation 21.

Appeals against hazardous substances contravention notices

21.—(1) Sections 143 to 145 shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 3.

(2) The provisions of those sections, as so modified are set out in Part 3 of Schedule 3.

Effect of hazardous substances contravention notices, etc.

22.—(1) Sections 146 to 149 shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 3.

(2) The provisions of those sections, as so modified are set out in Part 3 of Schedule 3.

PART 6

Electronic Communications

Use of electronic communications

23.—(1) Paragraphs (2) and (3) apply where a person uses electronic communications for any of the following purposes—

(a) making an application for hazardous substances consent under regulation 5;

(b) serving notice of appeal against a hazardous substances contravention notice under regulation 21.

(2) In a case to which this paragraph applies, and except where a contrary intention appears, the person making the application or serving notice of appeal shall be taken to have agreed—

(a) to the use of electronic communications for all purposes relating to the application, claim or appeal (as the case may be) which are capable of being effected using such communications;

(b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application, claim or appeal;

(c) that the person's deemed agreement under this paragraph shall subsist until that person gives notice in writing that he or she wishes to revoke the agreement and such withdrawal or revocation shall be final and shall take effect on a date specified by that person in the notice but not less than seven days after the date on which the notice is given.

(3) In regulation 5—

(a) in paragraph 1(c) the requirement that an application for consent shall include a site map is satisfied where the applicant identifies the site on an electronic map provided by the council and for this purpose a map is taken to be provided where the council has published it on its website;

(b) in paragraphs (1)(e), (2)(i) or (3)(i) the requirement that an application for hazardous substances consent shall be accompanied by 3 additional copies of the documents required shall not apply.

PART 7

Revocation, amendments, savings and transitional provisions

Revocation

24. The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 [M17] are revoked subject to the savings and transitional provisions set out in this Part.

Marginal Citations
M17 S.R. 2015 No. 61

Interpretation of existing consents

25.—(1) Nothing in this regulation shall affect the operation of section 29(3)(a) of the Interpretation Act (Northern Ireland) 1954.

(2) In this regulation, "relevant consent" means a hazardous substances consent granted before the commencement of these Regulations under which the following are expressly authorised—

(a) the presence of a category of substance listed in column 1 of Part B of Schedule 2 to the Hazardous Substances Regulations; or

(b) the presence of a substance named in column 1 of Part A of Schedule 2 to the Hazardous Substances Regulations.

(3) This regulation applies to a relevant consent where the category or substance referred to in paragraph (1)—

(a) is not contained in Schedule 2 to these Regulations; or

(b) is differently named or defined under Schedule 2 to these Regulations.

(4) Where this regulation applies references in a relevant consent to a category or substance referred to in paragraph (1) are to be interpreted as if these Regulations had not come into operation.

Notification of other establishments

26.—(1) This regulation applies where—

(a) hazardous substances consent would be required but for the exemption in regulation 4(13); and

(b) the council receives from the person in control of the land to which the notice relates a notice in writing which contains—

(i) details of the location of the land to which the notice relates and the person in control of the land;

(ii) details of the hazardous substances held at the site, including the quantities; and

(iii) an explanation of why regulation 4(13) applies.

(2) The council must, as soon as practicable after receiving the notice, send the Health and Safety Executive for Northern Ireland (HSENI) a copy of the notice.

(3) HSENI must, within 8 weeks of receiving notification from the council under paragraph (2), determine whether the notice concerns an establishment within the meaning of the Directive and, if so, notify the council for the area in which the establishment is located.

Amendment of the General Development Procedure Order

27.—(1) The General Development Procedure Order is amended as follows.

(2) In Parts 1 and 2 of Schedule 3, for paragraph 2(b) substitute—

"(b) where the development—

(i) involves the siting of new establishments;

(ii) consists of the modification of existing establishments covered by Article 11 of Council Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances; or

(iii) involves new developments including transport routes, locations of public use and residential areas in the vicinity of establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident [M18].".

Marginal Citations

M18 O.J. L. 197, 24.7.2012, p.1 In paragraph 2(b) expressions used in that paragraph have the same meaning as in that Directive.

Amendment of the Local Development Plan Regulations

28.—(1) The Planning (Local Development Plan) Regulations (Northern Ireland) 2015 [M19] are amended as follows.

(2) For Regulation 14 (additional matters to be taken into account) substitute—

"**14.**—(1) The other matters that the council must take into account in preparing a local development plan are—

(a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment by pursuing those objectives through the controls described in Article 13 of the Directive;

(b) the need, in the long term—

(i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;

(ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;

(iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of the Directive, so as not to increase the risks to human health and the environment.

(2) In this regulation—

(a) "the Directive" means Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances, and

(b) expressions used in paragraph (1) and in the Directive have the same meaning in that paragraph as in the Directive.".

Marginal Citations

M19 S.R. 2015 No. 62

Sealed with the Official Seal of the Department of the Environment on 24th September 2015

L.S.

Angus Kerr
A senior officer of the Department of the Environment

SCHEDULE 1

Regulation 7

PRESCRIBED FORM

Planning Act (Northern Ireland) 2011, section 109(2)

The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015, (Regulation 7)

Certificate A

I HEREBY CERTIFY that the accompanying application/appeal* is made by or on behalf of (Name of applicant/appellant) who is in actual possession of every part of the land to which the said application/appeal* relates and is entitled to a fee simple absolute/ a fee tail/ a life estate/ a tenancy of which at least 40 years remain unexpired in the land*.

OR

Certificate B

I HEREBY CERTIFY that the accompanying application/appeal* is made by or on behalf of (Name of applicant/appellant) who is the trustee of a trust or settlement which affects every part of the land to which the accompanying application/appeal* relates and that at the date of the application/appeal—

(a) a beneficiary under the trust or settlement in the actual possession of every part of the land; and

(b) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of any part of the said land within a period of 40 years.

OR

Certificate C

I HEREBY CERTIFY that the requisite notice of the accompanying application/appeal* has been given by or on behalf of (Name of applicant/appellant*) to any person who, at the beginning of the period of 21 days ending with the date of the said application/appeal* was, in relation to all or any part of the land affected by the application/appeal*—

(a) a person then in actual possession;

(b) the trustee of a trust or settlement where a beneficiary under the trust or settlement was in actual possession and no person other than such a beneficiary was entitled to enter into actual possession within a period of 40 years;

(c) a person (not being a person falling within (a) or (b)) entitled to enter into actual possession within a period of 40 years.

The persons upon whom notice was served are:—

Name and Address	Interest	Date of Service of Notice

OR

Certificate D

I HEREBY CERTIFY that the person making the accompanying application/appeal*—

(a) is unable to issue either Certificate A or B;

(b) has made due enquiries and is of the opinion that he is unable to issue a certificate for the following reasons—

(c) has given the requisite notice of the said application/appeal* to the under mentioned persons who, at the beginning of the period of 21 days ending with the date of said application/appeal* were in actual possession of any part of the land to which the application/appeal* relates, namely—

Names and Address	Date of Service of Notice

Notice of the application/appeal has been published in the (title of newspaper) on (date of publication) and a copy of the newspaper in which the notice appeared is enclosed.

Signature of Applicant or Agent_____

Date_____

* delete where inappropriate

SCHEDULE 2 Regulation 3(1) and (2)

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART 1

CATEGORIES OF SUBSTANCES

Column 1 Hazard categories in accordance with the CLP Regulation	***Column 2 Controlled quantity(tonnes)***
Section 'H' – HEALTH HAZARDS	
H1 ACUTE TOXIC Category 1, all exposure routes	5
H2 ACUTE TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 8)	50
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE category 1	50
Section 'P' – PHYSICAL HAZARDS	
P1a EXPLOSIVES (see note 9) — Unstable explosives or — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation (EC) No. 440/2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (see note 10) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures	10
P1b EXPLOSIVES (see note 9) Explosives, Division 1.4 (see note 11)	50
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10
P3a FLAMMABLE AEROSOLS (see note 12(1)) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)
P3b FLAMMABLE AEROSOLS (see note 12(1)) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids Category 1(see note 12(2))	5,000 (net)
P4 OXIDISING GASES	50

Oxidising gases, Category 1	
P5a FLAMMABLE LIQUIDS — Flammable liquids, Category 1, or — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or — Other liquids with a flash point ≤ 60°C, maintained at a temperature above their boiling point (see note 13)	10
P5b FLAMMABLE LIQUIDS — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or — Other liquids with a flash point ≤ 60°C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 13)	50
P5c FLAMMABLE LIQUIDS Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000
P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, type A or B or organic peroxides, Type A or B	10
P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F	50
P7 PYROPHORIC LIQUIDS AND SOLIDS Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50
P8 OXIDISING LIQUIDS AND SOLIDS Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	50
Section ‘E’ - ENVIRONMENTAL HAZARDS	
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200
Section ‘O’ – OTHER HAZARDS	
O1 Substances or mixtures with hazard statement EUH014	100
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100

O3 Substances or mixtures with hazard statement EUH029		50

PART 2

NAMED SUBSTANCES

Column 1 Hazardous substances	***CAS number[1]***	***Column 2 Controllled quantity (tonnes)***
1. Ammonium nitrate (see note 14)		5,000
2. Ammonium nitrate (see note 15)		1,250
3. Ammonium nitrate (see note 16)		350
4. Ammonium nitrate (see note 17)		10
5. Potassium nitrate (see note 18)		5,000
6. Potassium nitrate (see note 19)		1,250
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	0.1
9. Bromine	7726-95-6	20
10. Chlorine	7782-50-5	10
11. Nickel compounds in inhalable powder form; nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide		1
12. Ethyleneimine	151-56-4	10
13. Fluorine	7782-41-4	10
14. Formaldehyde (concentration ≥ 90%	50-00-0	5
15. Hydrogen	1333-74-0	2*
16. Hydrogen chloride (liquefied gas)	7647-01-0	25
17. Lead alkyls		5
18. Liquefied flammable gases, Category 1 or 2 (Including LPG) and natural gas (see note 20)		Natural gas (including liquefied natural gas): 15*) Liquefied petroleum gas: 25* Any other liquefied flammable gases: 50
19. Acetylene	74-86-2	5
20. Ethylene oxide	75-21-8	5

[1] The CAS number is shown only for indication

21. Propylene oxide	75-56-9	5
22. Methanol	67-56-1	500
23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	101-14-4	0.01
24. Methylisocyanate	624-83-9	0.15
25. Oxygen	7782-44-7	200
26. 2,4 – Toluene diisocyanate 2,6 - Toluene diisocyanate	584-84-9 91-08-7	10
27. Carbonyl dichloride (phosgene)	75-44-5	0.3
28. Arsine (arsenic trihydride)	7784-42-1	0.2
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2
30. Sulphur dichloride	10545-99-0	1
31. Sulphur trioxide	7746-11-9	15
32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 21)		0.001
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or its salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1.2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoylchloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Napthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone		0.5
34. Petroleum products and alternative fuels (a) gasolines and napthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)		2,500

[1] The CAS number is shown only for indication

35. Anhydrous ammonia	7664-41-7	50
36. Boron trifluoride	7637-07-2	5
37. Hydrogen sulphide	7783-06-4	5
38. Piperidine	110-89-4	50
39. Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50
40. 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50
41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing less than 5% active chlorine and not classified under any of the other hazard categories in Part 1 of this Schedule provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute category 1 [h400]		200
42. Propylamine (see note 22)	107-10-8	500
43.Tert-butyl-acrylate (see note 22)	1663-39-4	200
44. 2-Methyl-3-butenenitrile (see note 22)	16529-56-9	500
45. Tetrahydro-3,5-dimethyl-1,3,5-thiadiazine-2-thione (Dazomet) (see note 22)	533-74-4	100
46. Methyl acrylate (see note 22)	96-33-3	500
47. 3-Methylpyridine (see note 22)	108-99-6	500
48. 1-Bromo-3-chloropropane (see note 22)	109-70-6	500

[1] The CAS number is shown only for indication

PART 3

SUBSTANCES USED IN PROCESSES

Column 1 Hazardous substances	***Column 2 Controlled quantity***
Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 (“HS”) may be generated during loss of control of the processes, including storage activities in any installation within an establishment, any substance which is used in that process (“S”).	The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant process) an amount equal to or exceeding the controlled quantity of the HS in question.

PART 4

NOTES TO PARTS 1 TO 3

1. Substances and mixtures are classified in accordance with the CLP Regulation.

2. Mixtures shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.

3. Expressions appearing both in this Schedule and in the Directive have the same meaning for the purposes of this Schedule as they have for the purposes of the Directive.

4. The controlled quantities set out in Parts 1 to 3 of this Schedule relate to each establishment.

The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

5. The following rule governing the addition of hazardous substances, or categories of hazardous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements in these Regulations.

These Regulations apply to establishments if the sum $q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4Q_{L4} + q_5Q_{L5} + ...$ is greater than or equal to 1, where q_x = the quantity of hazardous substance x (or category of hazardous substances) falling within Part 1 or Part 2 of this Schedule; and Q_{LX} = the relevant controlled quantity for hazardous substance x (or category of hazardous substances x) from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule (except for those substances for which column 2 contains a quantity Q*, in which case, for Hydrogen, Q is equal to 5, and for Liquified petroleum gas and Natural Gas (including liquefied natural gas), Q is equal to 50).

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

(a) for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2, or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;

(b) for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;

(c) for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

6. In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

7. In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in note 5, the lowest controlled quantity for each group of categories in notes 5(a), 5(b) and 5(c) corresponding to the classification concerned must be used.

8. Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

9. The hazard class Explosives includes explosive articles (see Section 2.1 of Annex 1 to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

10. Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria) [M20] identifies the substance or mixture as potentially having explosive properties.

Marginal Citations

M20 More guidance on waiving of the test can be found in the A.14 method description in the Annex to Commission Regulation (EC) No. 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008.p.1).

11. If Explosives of Division 1.4 are unpacked or repacked, they shall be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

12.—(1) Flammable aerosols are classified in accordance with the Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers [M21] (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive 75/324/EEC correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

(2) In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

Marginal Citations

M21 O.J. L 147, 9.6.1975,.p. 40.

13. According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35°C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

14. Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-

sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

(a) between 15.75% [M22] and 24.5% [M23] by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers [M24];

(b) 15.75% by weight or less and unrestricted combustible materials.

Marginal Citations

M22 15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

M23 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.

M24 O.J. L 304, 21.11.2003, p. 1.

15. Ammonium nitrate (1,250/5,000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

(a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;

(b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;

(c) more than 28% by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

16. Ammonium nitrate (350/2,500): technical grade

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

(a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances;

(b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

17. Ammonium nitrate (10/50): ‘off-specs’ material and fertilisers not fulfilling the detonation test

This applies to—

(a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in notes 15 and 16, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of notes 15 and 16.

(b) fertilisers referred to in note 14(a), and note 15 to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003.

18. Potassium nitrate (5,000/10,000)

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

19. Potassium nitrate (1,250/5,000)

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

20. Upgraded biogas

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of this Schedule where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

21. Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

WHO 2005 TEF [1]			
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8,-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

[1] Van den Berg et.al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds

22. In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

23. Where a hazardous substance falls within both Parts 1 and 2 of this Schedule, the controlled quantity in Part 2 applies.

24. In relation to Part 3—

(a) where S also falls within Part 1 or Part 2, the classification with the lowest controlled quantity applies; and

(b) where S also falls within Part 1 and Part 2, the controlled quantity which is the lowest when the controlled quantities under Part 2 and Part 3 are compared applies.

SCHEDULE 3 Regulations 21 and 22

ENFORCEMENT – MODIFICATIONS OF THE 2011 ACT

PART 1

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

Provisions of the 2011 Act Applied	***Modifications***
Section 143 (appeal against enforcement notice) Subsection (1)	For the words "an enforcement notice" substitute " a hazardous substances contravention notice ".
Subsection (2)	In subsection (a) for the words "enforcement notice" substitute " hazardous substances contravention notice ".
Subsection (3)	For subsection (3) substitute— "(3) An appeal may be brought on any of the following grounds— (a) that in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of 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 section 162(4); (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 162(5)(b) falls short of what should reasonably be allowed.”
Subsection (4)	For the words “enforcement notice” substitute “ hazardous substances contravention notice ”.
Subsection (5)	None
Subsection (6)	None
Subsection (7)	Omit
Subsection (8)	For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”.
Subsection (9)	For the words “enforcement notice” in each place where they occur substitute “ hazardous substances contravention notice ”.
Section 144 (appeal against enforcement - general supplementary provisions)	For the words “enforcement notice” in each place where they occur substitute “ hazardous substances contravention notice ”.
Section 145 (appeal against enforcement - supplementary provisions relating to planning permission) Subsection (1)	For subsections (a) and (b) substitute— “(a) grant hazardous substances consent for the presence of hazardous substances on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land; (b) discharge any condition subject to which hazardous substances consent was granted.”

Subsection (1) (c)	Omit
Subsection (2)	Omit
Subsection (3)	Omit
Subsection (4)	For subsection (4) substitute— "(4) In considering whether to grant hazardous substances consent under subsection (1), the planning appeals commission shall have regard to the considerations specified in section 110(2) and to any other material considerations; and the hazardous substances consent granted under subsection (1) is any hazardous substances consent that might be granted under Part 4; and where under that subsection the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous."
Subsection (5)	For subsection (5) substitute— "(5) Where an appeal against a hazardous substances contravention notice is brought under section 143, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under subsection (1)— (a) any hazardous substances consent granted under that subsection shall be treated as granted on that application; (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the decision of the planning appeals commission will be final; and (c) subject to sub-section (b), any hazardous substances consent granted under that subsection shall have the

	like effect as a consent granted under Part 3.”
Subsection 6	None

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC.

Provisions of the 2011 Act Applied	***Modifications***
Section 146 (execution and costs of works required by enforcement notice)	
Subsection (1)	For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”.
Subsection (2)	For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ” and for the words “breach of planning control” in both places where they occur substitute “ contravention of hazardous substances control ”.
Subsections (3) to (9)	None
Section 147 (offence where enforcement notice not complied with) Subsection (1)	For subsection (1) substitute— “(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.”
Subsection (2)	For the words “the owner of the land” substitute “ a person ” and for the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”.
Subsection (3)	None
Subsection (4)	Omit
Subsection (5)	Omit
Subsection (6)	Omit the words “or (5)”
Subsection (7)	For the words “enforcement notice” substitute “ hazardous substances contravention notice. ”

Subsection (8)	None
Subsection (9)	None
Section 148 (effect of planning permission, etc., on enforcement or breach of condition notice) Subsection (1)	For paragraph (1) substitute— "(1) Where after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent."
Subsection (2)	Omit
Subsection (3)	For the words "an enforcement notice or breach of condition notice" substitute " a hazardous substances contravention notice ".
Section 149 (enforcement notice to have effect against subsequent development)	For Section 149 substitute— "(1) Compliance with a hazardous substances contravention notice shall not discharge that notice. (2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice, shall be in contravention of that notice. (3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity

in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

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

(5) Sections 146 and 147 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but a person authorised in writing by the council shall not enter the land under section 146(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of that person's intention to do so."

PART 3

SECTIONS OF THE 2011 ACT AS MODIFIED

Appeal against hazardous substances contravention notice

143.—(1) A person having an estate in the land to which a hazardous substances contravention notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on that person.

(2) This subsection applies to a person who—

(a) on the date on which the hazardous substances contravention notice is issued occupies the land to which it relates by virtue of a licence; and

(b) continues to occupy the land as aforesaid when the appeal is brought.

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

(a) that in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of 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 section 162(4);

(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 162(5)(b) falls short of what should reasonably be allowed.

(4) An appeal under this section must be made by serving written notice of the appeal on the planning appeals commission before the date specified in the hazardous substances contravention notice as the date on which it is to take effect and such notice must indicate the grounds of the appeal and state the facts on which it is based.

(5) Before determining an appeal under this section, the planning appeals commission must, if either—

(a) the appellant; or

(b) the council or as the case may be, the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.

(7) Omitted.

(8) Subject to subsection (9), 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 on which such an appeal may be brought.

(9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—

(a) has held an estate in the land since before the hazardous substances contravention notice was issued;

(b) was not served with a copy of the hazardous substances contravention notice served; and

(c) satisfies the court that—

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

(ii) that person's interests have been substantially prejudiced by the failure to serve him or her with a copy of it.

Appeal against hazardous substances contravention notice – general supplementary provisions

144.—(1) On an appeal under section 143 the planning appeals commission must quash the hazardous substances contravention notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any misdescription, defect or error in the hazardous substances contravention notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the council, or as the case may be, the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not so served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the copy of the hazardous substances contravention notice.

Appeal against hazardous substances contravention notice – supplementary provisions relating to hazardous substances consent

145.—(1) On the determination of an appeal under section 143, the planning appeals commission may—

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

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

(c) Omitted

(2) Omitted.

(3) Omitted.

(4) In considering whether to grant hazardous substances consent under subsection (1), the planning appeals commission shall have regard to the considerations specified in section 110(2) and to any other material considerations; and the hazardous substances consent granted under subsection (1) is any hazardous substances consent that might be granted under Part 4; and where under that subsection the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under section 143, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under subsection (1)—

(a) any hazardous substances consent granted under that subsection shall be treated as granted on that application;

(b) in relation to a grant of hazardous substances consent or a determination under that subsection, the decision of the planning appeals commission will be final; and

(c) subject to sub-section (b), any hazardous substances consent granted under that subsection shall have the like effect as a consent granted under Part 3.

(6) Where—

(a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and

(c) the planning appeals commission 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.

Execution and cost of works required by hazardous substances contravention notice

146.—(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the council may—

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

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with a hazardous substances contravention notice in respect of any contravention of hazardous substances control, and any sums paid by the owner of any land under subsection (1), in respect of expenses incurred by the council in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) The council may sell any materials which have been removed by it from any land when taking steps under subsection (1) if, before the expiration of 3 days from their removal, they are not claimed and taken away by their owner.

(4) Where the council sells any materials under subsection (3), it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from that person.

(5) Subsections (3) and (4) do not apply to refuse removed by the council.

(6) Where the council claims to recover any expenses under this section from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that—

(a) that person is receiving the rent of that land merely as agent or trustee for some other person; and

(b) has not, and since the date of the service of a demand for payment has not had, on behalf of that other person sufficient money to discharge the whole demand of the council,

that person's liability shall be limited to the total amount of the money which that person has or has had as mentioned in paragraph (b), but the council where it is, or would be, debarred by this subsection from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the council under this section shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from the owner.

(8) The charge created by subsection (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c.41) on mortgagees by deed accordingly.

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

Offence where hazardous substances contravention notice not complied with

147.—(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken,

the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.

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

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

(4) Omitted.

(5) Omitted.

(6) An offence under subsection (2) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the paragraph 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 242,

it shall be a defence for that person to show that that person 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 £100,000;

(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 must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

Effect of hazardous substances consent on hazardous substances contravention notice

148.—(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 land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.

(2) Omitted.

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

Hazardous substances contravention notice to have effect against subsequent development

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

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

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under land to

which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

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

(5) Sections 146 and 147 shall apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but a person authorised in writing by the council shall not enter the land under section 146(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of that person's intention to do so.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the land-use planning obligations (articles 13 and 15) in Directive 2012/18/EU of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances (O.J. 197, 24.7.2012, p.1) ("the Seveso III Directive"). They also revoke and replace the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (S.R. 2015 No. 61).

Section 108 of the Planning Act (Northern Ireland) 2011 (the "2011 Act") provides that the presence on, over or under land, of a hazardous substance equal to or in excess of the controlled quantity (as specified by regulations) requires the consent of the council.

These regulations specify the substances which are hazardous substances for the purposes of the 2011 Act and the controlled quantities of those substances. They also lay down the procedure for applications for consent and the determination of applications.

In addition they make provision for hazardous substances contravention notices, specify matters to be included in such notices and apply certain provisions of the 2011 Act with modifications to appeals against such notices, penalties for non-compliance, works required by and the effect of such notices.

The contents of the regulations are as follows—

Regulation 3 with Schedule 2 specifies the substances which are hazardous substances and the controlled quantities of those substances.

Regulation 4 specifies certain exemptions from the need for hazardous substances consent.

Regulations 5-9 deal with applications for consent, advertisement of notices of such applications, certificates to accompany applications, inspection of applications and representations to be taken into account.

Regulation 10 deals with persons who are to be treated as in actual possession of land.

Regulations 11-13 deal with consultations in respect of application for consent, determination of such application and notification of decisions.

Regulation 14 deals with applications to the Department for hazardous substances consent to execute works without compliance with conditions previously attached.

Regulation 15 deals with the notice to be served on the applicant where the council considers that section 114 of the 2011 Act (call in of certain applications for hazardous substances consent to the Department) applies.
Regulations 16 deals with applications by councils for hazardous substances consent.
Regulations 17-19 deal with obligations to take certain matters in the Seveso III Directive into account in land-use planning policies and other relevant policies, and public consultation and participation obligations in relation to certain plans, programmes and projects where the presence of hazardous substances is relevant.
Regulations 20-22 deal with enforcement of the hazardous substances provisions, i.e., hazardous substances contravention notices and apply, with modifications, certain provisions of the 2011 Act to appeals against, and to the effect of, such notices.
Regulation 23 sets out how electronic communications should be dealt with.
Regulations 24 -28 deal with revocations, amendments, savings and transitional provisions.
Schedule 1 prescribes the form and certificates required in connection with applications.
Schedule 2 lists the substances which are to be regarded as hazardous substances for the purposes of the 2011 Act and the quantities of those substances which are to be the controlled quantities.
Schedule 3 Parts 1 and 2 list provisions of the 2011 Act and modifications of those provisions which are applied for the purposes of hazardous substances control. Part 3 sets out those provisions as modified. Under section 147 of the 2011 Act (as applied and modified) where a person is in breach of a hazardous substances contravention notice he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100,000, or on conviction on indictment to a fine.
A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from the Department of the Environment, Causeway Exchange, 1-7 Bedford Street, Town Parks, Belfast, BT2 7EG or accessed at www.doeni.gov.uk.
The Explanatory Memorandum, which includes a transposition note indicating the parts of these Regulations which implement obligations in the Seveso III Directive, is available alongside the Regulations on the government's website www.legislation.gov.uk

Changes to legislation:
There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015.