

SCHEDULE 4

ENFORCEMENT — MODIFICATION OF THE PRINCIPAL ACT

PART 5

SECTIONS OF THE PRINCIPAL ACT AS MODIFIED

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

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

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

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

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

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

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

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

(6) In this section “relevant occupier” means a person who—

- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and
- (b) continues so to occupy the land when the appeal is brought.

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

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

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

- (a) correct any defect, error or misdescription in the hazardous substances contravention notice; or
- (b) vary the terms of the hazardous substances contravention notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the hazardous substances authority.

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

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

(3) The Secretary of State—

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

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

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

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

- (a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;
- (b) discharge any condition subject to which hazardous substances consent was granted.

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

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

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

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

(5A) Where—

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- (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 26A of the Planning (Hazardous Substances) Act 1990 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,

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

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

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

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

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

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

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

- (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the hazardous substances authority in taking steps required by such a notice to be taken,

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

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

- (a) section 276 of the Public Health Act 1936, (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and
- (c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

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

(4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936 may include adaptations and modifications for the purpose of giving the owner of land to which a hazardous substances contravention notice relates the right, as against all other persons interested in the land, to comply with the requirements of the hazardous substances contravention notice.

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

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

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

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

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

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

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

(7) Where—

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

(b) the notice is not contained in the appropriate register kept under section 188,

it shall be a defence for him to show that he was not aware of the existence of the notice.

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

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

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

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

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

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

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

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding

its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

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

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

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

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

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

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

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

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

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

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

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

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

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- (a) has held an interest in the land since before the hazardous substances contravention notice was issued under that Part;
- (b) did not have a copy of the hazardous substances contravention served on him under that Part; and
- (c) satisfies the court—
 - (i) that he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and
 - (ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.

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

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

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

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

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

- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
- (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

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

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

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