

## SCHEDULE 3

### ENFORCEMENT – MODIFICATIONS OF THE 2011 ACT

## 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.

**Changes to legislation:**

There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015, PART 3.