
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 61

PLANNING

**The Planning (Hazardous Substances)
Regulations (Northern Ireland) 2015**

Made - - - - *16th February 2015*

Coming into operation *1st April 2015*

The Department of the Environment makes the following Regulations, in exercise of the powers conferred by sections 108(4), 109(1), (2) and (4), 111, 115(7), 116(3), 162(4), (10) and (12), and 247(1) of the Planning Act (Northern Ireland) 2011⁽¹⁾.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 and shall come into operation on 1st April 2015.

Interpretation

2.—(1) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011;

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

“consent” means consent required under section 108 of the 2011 Act;

“the Directive” means Council Directive [96/82/EC](#)⁽²⁾ on the control of major-accident hazards involving dangerous substances as amended by Council Directive [2003/105/EC](#)⁽³⁾, and Council Directive [2012/18/EU](#)⁽⁴⁾;

(1) [2011 c.25 \(N.I.\)](#) see section 250(1) for definition of “the Department” and “prescribed”

(2) O.J. No. L10,14.1.1997, p. 13

(3) O.J. No. L345, 31.12.2003, p. 97

(4) O.J. No. L197, 24.7.2012, p. 1-37

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001(5);

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

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

(2) In these Regulations—

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

(b) a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 1.

(3) 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.

(4) Paragraphs (5) to (8) 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”).

(5) 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.

(6) In paragraph (5), “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.

(7) 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.

(8) 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 (5).

PART 2

Hazardous Substances, Controlled Quantities and Exemptions

Hazardous substances and controlled quantities

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

(a) specified in column 1 of Part A;

(5) 2001 c.9 (N.I.) as amended by 2003 c.21

- (b) falling within a category in column 1 of Part B; or
- (c) meeting the description in column 1 of Part C,

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 while it is being transported from one place to another unless it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or 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 contained in an exempt pipeline or a service pipe.

(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⁽⁶⁾, without requiring notification under regulation 6(1) of those Regulations by virtue of an exemption under regulation 6(5) of those Regulations.

(6) Hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site.

(7) 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 license has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965⁽⁷⁾.

(8) The presence of a quantity of a hazardous substance (other than that of a substance numbered 10, 18, 39 and 43 in column 1 of Part A of Schedule 2)—

- (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.

(9) The presence of a substance to which paragraphs (1) to (7) 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.

(10) In this regulation—

⁽⁶⁾ S.R. 1991 No. 509

⁽⁷⁾ 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1981

- (a) “exempt pipeline” means a pipeline used to convey a hazardous substance to or from a site, but does not include—
 - (i) that part of the pipeline on, over or under a site to which it has an outlet or inlet;
 - (ii) a service pipe;
- (b) “service pipe” means a pipeline used by a person to whom a licence has been granted under Article 8(1) of the Gas (Northern Ireland) Order 1996⁽⁸⁾ to supply gas to an individual customer from a main of that supplier;
- (c) “major incident” means an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of any operation carried out on, over or under land in respect of which there is required to be a hazardous substances consent and leading to serious danger to human health or the environment, immediate or delayed, and involving one or more hazardous substances;
- (d) the expressions “initiator”, “major emission, fire or explosion”, “resulting from uncontrolled developments”, “leading to serious danger to human health or the environment, immediate or delayed”, “waste land-fill site” and “ionising radiation” have the same meaning as in the Directive.

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 on Form 1;
 - (b) subject to paragraphs (4) and (5) include the information required by the form, a site map and a substance location plan; and
 - (c) be accompanied by 3 additional copies of the form, the map, plan and certificates 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, on Form 2;
 - (b) subject to paragraphs (8) and (9) include the information required by the form, a change of location plan, if required by paragraph (6), and particulars of the consent; and
 - (c) be accompanied by 3 additional copies of the form, the consent, any plan submitted with it and certificates 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 on Form 2;
 - (b) subject to paragraphs (7) to (9) include the information required by the form, a change of control plan, and particulars of the consent; and
 - (c) be accompanied by 3 additional copies of the form, the relevant consent, the change of control plan and certificates required by regulation 7.

⁽⁸⁾ S.I. 1996/275 (N.I.2)

(4) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an Ordnance map with a scale of not less than 1 to 2,500, which identifies the land to which the application relates and shows grid lines and Ordnance map reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to scale of not less than 1 to 1,250, which identifies—

- (a) any area of the site intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present;
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which section 111 applies which relates to a condition restricting the location of a hazardous substance, and shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

(7) The change of control plan required by paragraph (3) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies each area of the site under separate control after the proposed change of control.

(8) The consent referred to in paragraphs (2)(b) and (3)(b) is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the consent to be supplied shall be a copy of the consent granted on an application under the 2011 Act.

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

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

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

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 Form 3 is appropriate, signed by or on behalf of the applicant.

Council to take account of representations from certain persons

8. 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

9. 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

10. Before determining an application for consent the council shall consult with—

- (a) the Department: and
- (b) the Health and Safety Executive for Northern Ireland.
- (c) the Northern Ireland Fire and Rescue Service.

Determination of applications for hazardous substances consent

11. The council shall not determine an application for hazardous substances consent—

- (a) where the application is accompanied by certificate C or D as mentioned in regulation 7, before the end of the period of 14 days from the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate; and
- (b) before the end of a period of 28 days from the date on which all consultees have been served with a copy of the application.

Notification of decision

12.—(1) Subject to paragraph (3), 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, give notice of its decision on the application to every person who made representations which it was required to take into account under regulation 8.

(3) 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.

(4) 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

13.—(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

14.—(1) 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

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

(2) Regulations 5 to 7 shall apply to the making of such applications as they apply to applications made to a council.

(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.

PART 4

Enforcement

Hazardous substances contravention notices

16.—(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 17.

Appeals against hazardous substances contravention notices

17.—(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.

18.—(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 5

Electronic Communications

Use of electronic communications

19.—(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 17.

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

PART 6

Revocations and Transitional Provisions

Revocations

20. The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993(9) are revoked.

Sealed with the Official Seal of the Department of the Environment on 16th February 2015.



Angus Kerr
A senior officer of the Department of the
Environment

Status: This is the original version (as it was originally made).

SCHEDULE 1

Regulations 2(2), 5 and 7

PRESCRIBED FORMS

SCHEDULE 2

Regulation 3 (1) and (2)

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART A

NAMED SUBSTANCES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Hazardous Substances</i>	<i>Controlled quantity (Q) tonnes</i>	<i>Quantity for the purposes of Note 4 to the notes to Parts A and B (Q*)</i>
1. Ammonium nitrate to which Note 1 of the notes to this Part applies	5000.00	
2. Ammonium nitrate to which Note 2 of the notes to this Part applies	1000.00	1250.00
3. Ammonium nitrate to which Note 3 of the notes to this Part applies	350.00	
4. Ammonium nitrate to which Note 4 of the notes to this Part applies	10.00	
5. Potassium nitrate to which Note 5 of the notes to this Part applies	5000.00	
6. Potassium nitrate to which Note 6 of the notes to this Part applies	1250.00	
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1.00	
8. Arsenic trioxide, arsenious (III) acid and/or salts	0.10	
9. Bromine	20.00	

10. Chlorine	10.00	
11. Nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide)	1.00	
12. Ethyleneimine	10.00	
13. Fluorine	10.00	
14. Formaldehyde (≥90%)	5.00	
15. Hydrogen	2.00	5.00
16. Hydrogen chloride (liquefied gas)	25.00	
17. Lead alkyls	5.00	
18. Liquefied petroleum gas, including commercial propane and commercial butane, and any mixture thereof, when held at a pressure greater than 1.4 bar absolute.	25.00	50.00
19. Liquefied extremely flammable gases excluding pressurised LPG (entry no.18)	50.00	
20. Natural gas	15.00	50.00
21. Acetylene	5.00	
22. Ethylene oxide	5.00	
23. Propylene oxide	5.00	
24. Methanol	500.00	
25. 4,4-Methylenebis (2-Chloraniline) and/or salts, in powder form	0.01	
26. Methylisocyanate	0.15	
27. Oxygen	200.00	
28. Toluene diisocyanate	10.00	
29. Carbonyl dichloride (phosgene)	0.30	
30. Arsenic trihydride (arsine)	0.20	
31. Phosphorus trihydride (phosphine)	0.20	
32. Sulphur dichloride	1.00	
33. Sulphur trioxide (including sulphur trioxide dissolved in sulphuric acid to form Oleum)	15.00	
34. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (to which Note 7 of the Notes to this Part applies)	0.001	
35. The following CARCINOGENS at concentration above 5% by	0.5	

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weight: 4-Aminobiphenyl and/or its salts; Benzotrithloride; Benzidine and/or salts; Bis(chloromethyl) ether; Chloromethyl methyl ether; 1,2-Dibromoethane; Diethyl sulphate; Dimethyl sulphate; Dimethylcarbamoyl chloride; 1,2-Dibromo-3-chloropropane; 1,2-Dimethylhydrazine; Dimethylnitrosamine; Hexamethylphosphoric triamide; Hydrazine; 2-Naphthylamine and/or salts; 4-Nitrodiphenyl; and 1,3 Propanesultone

36. Petroleum products 2500.00

(a) gasolines and naphthas,

(b) kerosenes (including jet fuels),

(c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)

(d) heavy fuel oils

37. Acrylonitrile	20.00	50.00
38. Carbon disulphide	20.00	50.00
39. Hydrogen selenide	1.00	50.00
40. Nickel tetracarbonyl	1.00	5.00
41. Oxygen difluoride	1.00	5.00
42. Pentaborane	1.00	5.00
43. Selenium hexafluoride	1.00	50.00
44. Stibine (antimony hydride)	1.00	5.00
45. Sulphur dioxide	20.00	50.00
46. Tellurium hexafluoride	1.00	5.00
47. 2,2-Bis(tert-butylperoxy) butane (>70%)	5.00	50.00
48. 1,1-Bis(tert-butylperoxy) cyclohexane (>80%)	5.00	50.00
49. tert-Butyl peroxyacetate (>70%)	5.00	50.00
50. tert-Butyl peroxyisobutyrate (>80%)	5.00	50.00
51. tert-Butyl peroxyisopropylcarbonate (>80%)	5.00	50.00
52. tert-Butyl peroxy maleate (>80%)	5.00	50.00
53. tert-Butyl peroxy pivalate (>77%)	5.00	50.00
54. Cellulose Nitrate other than—	50.00	

(1) cellulose nitrate for which a license, granted under the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006⁽¹⁰⁾, is required; or

(2) cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution.

55. Dibenzyl peroxydicarbonate (>90%)	5.00	50.00
56. Diethyl peroxydicarbonate (>30%)	5.00	50.00
57. 2,2- Dihydroperoxypropane (>30%)	5.00	50.00
58. Di-isobutyryl peroxide (>50%)	5.00	50.00
59. Di-n-propyl peroxydicarbonate (>80%)	5.00	50.00
60. Di-sec-butyl peroxydicarbonate (>80%)	5.00	50.00
61. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%)	5.00	50.00
62. Methyl ethyl ketone peroxide (>60%)	5.00	50.00
63. Methyl isobutyl ketone peroxide (>60%)	5.00	50.00
64. Peracetic acid (>60%)	5.00	50.00
65. Sodium Chlorate	25.00	50.00
66. Gas or any mixture of gases (not covered by entry 20) which is flammable in air, when held as a gas	15.00	
67. A substance or any mixture of substances which is flammable in air when held above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute (see Note 8 of the notes to this Part).	25.00	

NOTES TO PART A

1. Ammonium nitrate: fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers containing ammonium nitrate with phosphate and/ or potash) in which the nitrogen content as a result of ammonium nitrate is

- (a) between 15.75 per cent **(11)** and 24.5 per cent **(12)** by weight, and either with not more than 0.4 per cent total combustible/organic materials or which satisfy the detonation resistance

⁽¹⁰⁾ S.R. 2006 No.425

⁽¹¹⁾ 15.75 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 45 per cent ammonium nitrate

⁽¹²⁾ 24.5 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 70 per cent ammonium nitrate

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test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003⁽¹³⁾,

- (b) 15.75 per cent by weight or less and unrestricted combustible materials,

and which are capable of self-sustaining decomposition according to the UN Trough Test (see United Nations Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria, Part III, sub-section 38.2).

2. Ammonium nitrate: fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers in which the nitrogen content as a result of ammonium nitrate is

- (a) more than 24.5 per cent by weight, except for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 per cent,
- (b) more than 15.75 per cent by weight for mixtures of ammonium nitrate and ammonium sulphate,
- (c) more than 28 per cent⁽¹⁴⁾ by weight for mixtures of ammonium nitrate with dolomite, limestone and/or calcium carbonate with a purity of at least 90 per cent,

and which satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

3. Ammonium nitrate: technical grade

This applies to

- (a) ammonium nitrate and preparations of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is
 - (i) between 24.5 per cent and 28 per cent by weight, and which contain not more than 0.4 per cent combustible substances,
 - (ii) more than 28 per cent by weight, and which contain not more than 0.2 per cent combustible substances,
- (b) aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80 per cent by weight.

4. Ammonium nitrate: “off-specs” material and fertilisers not fulfilling the detonation resistance test

This applies to

- (a) material rejected during the manufacturing process and to ammonium nitrate and preparations of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 2 and 3, 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 2 and 3; and
- (b) fertilisers referred to in Note 1(a) and Note 2 which do not satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

5. Potassium nitrate: composite potassium-nitrate based fertilisers composed of potassium nitrate in prilled/granular form.

⁽¹³⁾ S.I. 2003/1082

⁽¹⁴⁾ 28 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 80 per cent ammonium nitrate.

6. Potassium nitrate: composite potassium-nitrate based fertilisers composed of potassium nitrate in crystalline form.

7. Polychlorodibenzofurans and polychlorodibenzodioxins.

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

<i>International Toxic Equivalent Factors (ITEF) for the congeners of concern (NATO/CCMS)(15)</i>			
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-Pe-CDD	0.5	2,3,4,7,8-PeCDF	0.5
		1,2,3,7,8-PeCDF	0.05
1,2,3,4,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,6,7,8-HxCDF	0.1
		2,3,4,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01		
OCDD	0.001	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.001

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

8. Entry number 67

The controlled quantity of 25 tonnes in column 2 of entry 67 refers, in case of a mixture of substances, to the quantity of substances within the mixture held above their boiling point (measured at 1 bar absolute).

PART B

CATEGORIES OF SUBSTANCES AND PREPARATIONS NOT SPECIFICALLY NAMED IN PART A

<i>Column 1</i>	<i>Column 2</i>
<i>Categories of hazardous substances</i>	<i>Controlled quantity (Q) in tonnes</i>
1. VERY TOXIC	5.00
2. TOXIC	50.00
3. OXIDISING	50.00
4. EXPLOSIVE ((see Note 2 to this Part) where the substance, preparation or article falls under UN/ADR Division 1.4, excluding those at a factory subject to the public hearing	50.00

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	procedure under regulation 12 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 ⁽¹⁶⁾ or those licensed under the Explosives in Harbour Area Regulations (Northern Ireland) 1995 ⁽¹⁷⁾)	
5.	EXPLOSIVE ((see Note 2 to this Part) where the substance, preparation or article falls under any of: UN/ADR Divisions 1.1, 1.2, 1.3, 1.5 or 1.6 or risk phrase R2 or R3, excluding those at a factory subject to the public hearing procedure under regulation 12 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 or those licensed under the Explosives in Harbour Areas Regulations (Northern Ireland) 1995)	10.00
6.	FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(a) to this Part)	5000.00
7.	HIGHLY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(b)(i) and (b)(ii) to this Part)	50.00
8.	HIGHLY FLAMMABLE liquids (where the substance or preparation falls within the definition given in Note 3(b)(iii) to this Part)	5000.00
9.	EXTREMELY FLAMMABLE (where the substance or preparation falls within the definition given in Note 3(c) to this Part)	10.00
10.	DANGEROUS FOR THE ENVIRONMENT risk phrases:	100.00
	(i) R50: “Very toxic to aquatic organisms” (including R50/53);	200.00
	(ii) R51/53: “Toxic to aquatic organisms; may cause long term adverse effects in the aquatic environment”	
11.	ANY CLASSIFICATION not covered by those given above in combination with risk phrases:	100.00
	(i) R14: “reacts violently with water” (including R14/15);	50.00
	(ii) R29: “in contact with water, liberates toxic gas”	

NOTES TO PART B

1. Substances and preparations shall be classified for the purposes of this Schedule according to regulation 4 of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009⁽¹⁸⁾ (“CHIP”) whether or not the substance or preparation is required to be classified for the purposes of those Regulations or, in the case of a pesticide approved under the Food and

⁽¹⁶⁾ S.R. 2006 No.425

⁽¹⁷⁾ S.R. 1995 No.87

⁽¹⁸⁾ S.R. 2009 No.238

Environment Protection Act 1985⁽¹⁹⁾ in accordance with the classification assigned to it by that approval.

2. An “explosive” means:

- (a) a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2),
- (b) a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3), or
- (c) a substance, preparation or article covered by Class 1 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (UN/ADR), concluded on 30 September 1957, as amended, as transposed by Council Directive [94/55/EC](#) of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road⁽²⁰⁾.

Included in this definition are pyrotechnics, which for the purposes of these Regulations are defined as substances (or mixtures of substances), designated to produce heat, light, sound, gas or smoke or a combination of such effects through self sustained exothermic chemical reactions.

Where a substance or preparation is classified by both UN/ADR and risk phrase R2 or R3, the UN/ADR classification shall take precedence over assignment of risk phrases.

Substances and articles of Class 1 are classified in any of the divisions 1.1 to 1.6 in accordance with the UN/ADR classification scheme. The divisions concerned are:

Division 1.1: Substances and articles which have a mass explosion hazard (a mass explosion is an explosion which affects almost the entire load virtually instantaneously).

Division 1.2: Substances and articles which have a projection hazard but not a mass explosion hazard.

Division 1.3: Substances and articles which have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard:

- (i) combustion of which gives rise to considerable radiant heat; or
- (ii) which burn one after another, producing minor blast or projection effects or both.

Division 1.4: Substances and articles which present only a slight risk in the event of ignition or initiation during carriage. The effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire shall not cause virtually instantaneous explosion of virtually the entire contents of the package.

Division 1.5: Very insensitive substances having a mass explosion hazard which are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of carriage. As a minimum requirement they shall not explode in the external fire test.

Division 1.6: Extremely insensitive articles which do not have a mass explosion hazard. The articles contain only extremely insensitive detonating substances and demonstrate a negligible probability of accidental initiation or propagation. The risk is limited to the explosion of a single article.

Included in this definition are also explosive or pyrotechnic substances or preparations contained in articles. In the case of articles containing explosive or pyrotechnic substances or preparations, if the quantity of the substance or preparation contained is known, that quantity shall be considered for the purposes of these Regulations. If the quantity is not known, then, for the purposes of these Regulations, the whole article shall be treated as explosive.

⁽¹⁹⁾ 1985 c.48

⁽²⁰⁾ O.J. No.L.319, 12.12.1994, p.7. Directive as last amended by Commission Directive [2003/28/EC](#) O.J. No. L90,8.4.2003, p.45

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3. In categories 6, 7, 8 and 9 “flammable”, “highly flammable” and “extremely flammable” mean—

- (a) flammable liquids: means substances and preparations having a flash point equal to or greater than 21°C and less than or equal to 55°C (risk phrase R 10), supporting combustion;
- (b) highly flammable liquid means—
 - (i) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input or energy (risk phrase R 17); and
 - (ii) substances and preparations which have a flash point lower than 55°C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards;
 - (iii) substances and preparations having a flash point lower than 21°C and which are not extremely flammable (risk phrase R11, second indent);
- (c) extremely flammable gases and liquids means—
 - (i) liquid substances and preparations which have a flash point lower than 0°C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal pressure is less than or equal to 35°C (risk phrase R12, first indent); and
 - (ii) gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), which are in a gaseous or supercritical state; and
 - (iii) flammable and highly flammable liquid substances and preparations maintained at a temperature above their boiling point.

NOTES TO PARTS A AND B

1. Mixtures and preparations shall be treated in the same way as pure substances provided they remain within the concentration limits set according to their properties under the relevant provisions specified in CHIP, unless a percentage composition or other description is specifically given.

2. In the case of substances and preparations with properties giving rise to more than one classification the lowest thresholds shall apply.

3. Where a substance or group of substances listed in Part A also falls within a category of Part B, the controlled quantities set out in Part A must be used.

4. In the case of an establishment where no individual substance or preparation is present in a quantity above or equal to the relevant controlled quantity for that substance or preparation, the addition of hazardous substances to determine the controlled quantity shall be carried out according to the following rule:

If the sum— $q_1/Q + q_2/Q + q_3/Q + q_4/Q + q_5/Q + \dots \geq 1$

(where q_x = the quantity of hazardous substance x (or category of substance) present, Q = the relevant controlled quantity (Q) from Part A or B, except for those substances for which column 3 of Part A contains a quantity Q^* , in which case the quantity Q^* shall be used in place of the controlled quantity Q in column 2)

then the controlled quantity of each of the substances which are added together in accordance with each of paragraphs 5(a) to (c) below shall be deemed to be present for the purposes of sections 108(1), 112(2)(a), 117(2)(a) of the 2011 Act and of section 149 (enforcement notice to have effect against subsequent development) of the 2011 Act as modified by regulation 17(1) and Part 2 of Schedule 3 to these Regulations.

5. The addition rule in paragraph 4 will apply for the following circumstances:—

- (a) for the addition of substances and preparations named in Part A and classified as toxic or very toxic, together with substances and preparations falling into categories 1 or 2 of Part B;
- (b) for the addition of substances and preparations named in Part A and classified as oxidising, explosive, flammable, highly flammable or extremely flammable, together with substances and preparations falling into categories 3, 4, 5, 6, 7, 8 or 9 of Part B;
- (c) for the addition of substances and preparations named in Part A and classified as dangerous for the environment (R50 (including R50/53) or R51/53), together with substances and preparations falling into categories 10(i) or 10(ii) of Part B.

PART C

SUBSTANCES USED IN AN INDUSTRIAL CHEMICAL PROCESS

<i>Column 1</i>	<i>Column 2</i>
<i>Hazardous substances</i>	<i>Controlled quantity</i>
Where it is believed that a substance, which is within Part A or Part B, may be generated during loss of control of an industrial chemical process (“HS”), 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 industrial chemical process, the controlled quantity of the HS in question.

NOTES TO PART C

1. The expression “which it is believed may be generated during loss of control of an industrial chemical process” has the same meaning as in the Directive.
2. Where a substance falling within Part A or B also falls within Part C, the classification with the lowest controlled quantity shall apply, subject to Note 3 to the notes to Parts A and B.

SCHEDULE 3

Regulations 17 and 18

ENFORCEMENT – MODIFICATIONS OF THE 2011 ACT

PART 1

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

<i>Provisions of the 2011 Act Applied</i>	<i>Modifications</i>
Section 143 (appeal against enforcement notice) Subsection (1)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.

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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)	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)	
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

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Subsection (5)	<p>substitute another for it whether more or less onerous.”</p> <p>For subsection (5) substitute—</p> <p>“(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)—</p> <ul style="list-style-type: none"> (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.

<i>Provisions of the 2011 Act Applied</i>	<i>Modifications</i>
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)	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 (1)	
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)	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 (1)	
Subsection (2)	Omit
Subsection (3)	For the words “an enforcement notice or breach of condition notice” substitute “a hazardous substances contravention notice”.

Status: This is the original version (as it was originally made).

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 him.

(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 shall 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 shall indicate the grounds of the appeal and state the facts on which it is based.

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(5) Before determining an appeal under this section, the planning appeals commission shall, 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.

(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) did not have a copy of the hazardous substances contravention notice served on him; 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 must 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, 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.

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(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 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 step 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 the owner 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 for him to show that he did everything he 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 shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him 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 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.

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)

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 5-8 deal with applications for consent, advertisement of notices of such applications, certificates to accompany applications and representations to be taken into account.

Regulation 9 deals with persons who are to be treated as in actual possession of land.

Regulations 10-12 deal with consultations in respect of application for consent, determination of such application and notification of decisions.

Regulation 13 deals with applications to the Department for hazardous substances consent to execute works without compliance with conditions previously attached.

Regulation 14 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 15 deals with applications by councils for hazardous substances consent.

Regulations 16-18 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 19 sets out how electronic communications should be dealt with.

Regulation 20 deals with revocations.

Schedule 1 prescribes application forms and notices and certificates required in connection with such 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 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 is available alongside the Regulations on the government's website www.legislation.gov.uk