

SCHEDULE 1

Regulations 2(2), 5 and 7

PRESCRIBED FORMS

FORM 1

Planning Act (Northern Ireland) 2011, section 109(1)

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015
(Regulation 5)

General Application for Hazardous Substances Consent

1. Applicant (in BLOCK CAPITALS)

Address

Telephone No

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

Address

Telephone No

Contact

2. Address or Location of Application Site together with OS Grid Reference

3. Substance(s) covered by application

(a) List named substances falling within Part A of Schedule 2 to the 2015 Regulations **(a)** first, then list any substances falling within the categories in Part B of that Schedule, finally list substances falling within the description in Part C.

(b) Substances falling within parts B or C of Schedule 2 to the 2015 Regulations may be listed under the relevant category or description or named specifically. Where a substance falls within Part A and B list under Part A only; where a substance falls within more than one category in part B list under the category which has the lowest controlled quantity **(b)**. Where a substance falling within Part A or B also falls within Part C list under the Part which has the lowest controlled quantity.

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TABLE A				
<i>Name or relevant category or description of substance</i>	<i>Part and Entry Number (c) in Schedule 2 of the 2015 Regulations</i>	<i>Do you have a current PHS consent* in respect of this substance? (Yes/No)</i>	<i>If "Yes" state quantity for which consent granted</i>	<i>Maximum quantity proposed to be present in tonnes</i>

* a hazardous substances consent

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

For each substance, category or description of substance, covered by the application, provide the following information, referring to the substance location plan where appropriate.

(a) tick one box below to show whether the substance(s) will be present for storage only or will be stored and involved in a manufacturing, treatment or other industrial process.

TABLE B		
<i>Part and Entry Number in Schedule 2 to the 2015 Regulations</i>	<i>Storage only</i>	<i>Stored and involved in industrial process</i>

(b) For each vessel to be used for storing the substance(s), give the following information—

TABLE C							
<i>Vessel No*</i>	<i>Part and Entry No. in Schedule 2 to the 2015 Regulations of substance/s to be stores in vessel</i>	<i>Installed above Ground† (Yes/No)</i>	<i>Buried (Yes/No)</i>	<i>Mounded (Yes/No)</i>	<i>Maximum Capacity (cubic metres)</i>	<i>Highest vessel design temperature (°C)</i>	<i>Highest vessel design pressure (bar absolute)</i>

* identify by reference to substance location plan

† if "yes", specify whether or not it will be provided with full secondary containment

(c) For each substance, category or description of substance, state the largest size (capacity in cubic metres) of any moveable container(s) to be used for that substance, category or description of substances.

(d) Where a substance, category or description of substance is to be used in a manufacturing, treatment or other industrial process(es), give a general description of the process(es), describe the major items of plant which will contain the substance(s); and state the maximum quantity (in tonnes) which is liable to be present in the major items of plant, and the maximum temperature (°C) and pressure (bar absolute) at which the substance, category or description of substance is liable to be present.

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TABLE D					
<i>Part and Entry No. in Schedule 2 to the 2015 Regulations</i>	<i>Description of process(es)</i>	<i>Major items of plant*</i>	<i>Maximum quantity (tonnes)</i>	<i>Maximum temperature (°C)</i>	<i>Maximum pressure (bar absolute)</i>

*Identify by reference to substance location plan

5. Additional Information

(a) If you have existing PHS consent(s) as referred to in Table A, enclose a copy of each consent with this application.

(b) Has any application for hazardous substances consent or planning permission relating to the application site been made which has not yet been determined?
YES/NO

(c) Will any such application be submitted at the same time as this application?
YES/NO

If you have answered "YES" to either of the preceding questions, give sufficient information to enable the application(s) to be identified.

(d) Plans. List the maps or plans or any explanatory scale drawings of plant/buildings submitted with this application.

(e) Give any further information which you consider to be relevant to the determination of this application.

I/We* hereby apply for hazardous substances consent in accordance with the proposals described in the application

*delete where inappropriate

Signed

On behalf of
(insert applicant's name if signed by an agent)

Date

Notes

- (a) The "2015 Regulations" are the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015.
- (b) The "controlled quantity" means the quantity specified for that substance to column 2 of Parts A, B or C of Schedule 2 to the 2015 Regulations.
- (c) For Part C, state the Part only.

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FORM 2

Planning Act (Northern Ireland) 2011, sections 111 and 116

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015
(Regulations 5(2) and (3))

Application for either: (tick appropriate box)

Hazardous Substances Consent without compliance with conditions previously attached (section 111) OR

Effect of hazardous substances consent and change of control of land (section 116)

1. Applicant (IN BLOCK CAPITALS)

Address

Telephone No.

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

Address

Telephone No.

Contact

2. Address or location of Application Site together with OS Grid Reference

3. Substances covered by application

(a) In the Table below, list named substances falling within Part A of Schedule 2 to the 2015 Regulations **(a)** first, then list any substances falling within categories in Part B of that Schedule; finally list substances falling within the description in Part C.

(b) Substances falling within Parts B and C of Schedule 2 to the 2015 Regulations may be listed under the relevant category or description or named specifically. Where a substance falls within Part A and B list under Part A only; where a substance falls within more than one category in Part B list under the category which has the lowest controlled quantity **(b)**. Where a substance falling within Part A or Part B also falls within Part C list under the Part which has the lowest controlled quantity.

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<i>Name or relevant category or description of substance</i>	<i>Part and Entry Number(e) in Schedule 2 to the 2015 Regulations</i>	<i>Maximum quantity proposed to be present (in tonnes)</i>

(a) The "2015 Regulations" are the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015.

(b) The "controlled quantity" means the quantity specified for that substance in column 2 of Parts A,B or C of Schedule 2 to the 2015 Regulations.

(c) For Part C, state the Part only.

4. Application for removal of a condition(s) imposed on a previous consent (section 111)

(a) Identify the condition(s) previously imposed which it is intended should no longer be imposed on the consent, or which should only be imposed in a modified form. In the latter case, indicate the proposed modification—

(b) Give reasons why the condition(s) referred to in (a) should not be imposed or should only be imposed in a modified form—

(c) Describe any relevant changes in circumstances since the previous consent was granted—

5. Application for the continuation of hazardous substances consent(s) following a change in the person in control of part of the land (section 116)

(a) State the date on which the change in the person in control of part of the land is to take place, where known—

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(b) Describe the use of each area of the site identified in the accompanying change of control plan—

(c) Describe any relevant changes in circumstances since the existing consent was granted—

6. Additional information

Give any additional information which you consider to be relevant to the determination of this application—

I/We* hereby apply for hazardous substances consent/the continuation of hazardous substances consent* in accordance with this application.

*delete where inappropriate

Signed _____

On behalf of _____
(insert applicant's name if signed by agent)

Date _____

FORM 3

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

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015,
(Regulation 7)

Certificate A

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

OR

Certificate B

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

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

OR

Certificate C

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

- (a) a person then in actual possession;
- (b) the trustee of a trust or settlement where a beneficiary under the trust or settlement was in actual possession and no person other than such a beneficiary was entitled to enter into actual possession within a period of 40 years;
- (c) a person (not being a person falling within (a) or (b)) entitled to enter into actual possession within a period of 40 years.

The persons upon whom notice was served are:—

Name and Address	Interest	Date of Service of Notice

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OR

Certificate D

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

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

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

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

Names and Address	Date of Service of Notice

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

Signature of Applicant or Agent _____

Date _____

* delete where inappropriate

SCHEDULE 2

Regulation 3 (1) and (2)

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART 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 ($\geq 90\%$)	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	

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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 weight: 4-Aminobiphenyl and/or its salts; Benzotrichloride; 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	0.5	
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	
<p>(1) cellulose nitrate for which a license, granted under the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006(1), is required; or</p> <p>(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.</p>		
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	

(1) [S.R. 2006 No.425](#)

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 (2) and 24.5 per cent(3) by weight, and either with not more than 0.4 per cent total combustible/organic materials or which satisfy the detonation resistance test described in Schedule 2 to the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003(4),
- (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(5) 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

(2) 15.75 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 45 per cent ammonium nitrate

(3) 24.5 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 70 per cent ammonium nitrate

(4) [S.I. 2003/1082](#)

(5) 28 per cent nitrogen content by weight as a result of ammonium nitrate corresponds to 80 per cent ammonium nitrate.

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.

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)(6)</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

Column 1

Column 2

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

<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 procedure under regulation 12 of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006(7) or those licensed under the Explosives in Harbour Area Regulations (Northern Ireland) 1995(8))	50.00
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”	

(7) S.R. 2006 No.425

(8) S.R. 1995 No.87

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⁽⁹⁾ (“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 Environment Protection Act 1985⁽¹⁰⁾ 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⁽¹¹⁾.

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

⁽⁹⁾ S.R. 2009 No.238

⁽¹⁰⁾ 1985 c.48

⁽¹¹⁾ 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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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.

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 R 11, 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 R 12, first indent); and
 - (ii) gases which are flammable in contact with air at ambient temperature and pressure (risk phrase R 12, 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)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Subsection (1)	
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

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Subsection (3)

Omit

Subsection (4)

For subsection (4) substitute—

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

Subsection (5)

For subsection (5) substitute—

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

- (a) any hazardous substances consent granted under that subsection shall be treated as granted on that application;
- (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the decision of the planning appeals commission will be final; and
- (c) subject to sub-section (b), any hazardous substances consent granted under that subsection shall have the like effect as a consent granted under Part 3.”

Subsection 6

None

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC.

<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—
Subsection (1)	“(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.”
Subsection (2)	For the words “the owner of the land” substitute “a person” and for the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Subsection (3)	None
Subsection (4)	Omit
Subsection (5)	Omit
Subsection (6)	Omit the words “or (5)”
Subsection (7)	For the words “enforcement notice” substitute “hazardous substances contravention notice.”
Subsection (8)	None
Subsection (9)	None

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Section 148 (effect of planning permission, etc., on enforcement or breach of condition notice)

Subsection (1)

For paragraph (1) substitute—

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

Subsection (2)

Omit

Subsection (3)

For the words “an enforcement notice or breach of condition notice” substitute “a hazardous substances contravention notice”.

Section 149 (enforcement notice to have effect against subsequent development)

For Section 149 substitute—

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

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

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

notice, shall be in contravention of that notice.

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

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

PART 3

SECTIONS OF THE 2011 ACT AS MODIFIED

Appeal against hazardous substances contravention notice

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

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- (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.

(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.

(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

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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.