



# Planning (Hazardous Substances) Act 1990

## 1990 CHAPTER 10

### *Obtaining hazardous substances consent*

#### **11 Deemed hazardous substances consent: established presence.**

- (1) Where a hazardous substance was present on, over or under any land at any time within the establishment period hazardous substances consent may be claimed in respect of its presence.
- (2) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used [<sup>F1</sup>while it was so present].
- (3) Subject to subsections (4) to (6), the hazardous substances authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).
- (4) If at the relevant date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this section if notification in respect of the substance was given before that date in accordance with those regulations.
- (5) If at the relevant date such notification was not so required, hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.
- (6) If it appears to the hazardous substances authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—
  - (a) to notify the claimant that in their opinion the claim is invalid; and
  - (b) to give their reasons for that opinion.

*Changes to legislation: Planning (Hazardous Substances) Act 1990, Section 11 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) Hazardous substances consent which is deemed to be granted under this section is subject <sup>F2</sup> . . . —

(a) [<sup>F3</sup>to the condition that] the maximum aggregate quantity of the substance that may be present—

- (i) on, over or under the land to which the claim for the consent relates;
- (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
- (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,

at any one time shall not exceed the established quantity;

[<sup>F4</sup>, and

(b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent.]

(8) In this section—

“establishment period” means the period of 12 months immediately preceding the relevant date;

“established quantity” means, in relation to any land—

(a) where before the relevant date there was a notification in respect of a substance in accordance with any of the Notification Regulations—

- (i) the quantity notified or last notified before that date; or
- (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,

whichever is the greater;

(b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period;

“Notification Regulations” means the <sup>M1</sup>Notification of Installations Handling Hazardous Substances Regulations 1982;

“the relevant date” means the date on which Part IV of the <sup>M2</sup>Housing and Planning Act 1986 came into force or, if that Part of that Act is not in force immediately before the date on which this Act comes into force, that date.

“the transitional period” means the period of 6 months beginning with the relevant date.

#### Textual Amendments

- F1** Words "while it was so present" substituted (1.1.1992) for "immediately before the relevant date" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(a\)](#); S.I. 1991/2829, [art. 3](#)
- F2** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); S.I. 1991/2829, [art. 3](#)
- F3** Words inserted (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(b\)](#); S.I. 1991/2829, [art. 3](#)
- F4** Word "and" and para. (b) commencing "to such other" substituted (1.1.1992) for paras. (b)(c) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(b\)](#); S.I. 1991/2829, [art. 3](#)

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**Modifications etc. (not altering text)**

- C1** S. 11: power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**  
S. 11 applied (with modifications) (*temp.*) (20.4.1999) by S.I. 1999/981, **reg. 4(1)**

**Commencement Information**

- I1** S. 11 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 11 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art 2

**Marginal Citations**

- M1** S.I. 1982/1357.  
**M2** 1986 c. 63.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(4A) inserted by [2023 c. 55 Sch. 17 para. 4\(b\)](#)
- s. 9(2)(ca) inserted by [2023 c. 55 Sch. 6 para. 14](#)
- s. 10(4) inserted by [2023 c. 55 s. 124\(6\)](#)
- s. 20(4A) inserted by [2008 c. 29 Sch. 10 para. 26](#)
- s. 21(5A) inserted by [2008 c. 29 Sch. 10 para. 27](#)
- s. 37(3) inserted by [2008 c. 29 Sch. 10 para. 29](#)
- s. 37(5) inserted by [2023 c. 55 s. 124\(7\)\(b\)](#)
- Sch. para. 2(4A) inserted by [2008 c. 29 Sch. 10 para. 30\(2\)](#)
- Sch. para. 2(9) inserted by [2008 c. 29 Sch. 10 para. 30\(3\)](#)
- Sch. para. 3(4A)(4B) inserted by [2008 c. 29 Sch. 10 para. 30\(4\)](#)
- Sch. para. 6(1A) inserted by [2008 c. 29 Sch. 10 para. 30\(6\)](#)