



# Planning (Hazardous Substances) (Scotland) Act 1997

## 1997 CHAPTER 10

### *Contraventions of hazardous substances control*

#### **21 Offences.**

- (1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control if—
  - (a) a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
    - (i) there is no hazardous substances consent for the presence of the substance, or
    - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent, or
  - (b) there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In subsection (1) “the appropriate person” means—
  - (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
    - (i) any person knowingly causing the substance to be present on, over or under the land;
    - (ii) any person allowing it to be so present; and
  - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the occupier of the land.
- (4) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding £20,000, and
  - (b) on conviction on indictment, to a fine.
- (5) 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

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benefit which has accrued or appears likely to accrue to him in consequence of the offence.

- (6) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or
  - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
    - (i) that the substance was present, or
    - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
  - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (8) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that he was failing to comply with a condition subject to which hazardous substances consent had been granted.

## **22 Power to issue hazardous substances contravention notice.**

- (1) Where it appears to the planning authority that there is or has been a contravention of hazardous substances control they may issue a notice—
- (a) specifying the alleged contravention, and
  - (b) requiring such steps as may be specified in the notice to be taken to remedy wholly or partly the contravention,
- if they consider it expedient to do so having regard to any material consideration.
- (2) Such a notice is referred to in this Act as a “hazardous substances contravention notice”.
- (3) A planning authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (4) A copy of a hazardous substances contravention notice shall be served—
- (a) on the owner, the lessee and the occupier of the land to which it relates, and
  - (b) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect, and
  - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.

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- (6) Where a planning authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (1) (b), if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substance which is required to be removed.
- (8) The planning authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before or after it takes effect.
- (9) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice or would, if the notice were reissued, be served with a copy of it.

## **23 Hazardous substances contravention notices: supplementary provisions.**

- (1) The Secretary of State may by regulations—
  - (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by section 22;
  - (b) provide—
    - (i) for appeals to him against hazardous substances contravention notices;
    - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
    - (iii) for the procedure to be followed on such appeals;
    - (iv) for the directions that may be given on such an appeal;
    - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 130 to 134, 237(3) and 239 of the principal Act;
  - (c) direct that any of the provisions of sections 135 to 138, 140, 141, 143(1) to (6), 144, 145 and 147 of that Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;
  - (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (2) If any person appeals against a hazardous substances contravention notice, the notice shall have no effect pending the final determination or the withdrawal of the appeal.
- (3) Regulations under this section may make different provisions for different cases or descriptions of cases.

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## **24 Variation of hazardous substances contravention notices.**

- (1) A planning authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 22(5)(b) in the notice.
- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The planning authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were reissued, be served with a copy of it.

## **25 Interdicts restraining breaches of hazardous substances control.**

- (1) Whether or not they have exercised or propose to exercise any of their other powers under this Act or the principal Act, a planning authority may seek to restrain or prevent any actual or apprehended breach of any of the controls provided for by or under this Act by means of an application for interdict.
- (2) On an application under subsection (1) the court may grant such interdict as it thinks appropriate for the purpose of restraining or preventing the breach.
- (3) In this section “the court” means the Court of Session or the sheriff.

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