

## SCHEDULE 1

Regulation 3

## HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART A  
TOXIC SUBSTANCES

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
	(in tonnes, unless otherwise stated)
1. Acetone Cyanohydrin (2-Cyanopropan-2-ol)	200
2. Acrolein (2-Propenal)	200
3. Acrylonitrile	20
4. Allyl alcohol (2-Propen-1-ol)	200
5. Allylamine	200
6. Ammonia (anhydrous or as solution containing more than 50% by weight of ammonia)	100
7. Arsenic trioxide, Arsenious (III) acid and salts	1
8. Arsine (Arsenic hydride)	1
9. Bromine	40
10. Carbon disulphide	20
11. Chlorine	10
12. Ethylene dibromide (1,2-Dibromoethane)	50
13. Ethyleneimine	50
14. Formaldehyde (>90%)	50
15. Hydrogen chloride (liquefied gas)	250
16. Hydrogen cyanide	20
17. Hydrogen fluoride	10
18. Hydrogen selenide	1
19. Hydrogen sulphide	50
20. Methyl bromide (Bromoethane)	200
21. Methyl isocyanate	150 kilograms
22. Nickel tetracarbonyl	1
23. Nitrogen oxides	50

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<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
24. Oxygen difluoride	1
25. Pentaborane	1
26. Phosgene	750 kilograms
27. Phosphine (Hydrogen phosphide)	1
28. Propyleneimine	50
29. Selenium hexafluoride	1
30. Stibine (Antimony hydride)	1
31. Sulphur dioxide	20
32. Sulphur trioxide (including the sulphur trioxide content in oleum)	15
33. Tellurium hexafluoride	1
34. 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1 kilogram
35. Tetraethyl lead	50
36. Tetramethyl lead	50

## PART B

### HIGHLY REACTIVE SUBSTANCES AND EXPLOSIVE SUBSTANCES

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
	(in tonnes, unless otherwise stated)
37. Acetylene (Ethyne) when a gas subject to a pressure not exceeding 620 millibars above that of the atmosphere, and not otherwise deemed to be an explosive by virtue of Order in Council No 30(1) as amended by the Compressed Acetylene Order 1947(2), or when contained in a homogeneous porous substance in cylinders in accordance with Order of Secretary of State No 9(3), made under the Explosives Act 1875(4)	50
38. Ammonium nitrate and mixtures containing ammonium nitrate where the nitrogen content derived from the ammonium nitrate exceeds 28% of the mixture by weight other than—	500

(1) S.R. & O. 1937/54.

(2) S.R. & O. 1947/805.

(3) S.R. & O. 1919/869.

(4) 1875 c. 17.

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
(i) mixtures to which the Explosives Act 1875 applies;	
(ii) ammonium nitrate based products manufactured chemically for use as fertiliser which comply with Council Directive <a href="#">80/876/EEC</a> (5); or	
(iii) compound fertilisers.	
<b>39.</b> Aqueous solutions containing more than 90 parts by weight of ammonium nitrate per 100 parts by weight of solution	500
<b>40.</b> Ammonium nitrate based products manufactured chemically for use as fertilisers which comply with Council Directive <a href="#">80/876/EEC</a> and compound fertilisers where the nitrogen content derived from the ammonium nitrate exceeds 28% of the mixture by weight	1000
<b>41.</b> 2,2-Bis(tert-butylperoxy)butane (>70%)	5
<b>42.</b> 1,1-Bis(tert-butylperoxy)cyclohexane (>80%)	5
<b>43.</b> tert-Butyl peroxyacetate (>70%)	5
<b>44.</b> tert-Butyl peroxyisobutyrate (>80%)	5
<b>45.</b> tert-Butyl peroxyisopropylcarbonate (>80%)	5
<b>46.</b> tert-Butyl peroxy maleate (>80%)	5
<b>47.</b> tert-Butyl peroxy pivalate (>77%)	5
<b>48.</b> Cellulose nitrate other than—	50
(i) cellulose nitrate to which the Explosives Act 1875 applies; or	
(ii) solutions of cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and the solution contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution	
<b>49.</b> Dibenzyl peroxydicarbonate (>90%)	5
<b>50.</b> Diethyl peroxydicarbonate (>30%)	5
<b>51.</b> 2,2-Dihydroperoxypropane (>30%)	5

(5) OJ No L250, 23.9.80, p. 7.

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<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
52. Di-isobutyryl peroxide (>50%)	5
53. Di-n-propyl peroxydicarbonate (>80%)	5
54. Di-sec-butyl peroxydicarbonate (>80%)	5
55. Ethylene oxide	5
56. Ethyl nitrate	50
57. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%)	5
58. Hydrogen	2
59. Liquid Oxygen	500
60. Methyl ethyl ketone peroxide (>60%)	5
61. Methyl isobutyl ketone peroxide (>60%)	5
62. Peracetic acid (>60%)	5
63. Propylene oxide	5
64. Sodium chlorate	25
65. Sulphur dichloride	1

## PART C

### FLAMMABLE SUBSTANCES (UNLESS SPECIFICALLY NAMED IN PARTS A AND B)

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
	(in tonnes, unless otherwise stated)
66. Liquefied petroleum gas, such as commercial propane and commercial butane, and any mixtures thereof, when held at a pressure greater than 1.4 bar absolute	25
67. Liquefied petroleum gas, such as commercial propane and commercial butane, and any mixture thereof, when held under refrigeration at a pressure of 1.4 bar absolute or less	50
68. Gas or any mixture of gases which is flammable in air, when held as a gas	15
69. 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	25

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
<b>70.</b> A liquefied gas or any mixture of 50 liquefied gases, which is flammable in air and has a boiling point of less than 0°C (measured at 1 bar absolute), when held under refrigeration or cooling at a pressure of 1.4 bar absolute or less	
<b>71.</b> A liquid or any mixture of liquids not included in entries 68 to 70 above, which has a flash point of less than 21°C	10,000

## PART D

### INTERPRETATION

In this Schedule—

- (a) references to percentages are references to parts by weight of the substance per 100 parts by weight of the solution;
- (b) “compound fertiliser” means a fertiliser containing ammonium nitrate and phosphate or potash;
- (c) Part C does not include a substance which is within Part A or Part B;
- (d) a substance, or any mixture of substances, shall only be treated as a hazardous substance by virtue of satisfying a description in entry number 37, 66, 67, 68, 69 or 70 when it is in a state in which it satisfies the description;
- (e) the controlled quantity of 25 tonnes in entry 69 refers, in the case of a mixture of substances, to the quantity of substances within that mixture held above their boiling point (measured at 1 bar absolute);
- (f) the controlled quantity of 50 tonnes in entry 70 refers, in the case of a mixture of substances, to the quantity of substances within that mixture having boiling points below 0°C.

### SCHEDULE 2

#### PRESCRIBED FORMS, NOTICES AND CERTIFICATES

Form 1

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**The Planning (Hazardous Substances) Act 1990 – Section 7(1)  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 5)**

**General application for Hazardous Substances Consent**

**1. Applicant (IN BLOCK CAPITALS)**  
Address

Tel No

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

Tel No  
Contact

**2. Address or location of application site**

**3. Substance(s) covered by application**

Name	Entry number in Schedule 1 to the 1992 Regulations	Maximum quantity proposed to be present (in tonnes)†

† or kilograms in the case of substances with entry numbers 21, 26 or 34

**4. Manner in which substance(s) to be kept and used**

Provide the following information for each substance covered by the application (referring to the substance location plan where appropriate)

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

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Substance Entry number	Storage only	Stored and involved in industrial process

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

Vessel No*	Entry No of substance(s) to be stored in vessel	Installed above ground (yes/no)	Buried (yes/no)	Mounted (yes/no)	Max capacity (cubic metres)	Highest vessel design temperature (°C)	Highest vessel design pressure (bar absolute)

\* identify by reference to substance location plan

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

(c) State for each substance the largest size (capacity in cubic metres) of any moveable container to be used for that substance:

(d) Where the 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; and state the maximum quantity (in tonnes) which is liable to be present in the major items of the plant, and the maximum temperature (°C) and pressure (bar absolute) at which the substance is liable to be present:

Substance entry No	Description of process(es)	Major items of plant*	Max quantity (tonnes)	Max temp (°C)	Max pressure (bar absolute)

\* identify by reference to substance location plan

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**5. Additional Information**

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

(b) 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 details to enable the application(s) to be identified.

(c) **Plans.** Please list the maps or plans or any explanatory scale drawings of plant/buildings submitted with this application.

(d) 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

Signed .....

on behalf of .....

(insert applicant's name if signed by agent)

Date .....



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**The Planning (Hazardous Substances) Act 1990 – Sections 13 and 17  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 5)**

Application for either: *(tick appropriate box)*

Hazardous Substances Consent  
without a condition(s) imposed on a  
previous consent (section 13)

**OR**

Continuation of Hazardous Substances Consent  
following a change in control of part of the land (section 17)

- 1. Applicant (IN BLOCK CAPITALS)**  
Address

Tel No

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

Tel No  
Contact

- 2. Address or location of Application Site**

- 3. Substances covered by application**

Name	Entry number in Schedule 1 to the 1992 Regulations	Maximum quantity proposed to be present (in tonnes)†

† or kilograms in the case of substances with entry numbers 21, 26 or 34

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**4. In the case of an application for hazardous substances consent without a condition imposed on a previous consent (section 13)**

(a) identify the condition(s) previously imposed which it is intended should not be imposed on the consent, or should only be imposed in a modified form (*in the latter case, indicate the proposed modification*)–

(b) give the 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. In the case of an application for the continuation of hazardous substances consent(s) following a change in the person in control of part of the land (section 17)**

(a) describe the use of each area of the site identified in the accompanying change of control plan.

(b) describe any relevant changes in circumstances since the existing consent was granted.

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**6. Additional information**

Give any further information which you consider to be relevant to the determination of the 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

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**The Planning (Hazardous Substances) Act 1990  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 6)**

**Notice of Application for Hazardous Substances Consent/  
Continuation of Hazardous Substances Consent\***

I give notice that (a) .....  
is applying to the (b) .....  
for hazardous substances consent/the continuation of hazardous substance consent\* (c) .....  
.....  
at (d) .....

Members of the public may inspect a copy of the application at (e) .....  
.....  
during all reasonable hours until (f) .....

Anyone who wishes to make representations about this application should write to the (b) .....  
.....  
at (g) .....  
.....  
by (j) .....

Signed: .....  
\*on behalf of .....  
Date .....

\* delete where inappropriate

Insert:

- (a) applicant's name
- (b) name of Council or other body to whom the application is to be made
- (c) brief details of the consent being sought
- (d) address or location of the application site
- (e) address at which the application may be inspected (the applicant is required to make the application available for inspection at a place within the locality of the application site)
- (f) date giving a period of not less than 21 days, beginning with the date when the notice is published or first displayed on site (as the case may be)
- (g) address of Council or other body to whom the application is to be made

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Form 4

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**The Planning (Hazardous Substances) Act 1990  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 6)**

**Posting of Notice of Application Certificate**

**Certificate A**

I certify that:

- I/The applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.
- The notice was left in position for not less than 7 days during the 21 day period preceding the application.

or

**Certificate B**

I certify that:

I have/The applicant has\* been unable to post the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application because I have/the applicant has\* no right of access or other rights in respect of the land that would enable me/the applicant\* to do so.

I have/The applicant has\* taken the following steps to acquire those rights, but have/has\* been unsuccessful.

(Give description of steps taken) .....  
.....  
.....

or

**Certificate C**

I certify that:

- I/The applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.
- It was, however, left in position for less than 7 days during the 21 day period preceding the application.
- This happened because it was removed/obscured/defaced\* before 7 days had elapsed.
- This was not my/the applicant's\* fault or intention.
- I/The applicant\* took the following steps to protect and replace the notice:

(Give description of steps taken) .....  
.....  
.....

Signed .....

\*On behalf of .....

Date .....

\* delete where inappropriate

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Form 5

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**The Planning (Hazardous Substances) Act 1990  
The Planning (Hazardous Substances) Regulations 1992**

**Certificates under Regulation 7(1)\* or 13(4)\*(aj)**

**Certificate A**

I certify that:

at the beginning of the period of 21 days ending with the date of the accompanying application/appeal\* nobody, except the applicant/appellant\*, was the owner (b) of any part of the land to which the application/appeal\* relates.

Signed .....

\*on behalf of .....

Date .....

**Certificate B**

I certify that:

I have/The applicant has/The appellant has\* given the required notice (c) to everyone else who, at the beginning of the period of 21 days ending with the date of the accompanying application/appeal, was the owner (b) of any part of the land to which the application/appeal\*relates, as listed below.

Owner's name	Address at which notice was served	Date at which notice was served
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Signed .....

\*on behalf of .....

Date .....

**Certificate C**

I certify that:

I/The applicant/The appellant\* cannot issue a Certificate A or B in respect of the accompanying application/appeal\*.

I have/The applicant has/The appellant has\* given the required notice (c) to the persons specified below, being persons who at the beginning of the period of 21 days ending with the date of the application/appeal\*, were owners (b) of any part of the land to which the application/appeal \*relates.

Owner's name	Address at which notice was served	Date at which notice was served
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I have/The applicant has/The appellant has\* taken all reasonable steps open to me/him/her\* to find out the names and addresses of the remaining owners (b) of the land, or of a part of it, but have/has\* been unable to do so. These steps were as follows:-



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(d) .....  
.....  
.....  
.....

Signed .....

\*On behalf of .....

Date .....

**Certificate D**

I certify that:

The applicant/The appellant\* cannot issue a Certificate A in respect of the accompanying application/appeal\*

The applicant/The appellant\* have/has\* taken all reasonable steps open to me/him/her\* to find out the names and addresses of everyone else who, at the beginning of the period of 21 days ending with the date of the application/appeal\*, was the owner (b) of any part of the land to which the application/appeal\* relates, but have/has\* been unable to do so. These steps were as follows:-

(d) .....  
.....  
.....  
.....

Signed .....

\*On behalf of .....

Date .....

\* delete where inappropriate

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(a) These Certificates are for use both with applications and appeals for hazardous substances consent. References to either regulation 7(1) or 13(4) should therefore be deleted as appropriate. One of certificates A, B, C or D must be completed.

(b) "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(c) Form 6 (for applications) or Form 7 (for appeals).

(d) Insert description of steps taken.

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Form 6

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**The Planning (Hazardous Substances) Act 1990  
The Planning (Hazardous Substances) Regulations 1992**

**Notice of Application for Hazardous Substances Consent/  
Continuation of Hazardous Substances Consent\***

**To be served on an owner**

*("owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.)*

**I give notice that (a) .....**  
is applying to the (b) .....

for hazardous substances consent/the continuation of hazardous substances consent\* (c) .....

at (d) .....

You may inspect a copy of the application at (e) .....

within 21 days of the service of this notice.

If you wish to make representations about this application you should write to the (f) .....

at (f) .....

within 21 days of the service of this notice.

Signed: .....

\*on behalf of .....

Date .....

\* delete where inappropriate

**Insert:**

- (a) applicant's name
- (b) name of Council or other body to whom the application is to be made
- (c) brief details of the consent being sought
- (d) address or location of the application site
- (e) address at which the application may be inspected (the applicant is required to make the application available for inspection at a place within the locality of the application site)
- (f) address of Council or other body to whom the application is to be made

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Form 7

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**The Planning (Hazardous Substances) Act 1990  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 13)**

**Notice of Appeal**

**To be served on an owner**

*("owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.)*

I give notice that (a) .....

having applied to the (b) .....

for hazardous substances consent/the continuation of hazardous substances consent\* (c) .....

.....

.....

at (d) .....

.....

.....

is appealing to the Secretary of State for the Environment/Secretary of State for Wales<sup>a</sup>

– against the decision of the (b) .....

– on the failure of the (b) ..... to give notice of a decision\*

If you wish to make representations about this appeal you should write to the Planning Inspectorate, Tollgate House, Houlton Street, Bristol BS2 9DJ/the Planning Inspectorate, Cathays Park, Cardiff CF1 3NQ\* within 21 days of the date of service of this notice.

Signed: .....

\*on behalf of .....

Date .....

\* delete where inappropriate

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**Insert:**

(a) appellant's name

(b) name of Council or other body to whom the application was made

(c) brief details of the consent being sought

(d) address or location of the application site

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Form 8

**The Planning (Hazardous Substances) Act 1990 - Section 11  
The Planning (Hazardous Substances) Regulations 1992 (Regulation 14)**

**Part 1 Claimant and Site**

**1. Claimant (IN BLOCK CAPITALS)**  
*Address*

*Tel No*

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

**Tel No**  
**Contact**

**2. Full postal address or location of land to which the claim relates**

**3. General description of activities carried on at the site during the establishment period**

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**Part 2 – Substances for which consent is being claimed and established quantity**

**Table A**

To be completed for substances notified to HSE(a) under NIHHS(b) before the relevant date(c)

1 Name of Substance(s) present during establishment period(d)	2 Entry number in Schedule 1 to the 1992 Regulations(e)	3 Quantity last notified to HSE(a) before the relevant date(c)	4 Quantity notified before start of the establishment period(d) (if applicable)	5 Established quantity(f)

**Table B**

To be completed for substances not required to be notified under NIHHS before the relevant date(c) and where a quantity not less than the controlled quantity (h) was present at any one time during the establishment period(d).

1 Name of Substance(s) present during establishment period(d)	2 Entry number in Schedule 1 to the 1992 Regulations(e)	3 Maximum quantity present during establishment period(d)	4 Established quantity(g)

**Notes to part 2**

- (a) "HSE" stands for the Health and Safety Executive.
- (b) "NIHHS" stands for the Notification of Installations Handling Hazardous Substances Regulations 1982.
- (c) The relevant date is 1st June 1992.
- (d) The establishment period is the 12 months period immediately preceding the relevant date.
- (e) The "1992 Regulations" means the Planning (Hazardous Substances) Regulations 1992.
- (f) The established quantity in Table A for a substance is the quantity in column (3) of that table for the substance, or twice the quantity specified in column (4) for that substance, if greater.
- (g) The established quantity in Table B for a substance is the quantity specified in column (3) of that table for that substance multiplied by 1.5.
- (h) The "controlled quantity" means the quantity specified for that substance in column 2 of the table in Part 1 of Schedule 1 to the 1992 Regulations.

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**Part 3 – Moveable Container Storage Areas**

For each area identified in any moveable container storage area plan which accompanies this claim specify–

(a) the maximum quantity of the hazardous substance stored in the area in moveable containers at any time during the establishment period–

(b) whether the substance was stored in a moveable container with a capacity in excess of 10% of the substance's controlled quantity in that area during that period and, if so, the capacity (in tonnes) of the largest moveable container in which the substance was so stored–

**Part 4 – Vessel Capacity, Temperature, and Pressure**

(see next page)



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**Part 4 Vessel Capacity, Temperature and Pressure - Table C**

Vessel area (a)	Entry number of substance in Schedule 1 to the 1992 Regulations	Below ambient temperature (b)					At ambient temperature (c)					Above ambient temperature (d)					
		1(e)	2(f)	3(g)	4(h)	5(i)	6(j)	7(k)	8(l)	9(m)	10(n)	11(o)					
		Largest capacity vessel	Highest design pressure	Buried or mounded vessels largest capacity vessel	Buried or mounded vessels highest vessel design pressure	Non buried or non mounded vessels largest capacity vessel	Non buried or non mounded vessels highest vessel design pressure	Present at or below boiling point at 1 bar largest capacity vessel	Present at or below boiling point at 1 bar highest vessel design pressure	Highest design temperature	Present at above boiling point at 1 bar largest capacity vessel	Present at above boiling point at 1 bar highest vessel design pressure					

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**Notes to Part 4– Table C**

- (a) This table should be completed for each vessel area identified in any vessel location plan which accompanies this claim, with a separate row being completed for each hazardous substance in that vessel area.
- (b) Only complete columns 1 and 2 in respect of a vessel area in which the substance was present in a vessel at below ambient temperature at any time during the establishment period.
- (c) Only complete columns 3 to 6 in respect of a vessel area in which the substance was present in a vessel at ambient temperature at any time during the establishment period.
- (d) Only complete columns 7 to 11 in respect of a vessel area in which the substance was present in a vessel at above ambient temperature at any time during the establishment period.
- (e) **Column 1** Enter the capacity (*in cubic metres*) of the largest capacity vessel in which the substance was present in the relevant vessel area at below ambient temperature at any time during the establishment period.
- (f) **Column 2** Only complete if the substance was present in a vessel at above atmospheric pressure at below ambient temperature in the relevant vessel area at any time during the establishment period.  
To complete, enter the highest vessel design pressure of any vessel in which the substance was present in the relevant vessel area at above atmospheric pressure at below ambient temperature at any time during the establishment period.
- (g) **Column 3** Only complete if the substance was present at ambient temperature in a vessel which was buried or mounded in the relevant vessel area at any time during the establishment period.  
To complete, enter the capacity (*in cubic metres*) of the largest capacity buried or mounded vessel in which the substance was present at ambient temperature in the relevant vessel area at any time during the establishment period.
- (h) **Column 4** Only complete if the substance was present at above atmospheric pressure at ambient temperature in a vessel which was buried or mounded in the relevant vessel area at any time during the establishment period.  
To complete, enter the highest vessel design operating pressure of any buried or mounded vessel in which the substance was present in the relevant vessel area at above atmospheric pressure at ambient temperature at any time during the establishment period.
- (i) **Column 5** Only complete if the substance was present at ambient temperature in a non-buried or non-mounded vessel in the relevant vessel area at any time during the establishment period.  
To complete, enter the capacity (*in cubic metres*) of the largest capacity non-buried or non-mounded vessel in which the substance was present at ambient temperature in the relevant vessel area at any time during the establishment period.
- (j) **Column 6** Only complete if the substance was present at above atmospheric pressure at ambient temperature in a non-buried or non-mounded vessel in the relevant vessel area at any time during the establishment period.  
To complete, enter the highest vessel design operating pressure of any non-buried or non-mounded vessel in which the substance was present in the relevant vessel area at above atmospheric pressure at ambient temperature at any time during the establishment period.
- (k) **Column 7** Only complete if the substance was present in a vessel at above ambient temperature at or below its boiling point at 1 bar absolute in the relevant vessel area at any time during the establishment period.  
To complete, enter the capacity (*in cubic metres*) of the largest capacity vessel in which the substance was present at above ambient temperature at or below its boiling point at 1 bar absolute in the relevant vessel area at any time during the establishment period.

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- (l) **Column 8** Only complete if the substance was present at above atmospheric pressure at above ambient temperature at or below its boiling point at 1 bar absolute in a vessel in the relevant vessel area at any time during the establishment period.

To complete, enter the highest vessel design operating pressure of any vessel in which the substance was present at above atmospheric pressure at above ambient temperature at or below its boiling point at 1 bar absolute in a vessel in the relevant vessel area at any time during the establishment period.

- (m) **Column 9** Enter the highest design operating temperature (in centigrade) of any vessel in which the substance was present at above ambient temperature in the relevant vessel area at any time during the establishment period.

- (n) **Column 10** Only complete if the substance was present in a vessel at above its boiling point at 1 bar absolute in the relevant vessel area at any time during the establishment period.

To complete, enter the capacity (in cubic metres) of the largest capacity vessel in which the substance was present at above its boiling point at 1 bar absolute in the relevant vessel area at any time during the establishment period.

- (o) **Column 11** Only complete if the substance was present at above atmospheric pressure above its boiling point at 1 bar absolute in a vessel in the relevant vessel area at any time during the establishment period.

To complete, enter the highest vessel design operating pressure of any vessel in which the substance was present at above atmospheric pressure at above its boiling point at 1 bar absolute in a vessel in the relevant vessel area at any time during the establishment period.

**Part 5**

I/We hereby claim hazardous substances consent in accordance with the information provided(a).

Signed .....

on behalf of .....

Date .....

**Notes to Part 5**

- (a) The hazardous substances authority is required to notify you within 2 weeks from receipt of the claim if, in their opinion, the claim is invalid and to give their reasons for that opinion. If the claim is valid that authority shall be deemed to have granted the hazardous substances consent claimed, subject to the conditions set out in section 11(7) of the Planning (Hazardous Substances) Act 1990 and Schedule 3 to the Planning (Hazardous Substances) Regulations 1992.

## SCHEDULE 3

Regulation 15

## DEEMED CONSENT CONDITIONS

**Below ambient temperature vessel conditions**

1. A hazardous substance shall only be present at below ambient temperature in a vessel in a vessel area if—

- (a) it was present at below ambient temperature in a vessel in that vessel area at any time during the establishment period;
- (b) the vessel in which it is present does not have a greater capacity than that specified in column 1 of Table C; and
- (c) the pressure at which it is present does not exceed—
  - (i) atmospheric pressure, if the substance was not present at above atmospheric pressure at below ambient temperature in a vessel in that vessel area at any time during the establishment period; or
  - (ii) the pressure specified in column 2 of Table C, in any other case.

**Ambient temperature vessel conditions**

2. A hazardous substance shall only be present at ambient temperature in a buried or mounded vessel in a vessel area if—

- (a) it was present at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period;
- (b) the buried or mounded vessel in which it is present does not have a greater capacity than that specified in column 3 of Table C; and
- (c) the pressure at which it is present in the buried or mounded vessel does not exceed—
  - (i) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period; or
  - (ii) the pressure specified in column 4 of Table C, in any other case.

3. A hazardous substance shall only be present at ambient temperature in a non-buried or non-mounded vessel in a vessel area if—

- (a) it was present at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period;
- (b) the non-buried or non-mounded vessel in which it is present does not have a greater capacity than that specified in column 5 of Table C; and
- (c) the pressure at which it is present in the non-buried or non-mounded vessel does not exceed—
  - (i) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period; or
  - (ii) the pressure specified in column 6 of Table C, in any other case.

**Above ambient temperature vessel conditions**

4. A hazardous substance shall only be present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in a vessel area if—

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- (a) it was present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period;
  - (b) the vessel in which it is present does not have a greater capacity than that specified in column 7 of Table C; and
  - (c) the pressure at which it is present does not exceed—
    - (i) atmospheric pressure, if the substance was not present at above atmospheric pressure at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or
    - (ii) the pressure specified in column 8 of Table C, in any other case.
5. A hazardous substance shall only be present at above its boiling point at 1 bar absolute in a vessel area if—
- (a) it was present at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period;
  - (b) the temperature at which it is present does not exceed the temperature specified in column 9 of Table C;
  - (c) the vessel in which it is present does not have a greater capacity than that specified in column 10 of Table C; and
  - (d) the pressure at which it is present does not exceed—
    - (i) atmospheric pressure, if the substance was not present at above atmospheric pressure at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or
    - (ii) the pressure specified in column 11 of Table C, in any other case.

#### **Vessel location condition**

6. A hazardous substance shall not be present in a vessel outside of a vessel area.

#### **Moveable container storage area conditions**

7.—(1) A hazardous substance shall only be stored in moveable containers in an area identified in a moveable container storage area plan for that substance in accordance with regulation 14(3).

(2) The quantity of a hazardous substance stored in such an area shall not exceed twice the maximum quantity of the substance stored in moveable containers in that area at any time during the establishment period.

(3) A hazardous substance shall not be stored in such an area in a moveable container with a capacity in excess of—

- (a) 10% of the substance's controlled quantity, if it was not stored in a moveable container with a capacity in excess of 10% of that quantity in that area at any time during the establishment period; or
- (b) the capacity of the largest moveable container in which it was stored during that period in that area, in any other case.

SCHEDULE 4

Regulations 18, 20 21 and 22

ENFORCEMENT — MODIFICATION OF THE PRINCIPAL ACT

PART 1

APPEALS AGAINST HAZARDOUS  
SUBSTANCES CONTRAVENTION NOTICES

1. In section 174 of the principal Act (appeals against enforcement notice)—
  - (a) in subsection (1), for “an enforcement notice” substitute “a hazardous substances contravention notice”;
  - (b) for subsection (2) substitute—
    - “(2) 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 the 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 or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
      - (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 24(5)(b) of that Act falls short of what should reasonably be allowed.”;
    - (c) in subsection (3)(a), for “enforcement notice” substitute “hazardous substances contravention notice”;
    - (d) for subsection (4) substitute—
      - “(4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—
        - (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
        - (b) setting out the appellant’s submissions in relation to each ground of appeal.”;
    - (e) in subsection (5), after “does not” and “failed” insert “in that statement” and omit “within the prescribed time” and “within that time”;
    - (f) in subsection (6), for “enforcement notice” substitute “hazardous substances contravention notice”.
  2. In section 175 of the principal Act (appeals — supplementary provisions)—
    - (a) in subsection (3), for “local planning authority” substitute “hazardous substances authority”;
    - (b) in subsection (6), for “any other provisions of this Act” substitute “section 25(1) of the Planning (Hazardous Substances) Act 1990”.

3. In section 176 of the principal Act (general provisions relating to determination of appeals)—
  - (a) in subsection (1)—
    - (i) for “enforcement notice” in both places where it occurs, substitute “hazardous substances contravention notice”;
    - (ii) for “local planning authority” substitute “hazardous substances authority”;
  - (b) in subsection (3)—
    - (i) in paragraph (a) omit “within the prescribed time”;
    - (ii) for paragraph (b) substitute—
      - “(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 19(2) of the Planning (Hazardous Substances) Regulations 1992.”;
  - (c) in subsections (4) and (5), for “enforcement notice” substitute “hazardous substances contravention notice”.
4. In section 177 of the principal Act (grant or modification of planning permission on appeal against enforcement notice)—
  - (a) for subsection (1) substitute—
    - “(1) On the determination of an appeal under section 174, the Secretary of State may—
      - (a) grant hazardous substances consent for the presence of the hazardous substance 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.”;
  - (b) omit subsections (1A) and (1B);
  - (c) for subsection (2) substitute—
    - “(2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990.”;
  - (d) in subsection (3), for “planning permission” in both places where it occurs substitute “hazardous substances consent” and for “Part III” substitute “the Planning (Hazardous Substances) Act 1990”;
  - (e) in subsection (4) omit “or limitation” in both places where it occurs;
  - (f) for subsection (5) substitute—
    - “(5) Where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.”;
  - (g) in subsection (5A), for “section 303” substitute “section 26A of the Planning (Hazardous Substances) Act 1990”;
  - (h) in subsections (6) and (7), for “planning permission” substitute “hazardous substances consent”;
  - (i) for subsection (8) substitute—
    - “(8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State’s decision shall be treated as having been given by him in dealing

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with an application for hazardous substances consent made to the hazardous substances authority.”.

## PART 2

### EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES, ETC.

5. In section 178 of the principal Act (execution and cost of works required by enforcement notices)—

- (a) for “an enforcement notice” in each place where it occurs substitute “a hazardous substances contravention notice”;
- (b) for “local planning authority” in each place where it occurs substitute “hazardous substances authority”;
- (c) in subsection (2) for “breach of planning control” in both places where it occurs substitute “contravention of hazardous substances control”;
- (d) in subsection (4) for “the enforcement notice” substitute “the hazardous substances contravention notice”;
- (e) after subsection (6) insert—

“(7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken.”.

6. In section 179 (offence where enforcement notice not complied with)—

- (a) 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.”;
- (b) in subsection (2) for “the owner of the land” substitute “a person” and for “an enforcement notice” substitute “a hazardous substances contravention notice”;
- (c) omit subsections (4) and (5);
- (d) in subsection (6) omit “or (5)”;
- (e) in subsection (7)(a) for “enforcement notice” substitute “hazardous substance contravention notice”.

7. In section 180 (effect of planning permission etc. on enforcement or breach of condition notice)

- (a) for subsection (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 the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.”
- (b) omit subsection (2);
- (c) in subsection (3), for “enforcement notice or breach of conditions notice” substitute “a hazardous substances contravention notice”.



8. For section 181 (enforcement notice to have effect against subsequent development) 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 178 and 179 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 the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.”.

## PART 3

### REGISTERS

9. In section 188 of the principal Act (register of enforcement and stop notices)—

(a) for subsections (1) and (2) substitute—

“(1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them—

- (a) the address of the land to which the notice relates;
- (b) the date of service of copies of the notice;
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

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(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority.”.

## PART 4

### VALIDITY

**10.** In section 285 of the principal Act (validity of enforcement notices and similar notices)—

- (a) in subsection (1), for “an enforcement notice” substitute “a hazardous substances contravention notice”;
- (b) in subsection (2), for “enforcement notice” in each place where it occurs substitute “hazardous substances contravention notice”;
- (c) omit subsections (3) and (4).

**11.** In section 289 of the principal Act (appeals to the High Court relating to enforcement notices etc.)—

- (a) in subsections (1), (4A) and (5A) for “an enforcement notice” in each place where it occurs substitute “a hazardous substances contravention notice” and in subsections (1) and (4A) for “local planning authority” in each place where it occurs substitute “hazardous substances authority”;
- (b) omit subsections (2) and (4B).

## PART 5

### SECTIONS OF THE PRINCIPAL ACT AS MODIFIED

**174.**—(1) A person having an interest in the land to which a hazardous substances contravention notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.

(2) 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 the 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 these 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 or under section 24(4) of the Planning (Hazardous Substances) Act 1990;

- (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 24(5)(b) of that Act falls short of what should reasonably be allowed.
- (3) An appeal under this section shall be made either—
- (a) by giving written notice of the appeal to the Secretary of State before the date specified in the hazardous substances contravention notice as the date on which it is to take effect; or
  - (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.
- (4) A notice under subsection (3) shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement—
- (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
  - (b) setting out the appellant’s submissions in relation to each ground of appeal.
- (5) If, where more than one ground is specified in that statement, the appellant does not in that statement give information required under subsection (4)(b) in relation to each of those grounds the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed in that statement to give such information.
- (6) In this section “relevant occupier” means a person who—
- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and
  - (b) continues so to occupy the land when the appeal is brought.

**175.—**(3) Subject to section 176(4), the Secretary of State shall, if either the appellant or the hazardous substances authority so desire, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) Schedule 6 applies to appeals under section 174, including appeals under that section as applied by regulations under section 25(1) of the Planning (Hazardous Substances) Act 1990.

**176.—**(1) On an appeal under section 174 the Secretary of State may—

- (a) correct any defect, error or misdescription in the hazardous substances contravention notice; or
- (b) vary the terms of the hazardous substances contravention notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the hazardous substances authority.

(2) Where the Secretary of State determines to allow the appeal, he may quash the notice.

(2A) The Secretary of State shall give any directions necessary to give effect to his determination on the appeal.

(3) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with section 174(4); and
- (b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 19(2) of the Planning (Hazardous Substances) Regulations 1992.

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the hazardous substances contravention notice under paragraph (b) of that subsection, he need not comply with section 175(3).

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(5) Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

**177.**—(1) On the determination of an appeal under section 174, the Secretary of State may—

- (a) grant hazardous substances consent for the presence of the hazardous substance 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.

(2) In considering whether to grant hazardous substances consent under subsection (1), the Secretary of State shall have regard to the considerations specified in section 9(2) of the Planning (Hazardous Substances) Act 1990.

(3) The hazardous substances consent that may be granted under subsection (1) is any hazardous substances consent that might be granted on an application under the Planning (Hazardous Substances) Act 1990.

(4) Where under subsection (1) the Secretary of State discharges a condition he may substitute another condition for it, whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under section 174, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.

(5A) Where—

- (a) the statement under subsection (4) of section 174 specifies the ground mentioned in subsection (2)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 26A of the Planning (Hazardous Substances) Act 1990 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the Secretary of State 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.

(6) Any hazardous substances consent granted under subsection (1) on an appeal shall be treated as granted on the application deemed to have been made by the appellant.

(7) In relation to a grant of hazardous substances consent or a determination under subsection (1) the Secretary of State's decision shall be final.

(8) For the purposes of section 28 of the Planning (Hazardous Substances) Act 1990 the Secretary of State's decision shall be treated as having been given by him in dealing with an application for hazardous substances consent made to the hazardous substances authority.

**178.**—(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period for compliance with the notice, the hazardous substances authority 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 them in doing so.

(2) Where a copy of a hazardous substances contravention notice has been served in respect of any contravention of hazardous substances control—

- (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice, and
- (b) any sums paid by the owner of any land under subsection (1) in respect of expenses incurred by the hazardous substances authority in taking steps required by such a notice to be taken,

shall be deemed to be incurred or paid for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) Regulations made under this Act may provide that—

- (a) section 276 of the Public Health Act 1936, (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 of that Act (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and
- (c) section 294 of that Act (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a hazardous substances contravention notice.

(4) Regulations under subsection (3) applying section 289 of the Public Health Act 1936 may include adaptations and modifications for the purpose of giving the owner of land to which a hazardous substances contravention notice relates the right, as against all other persons interested in the land, to comply with the requirements of the hazardous substances contravention notice.

(5) Regulations under subsection (3) may also provide for the charging on the land of any expenses recoverable by a hazardous substances authority under subsection (1).

(6) 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.

(7) Where different periods are specified for different steps under section 24(5)(b) of the Planning (Hazardous Substances) Act 1990 in relation to a hazardous substances contravention notice, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken.

**179.**—(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.

(2) Where a person is in breach of a hazardous substances contravention notice he 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.

(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 subsection 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

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(b) the notice is not contained in the appropriate register kept under section 188, it shall be a defence for him to show that he 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 £20,000; and

(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.

**180.**—(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 the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.

(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.

**181.**—(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 178 and 179 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 the hazardous substances authority shall not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.

**188.**—(1) Every hazardous substances authority shall keep an enforcement register containing the following information in respect of each hazardous substances contravention notice issued by them—

(a) the address of the land to which the notice relates;

(b) the date of service of copies of the notice;

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- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the hazardous substances authority.

(2) The register shall be kept at the principal office of the hazardous substances authority.

(3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

**285.**—(1) The validity of a hazardous substances contravention notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(2) Subsection (1) shall not apply to proceedings brought under section 179 against a person who—

- (a) has held an interest in the land since before the hazardous substances contravention notice was issued under that Part;
- (b) did not have a copy of the hazardous substances contravention served on him under that Part; and
- (c) satisfies the court—
  - (i) that he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and
  - (ii) that his interests have been substantially prejudiced by the failure to serve him with a copy of it.

**289.**—(1) Where the Secretary of State gives a decision in proceedings on an appeal under Part VII against a hazardous substances contravention notice the appellant or the hazardous substances authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

(3) At any stage of the proceedings on any such appeal as is mentioned in subsection (1), the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

(4) A decision of the High Court on a case stated by virtue of subsection (3) shall be deemed to be a judgment of the court within the meaning of section 16 of the Supreme Court Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

(4A) In proceedings brought by virtue of this section in respect of a hazardous substances contravention notice, the High Court or, as the case may be, the Court of Appeal may, on such terms if any as the Court thinks fit (which may include terms requiring the hazardous substances authority to give an undertaking as to damages or any other matter), order that the notice shall have effect, or

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have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any re-hearing and determination by the Secretary of State.

(5) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—

- (a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and
- (b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(5A) Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of a hazardous substances contravention notice are finally concluded and any re-hearing and determination by the Secretary of State has taken place, of any other powers in respect of the matters to which such a notice relates.

(6) No proceedings in the High Court shall be brought by virtue of this section except with the leave of that Court and no appeal to the Court of Appeal shall be so brought except with the leave of the Court of Appeal or of the High Court.

(7) In this section “decision” includes a direction or order, and references to the giving of a decision shall be construed accordingly.