

## SCHEDULES

### SCHEDULE 4

Regulations 15, 17, 18 and 19(1)

Enforcement – application of the principal Act

### PART 1

#### Appeals against hazardous substances contravention notices

1. Section 174 of the principal Act (appeals against enforcement notice) applies but as if—
  - (a) in subsection (1), for “an enforcement notice” there were substituted “a hazardous substances contravention notice”;
  - (b) for subsection (2) there were substituted—
    - “(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) subsections (2A), (2B) and (2C) were omitted;
    - (d) in subsection (3)(a), for “enforcement notice” there were substituted “hazardous substances contravention notice”;
    - (e) for subsection (4) there were substituted—
      - “(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.”;
    - (f) in subsection (5), after “does not” and “failed” there were inserted “in that statement” and “within the prescribed time” and “within that time” were omitted;

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- (g) in subsection (6), for “enforcement notice” there were substituted “hazardous substances contravention notice”.
2. Section 175 of the principal Act (appeals: supplementary provisions) applies but as if—
- (a) in subsections (1), (4) and (5), for “enforcement notice” there were substituted “hazardous substances contravention notice”;
  - (b) in subsection (3), for “local planning authority” there were substituted “hazardous substances authority”;
  - (c) subsection (3A) were omitted;
  - (d) in subsection (6), for “any other provisions of this Act” there were substituted “section 25(1) of the Planning (Hazardous Substances) Act 1990”.
3. Section 176 of the principal Act (general provisions relating to determination of appeals) applies but as if—
- (a) in subsection (1)—
    - (i) for “enforcement notice” in both places where it occurs, there were substituted “hazardous substances contravention notice”;
    - (ii) for “local planning authority” there were substituted “hazardous substances authority”;
  - (b) in subsection (3)—
    - (i) in paragraph (a) “within the prescribed time” were omitted;
    - (ii) for paragraph (b) there were substituted—
      - “(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fail to comply with regulation 16(2) of the Planning (Hazardous Substances) Regulations 2015.”
  - (c) in subsections (4) and (5), for “enforcement notice” there were substituted “hazardous substances contravention notice”.
4. Section 177 of the principal Act (grant or modification of planning permission on appeal against enforcement notice) but as if—
- (a) for subsection (1) there were substituted —
    - “(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) subsections (1A) and (1B) were omitted;
  - (c) for subsection (2) there were substituted —
    - “(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 there were substituted “hazardous substances consent” and for “Part III” there were substituted “the Planning (Hazardous Substances) Act 1990”;
  - (e) in subsection (4) “or limitation” were omitted in both places where it occurs;

- (f) for subsection (5) there were substituted—

“(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” there were substituted “section 26A of the Planning (Hazardous Substances) Act 1990”;
- (h) in subsections (6) and (7), for “planning permission” there were substituted “hazardous substances consent”;
- (i) for subsection (8) there were substituted—

“(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.”

## PART 2

### Effect of hazardous substances contravention notices, etc.

- 5. Section 178 of the principal Act (execution and cost of works required by enforcement notices) has effect but as if—
  - (a) for “an enforcement notice” in each place where it occurs there were substituted “a hazardous substances contravention notice”;
  - (b) for “local planning authority” in each place where it occurs there were substituted “hazardous substances authority”;
  - (c) in subsection (2) for “breach of planning control” in both places where it occurs there were substituted “contravention of hazardous substances control”;
  - (d) in subsection (4) for “the enforcement notice” there were substituted “the hazardous substances contravention notice”;
  - (e) after subsection (6) there were inserted—

“(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. Section 179 (offence where enforcement notice not complied with) has effect but as if—
  - (a) for subsection (1) there were substituted—

“(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” there were substituted “a person” and for “an enforcement notice” substitute “a hazardous substances contravention notice”;
  - (c) subsections (4) and (5) were omitted;
  - (d) in subsection (6) “or (5)” were omitted;

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- (e) in subsection (7)(a) for “enforcement notice” there were substituted “hazardous substance contravention notice”.
7. Section 180 (effect of planning permission etc. on enforcement or breach of condition notice) has effect but as if—
- (a) for subsection (1) there were substituted—
    - “(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) subsection (2) were omitted;
  - (c) in subsection (3), for “enforcement notice or breach of conditions notice” there were substituted “a hazardous substances contravention notice”.
8. Section 181 (enforcement notice to have effect against subsequent development) has effect but as if it read—
- “(1) Compliance with a hazardous substances contravention notice shall not discharge the 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. Section 188 of the principal Act (register of enforcement and stop notices) has effect but as if—
- (a) for subsections (1) and (2) there were substituted—

“(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.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall—

- (a) include the category in Column 1 of Part 1 of Schedule 1 to the Planning (Hazardous Substances) Regulations 2015 into which any substance in the notice falls; and
- (b) 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.

(b) paragraph (4) were omitted.

## PART 4

### Validity

**10.** Section 285 of the principal Act (validity of enforcement notices and similar notices) applies but as if—

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

**11.** Section 289 of the principal Act (appeals to the High Court relating to enforcement notices etc.) applies but as if—

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