

SCHEDULES

SCHEDULE 4

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;

Status: This is the original version (as it was originally made).

- (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.”