

1993 No. 275

**PLANNING****The Planning (Hazardous Substances)  
Regulations (Northern Ireland) 1993***Made* . . . . . 18th June 1993*Coming into operation* . . . . . 1st August 1993**ARRANGEMENTS OF REGULATIONS****PART 1****GENERAL***Regulation*

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The Department of the Environment, in exercise of the powers conferred by Articles 53(3), 54(1), (2) and (4), 56(1), 57(7), 60(3), 81(4), (10) and (12), 127, 129(1) and paragraphs 4(4) and (9) of Schedule 4 to, the Planning (Northern Ireland) Order 1991(a) and of all other powers enabling it in that behalf, makes the following regulations:

## PART 1

## GENERAL

*Citation and commencement*

1. These regulations may be cited as The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 and shall come into operation on 1st August 1993.

*Interpretation*

2.—(1) In these regulations—

“the 1991 Order” means the Planning (Northern Ireland) Order 1991;

(a) S.I. 1991 No. 1220 (N.I. 11) see Article 2(2) for definitions of “the Department” and “prescribed”

“buried or mounded vessel” includes a vessel which is only partially buried or mounded;

“deemed consent” means consent deemed to be granted under paragraph 4(5) to (7) of Schedule 4 to the 1991 Order;

“express consent” means consent required under Article 53 of the 1991 Order;

“moveable container” means any container, other than a vessel, designed or adapted to contain hazardous substances;

“vessel” means any container which is affixed to land and which is designed or adapted to contain hazardous substances, and includes a container which forms part of plant or machinery but does not include a pipeline.

(2) In these regulations—

(a) a reference to an Article is a reference to that Article of the 1991 Order;

(b) a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 1.

(3) Part 4 (deemed consent), Form 5 (claim for deemed consent) and Schedule 2 (deemed consent conditions) shall be construed in accordance with regulation 16.

## PART 2

### HAZARDOUS SUBSTANCES, CONTROLLED QUANTITIES AND EXEMPTIONS

#### *Hazardous substances and controlled quantities*

3.—(1) Subject to paragraph (2), the substances specified in column 1 of Schedule 3 are hazardous substances for the purposes of the 1991 Order.

(2) A substance which is controlled waste, as defined in Article 36 of the Pollution Control and Local Government (Northern Ireland) Order 1978(a), or radioactive waste as defined in section 18(4) of the Radioactive Substances Act 1960(b), is not a hazardous substance for the purposes of the 1991 Order.

(3) The quantity specified in column 2 of Schedule 3 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the 1991 Order.

#### *Exemptions*

4.—(1) Hazardous substances consent is not required for the presence of a hazardous substance contained in an aerosol dispenser if—

(a) the capacity of the dispenser does not exceed 1000 millilitres; or

(b) the dispenser—

(i) does not contain a substance or mixture of substances which is classified at least as “flammable” for the purposes of paragraph 2

(a) S.I. 1978/1049 (N.I. 19)

(b) 1960 c. 34

of Part III of Schedule 1 to the Classification, Packaging and Labelling of Dangerous Substances Regulations (Northern Ireland) 1985(a); and

- (ii) does not contain substances numbered 7, 8, 18, 21, 22, 24, 25, 27, 29, 30, 33, 34 or 65 in column 1 of Schedule 3 or, if it does, the aggregate quantity of that substance contained in aerosol dispensers with a capacity in excess of 1000 millilitres on the relevant site is less than the controlled quantity for that substance.

(2) Hazardous substances consent is not required for the presence of a hazardous substance contained in an exempt pipeline or a service pipe.

(3) Subject to paragraph (4) hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other seagoing craft in an emergency until the expiry of 14 days from the day on which it was so unloaded.

(4) For the purpose of paragraph (3) a substance shall be treated as having been unloaded from a craft in an emergency if it was unloaded from a craft after having been brought into a harbour or harbour area (as those expressions are defined in regulation 2 of the Dangerous Substances in Harbour Areas Regulations (Northern Ireland) 1991(b), without requiring notification under regulation 6(1) of those regulations by virtue of an exemption under regulation 6(5) of those regulations.

(5) Where there is deemed consent for the presence of substance number 40 in column 1 of Schedule 3, consent is not required for the presence of an additional quantity of that substance not exceeding one third of the established quantity provided that all the conditions set out in Schedule 2 and applying to that substance under the deemed consent are also complied with in relation to the additional quantity present.

(6) The presence of a substance for which consent is not required by virtue of paragraph (1), (2) or (3) shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the 1991 Order or these regulations.

(7) In this regulation—

(a) "exempt pipeline" means a pipeline laid by undertakers in accordance with Article 13 of the Gas (Northern Ireland) Order 1977(c) but does not include—

(i) that part of the pipeline across a site to which it has an outlet or inlet;

(ii) a service pipe;

(b) "service pipe" means a pipeline used by undertakers (as defined in Article 2(2) of the said Order) to supply gas to an individual consumer from a main of those undertakers.

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(a) S.R. 1985 No. 81  
(b) S.R. 1991 No. 509  
(c) S.I. 1977/596 (N.I. 7)

## EXPRESS CONSENT

*Application for hazardous substances consent*

5.—(1) Subject to paragraph (2), an application for express consent shall—

- (a) be made to the Department on Form 1;
- (b) subject to paragraphs (4) and (5) include the information required by the form, a site map and a substance location plan; and
- (c) be accompanied by 3 additional copies of the form, the map, plan and certificates required by regulation 7.

(2) An application to which Article 58 applies (application for express consent without a condition subject to which a previous consent was granted) shall—

- (a) be made to the Department on Form 2;
- (b) subject to paragraphs (8) and (9) include the information required by the form, a change of location plan, if required by paragraph (6), and particulars of the consent; and
- (c) be accompanied by 3 additional copies of the form, the consent, any plan submitted with it and certificates required by regulation 7.

(3) An application under Article 60(2) (application for the continuation of consent following a change of control of the land) shall—

- (a) be made to the Department on Form 2;
- (b) subject to paragraphs (7) to (9) include the information required by the form, a change of control plan, and particulars of the consent; and
- (c) be accompanied by 3 additional copies of the form, the relevant consent, the change of control plan and certificates required by regulation 7.

(4) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an ordnance map with a scale of not less than 1 to 2,500, which identifies the land to which the application relates and shows grid lines and ordnance map reference numbers.

(5) The substance location plan required by paragraph (1)(b) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies—

- (a) any area of the site intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present;
- (c) access points to and from the land.

(6) A change of location plan shall be required in the case of an application to which Article 58 applies which relates to a condition restricting the location of a hazardous substance, and shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which

identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application.

(7) The change of control plan required by paragraph (3) shall be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 1,250, which identifies each area of the site under separate control after the proposed change of control.

(8) The consent referred to in paragraphs (2)(b) and (3)(b) is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the consent to be supplied shall be a copy of the consent, in the case of a consent granted on an application under the 1991 Order or a copy of the relevant claim, in the case of a deemed consent.

(9) Where an application referred to in paragraphs (2) or (3) relates to more than one consent, particulars of each such consent shall be included in the application.

(10) Regulations 6 to 13 shall apply to applications made under Articles 58 and 60(2) as they apply to applications for express consent.

#### *Advertisement of notices of applications*

6.—(1) Where an application for express consent is made to the Department, the Department shall publish notice of the application in at least one newspaper circulating in the locality in which the land to which the application relates is situated.

(2) A notice under paragraph (1) shall state—

- (a) the name of the applicant;
- (b) brief details of the consent being sought;
- (c) the address or location of the application site; and
- (d) the place and times at which and the period during which copies of the application may be inspected by the public.

#### *Certificates to accompany applications*

7. An application for express consent or an appeal against the refusal of such an application or against the imposition of a condition on such a consent shall not be entertained by the Department or the planning appeals commission, as the case may be, unless it is accompanied by whichever of the certificates A to D set out in Form 3 is appropriate, signed by or on behalf of the applicant.

#### *Department to take account of representations from certain persons*

8. Where an application for express consent is accompanied by a certificate C or D as mentioned in regulation 7, the Department, in determining the application, shall take into account any representations relating thereto which are made to it by any person who satisfies it that, in relation to any of the land to which the application relates, he is such a person as is described in paragraphs (a) to (c) of certificate C.

*Persons to be treated as in actual possession of land*

9. For the purposes of any provision of these regulations a person shall be treated as in actual possession of land if he is entitled to one of the following estates in land namely—

- (a) a legal or equitable fee simple absolute, a legal or equitable fee tail or a legal or equitable life estate; or
- (b) a tenancy of which not less than 40 years of the term thereof remains unexpired.

*Consultations before determining applications for hazardous substances consent*

10. Before determining an application for express consent the Department shall consult with—

- (a) the district council for the area in which the land to which the application relates is situated; and
- (b) the Department of Economic Development.

*Determination of applications for hazardous substances consent*

11. The Department shall not determine an application for hazardous substances consent—

- (a) where the application is accompanied by certificate C or D as mentioned in regulation 7, before the end of the period of 14 days from the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate; and
- (b) before the end of a period of 28 days from the date on which all consultees have been served with a copy of the application.

*Notification of decision*

12.—(1) The period prescribed for the purposes of Article 57(7) (notification to the applicant of the decision or that Article 56 (special procedure for major applications) applies) is 8 weeks from the date when the application is received by the Department.

(2) The Department shall, as soon as is practicable, give notice of its decision on the application to every person who made representations which it was required to take into account under regulation 8.

*Notice of application of Article 56 of the 1991 Order*

13. Where the Department applies Article 56 to an application, the notice served on the applicant under Article 56(1) shall be as set out in Form 4.

DEEMED CONSENT — TRANSITIONAL PROVISIONS UNDER SCHEDULE 4 OF  
THE 1991 ORDER*Claim for deemed consent*

14.—(1) A claim for deemed consent under paragraph 4 of Schedule 4 to the 1991 Order shall—

(a) be made to the Department on Form 5; and

(b) include the information required by the form, a site map, and, where applicable, a moveable container storage area plan and a vessel location plan for each hazardous substance included in the claim.

(2) The site map required by paragraph (1)(b) shall be a map, reproduced from, or based upon, an ordnance map with a scale of not less than 1 to 2,500, which identifies the land to which the claim relates and shows grid lines and ordnance map reference numbers.

(3) The moveable container storage area plan required by paragraph (1)(b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 1,250, which identifies any area of the site where the hazardous substance has been stored in moveable containers at any time during the establishment period.

(4) Subject to paragraphs (5) and (6) the vessel location plan required by paragraph (1)(b) shall be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 1,250, which identifies any area of the site where the hazardous substance has been present in a vessel at any time during the establishment period.

(5) No point on the boundary of the area identified in accordance with paragraph (4) shall be more than 75 metres away from—

(a) a building which is or was within the area and which at any time during the establishment period contained a vessel in which the substance was present;

(b) plant and machinery (other than pipe work) which is or was affixed to land within the area and which, at any time during the establishment period whilst it was so affixed, was used for an industrial process involving the substance; or

(c) a vessel which is or was located outside a building and within the area and in which, at any time during the establishment period whilst it was so located, the substance was present.

(6) No area identified in accordance with paragraph (4) shall overlap with any other area so identified in respect of the same substance.

*Conditions on deemed consent*

15. The conditions set out in Schedule 2 are prescribed for the purposes of paragraph 4(9) of Schedule 4 to the 1991 Order.



*Interpretation of deemed consent provisions*

16.—(1) For the purpose of regulation 14(3) and the condition set out in paragraph 8(1) of Schedule 2, no account shall be taken of the storage of a hazardous substance in moveable containers in an area if the quantity of the substance so stored in that area does not exceed 10% of the substance's controlled quantity.

(2) For the purpose of the 75 metre limit in regulation 14(5), where a petroleum-spirit licence under the Petroleum (Consolidation) Act (Northern Ireland) 1929(a) applying to the site was in force at any time during the establishment period, the reference to a vessel in which the hazardous substance was present shall, in relation to hazardous substance number 71 in column 1 of Schedule 3, include any vessel identified in the licence.

(3) For the purpose of regulation 14(4) and (5) and the conditions set out in paragraphs 2 to 7 of Schedule 2, and for the purpose of completing Table C in Form 5, no account shall be taken of the presence in a vessel of a hazardous substance if the quantity present in the vessel does not exceed 10% of the substance's controlled quantity.

(4) For the purpose of the conditions set out in paragraphs 2 to 6 of Schedule 2, and for the purpose of completing Table C in Form 5, a hazardous substance shall not be treated as being present in a vessel at other than ambient temperature by virtue only of—

- (a) the heating of the substance to maintain its fluidity during seasonal variations in temperature; or
- (b) any cooling effect resulting from the vaporisation of the substance during the withdrawal of vapour from the vessel; or
- (c) the presence of the substance at, above or below ambient temperature on entry into the vessel, if the temperature of the substance is allowed to move to ambient temperature upon entry.

(5) For the purpose of the conditions set out in paragraphs 2 to 6 of Schedule 2, and for the purpose of completing Table C in Form 5, a hazardous substance shall not be treated as being present at above atmospheric pressure unless the pressure at which it is present exceeds 1.5 bar absolute.

(6) For the purpose of the conditions set out in paragraphs 2 to 6 of Schedule 2, no account shall be taken of an increase in pressure during the operation of a pressure relief system.

(7) In Schedule 2 and Table C in Form 5 "vessel area" means an area identified in a vessel location plan in accordance with regulation 14(4).

(8) In Schedule 2, references to a column of Table C refer to the relevant column of Table C of the form on which the claim for deemed consent is made which applies to the relevant hazardous substance and vessel area.

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(a) 1929 c. 13 (N.I.)

## PART 5

## ENFORCEMENT

*Hazardous substances contravention notices*

17.—(1) A hazardous substances contravention notice shall identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed pursuant to Article 81(4)(c) (other persons to be given notice) are all persons having an interest in the land, being an interest which, in the opinion of the Department, is materially affected by the notice.

(3) Every copy of a hazardous substances contravention notice served pursuant to Article 81(4) shall be accompanied by a statement setting out—

- (a) the Department's reasons for issuing the notice;
- (b) the right of appeal to the planning appeals commission against the notice, and the persons by whom, grounds upon which and time within which, such an appeal may be brought under Article 69 as applied by regulation 18.

*Appeals against hazardous substances contravention notices*

18.—(1) Articles 69 to 71 shall apply to appeals against hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 4.

(2) The provisions of those Articles, as so modified are set out in Part 3 of Schedule 4.

*Effect of hazardous substances contravention notices, etc.*

19.—(1) Articles 72 and 74 to 76 shall have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 4.

(2) The provisions of those Articles, as so modified are set out in Part 3 of Schedule 4.

## PART 6

## FEES

*Fees for applications*

20.—(1) A fee shall be payable to the Department in respect of an application for hazardous substances consent as follows—

- (a) if Article 58(1) applies (new consent without previous conditions), £200;
- (b) if Article 58(1) does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400;
- (c) in all other cases, £250.

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(2) A fee of £200 shall be payable to the Department in respect of an application for the continuation of hazardous substances consent under Article 60.

(3) Any fee paid pursuant to this regulation shall be refunded if the application is rejected as invalidly made.

Sealed with the Official Seal of the Department of the Environment on  
18th June 1993.

(L.S.)

*J. McConnell*

Assistant Secretary

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SCHEDULE 1

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Regulations 2(2), 5, 7,  
13 and 14

**PRESCRIBED FORMS**

Form 1

**Planning (Northern Ireland) Order 1991, Article 54(1)**  
**The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993**  
**(Regulation 5)**

General Application for Hazardous Substances Consent

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

Address

Telephone No.

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

Address

Telephone No.

Contact

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

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

Name	Entry number in Schedule 3 to the 1993 Regulations	Maximum quantity proposed to be present (in tonnes) <sup>†</sup>

<sup>†</sup> 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:

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)	Mounded (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:

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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

5. Additional information

- (a) Has any application for hazardous substances 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

\*delete where inappropriate

Signed .....

on behalf of .....

(insert applicant's name if signed by agent)

Date .....

**Planning (Northern Ireland) Order 1991, Articles 58 and 60**  
**The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993,**  
**Regulation 5(2) and 5(3)**

Application for either: (*tick appropriate box*)

- Hazardous Substances Consent without a condition(s) imposed on a previous consent (Article 58)  
OR  
 Continuation of Hazardous Substances Consent following a change in control of part of the land (Article 60)

1. Applicant (*IN BLOCK CAPITALS*)  
Address

Telephone No.

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

Telephone No.  
Contact

2. Address or location of application site

3. Substances covered by application

Name	Entry number in Schedule 3 to the 1993 Regulations	Maximum quantity proposed to be present (in tonnes)†

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

4. In the case of an application for hazardous substances consent without a condition imposed on a previous consent (Article 58)

(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 (Article 60)

(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.

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.....



## Planning (Northern Ireland) Order 1991, Article 54(2)

The Planning (Hazardous Substances)  
Regulations (Northern Ireland) 1993, Regulation 7

## Certificate A

I hereby certify that the accompanying application/appeal\* is made by or on behalf of (Name of applicant/appellant\*) who is in actual possession of every part of the land to which the said application/appeal\* relates and is entitled to a fee simple absolute/a fee tail/a life estate/a tenancy of which at least 40 years remain unexpired in the land.\*

OR

## Certificate B

I hereby certify that the accompanying application/appeal\* is made by or on behalf of (Name of applicant/appellant\*) who is the trustee of a trust or settlement which affects every part of the land to which the accompanying application/appeal\* relates, and that at the date of the application/appeal\*—

- (a) a beneficiary under the trust or settlement is in the actual possession of every part of the land; and
- (b) no person other than a beneficiary under the trust or settlement is entitled to enter into the actual possession of any part of the said land within a period of 40 years.

OR

## Certificate C

I hereby certify that the requisite notice of the accompanying application/appeal\* has been given by or on behalf of (Name of applicant/appellant\*) to any person who, at the beginning of the period of 21 days ending with the date of the said application/appeal\* was, in relation to all or any part of the land affected by the application/appeal\*—

- (a) a person then in actual possession;
- (b) the trustee of a trust or settlement where a beneficiary under the trust or settlement was in actual possession and no person other than such a beneficiary was entitled to enter into actual possession within a period of 40 years;
- (c) a person (not being a person falling within (a) or (b)) entitled to enter into actual possession within a period of 40 years.

The persons upon whom notice was served are—

Name and Address	Interest	Date of Service of Notice
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OR

1. I hereby certify that the person making the accompanying application/appeal\*—

(a) is unable to issue either Certificate A or B;

(b) has made due enquiries and is of the opinion that he is unable to issue a certificate for the following reasons—

(c) has given the requisite notice of the said application/appeal\* to the undermentioned persons who, at the beginning of the period of 21 days ending with the date of said application/appeal\* were in actual possession of any part of the land to which the application/appeal\* relates, namely—

Name and Address

Date of Service of Notice

2. Notice of the application/appeal\* has been published in the (title of newspaper) on (date of publication) and a copy of the newspaper in which the notice appeared is enclosed.

Signature of Applicant .....  
or Agent

Date.....

\* Delete where inappropriate.

Form 4

Planning (Northern Ireland) Order 1991, Article 56

The Planning (Hazardous Substances) Regulations  
(Northern Ireland) 1993, Regulation 13

Notice for Major Application

To: (Name and Address of Applicant) .....

Address or Location of the Land for which Hazardous Substances Consent is Sought .....

Take notice that the Department of the Environment, in exercise of its powers under Article 56 of the Planning (Northern Ireland) Order 1991 considers that the presence of any hazardous substance on, over or under land for which consent is sought, would—

\*(a) involve a substantial departure from the development plan for the area in which the land is situated;

\*(b) be of significance to the whole or a substantial part of Northern Ireland; or

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\*(c) affect the whole of a neighbourhood.

The Department therefore by virtue of this Notice applies the said Article 56 to the said application.

\* Delete as appropriate.

Form 5

**Planning (Northern Ireland) Order 1991  
Schedule 4, Paragraph 4(4)**

**The Planning (Hazardous Substances) Regulations  
(Northern Ireland) 1993, Article 14(1)**

Claim for Deemed Consent

**Part 1—Claimant and Site**

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

Address

Telephone No.

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

Address

Telephone 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.**

**Part 2 — Substances for which Consent is being Claimed and Established Quantity**

**Table A**

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

1	2	3	4	5
Name of Substance(s) present during establishment period(d)	Entry number in Schedule 3 to the 1993 Regulations(e)	Quantity last notified to HSD(a) before the relevant date(c)	Quantity notified before start of the establishment period(d) (if applicable)	Established quantity(f)

**Table B**

To be completed for substances not required to be notified under NIHHS(b) 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	2	3	4
Name of Substance(s) present during establishment period(d)	Entry number in Schedule 3 to the 1993 Regulations(e)	Maximum quantity present during establishment period(d)	Established quantity(g)

**Notes to Part 2**

- (a) "HSD" stands for Health and Safety Division, Department of Economic Development.
- (b) "NIHHS" stands for the Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984.
- (c) The relevant date is 1st August 1993.
- (d) The establishment period is the 12 months period immediately preceding the relevant date.

- (e) The "1993 Regulations" means The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993.
- (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 Schedule 3 to the 1993 Regulations.

### 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 container in which the substance was so stored—

Part 4 — Vessel Capacity, Temperature and Pressure — Table C

Vessel area(a)	Entry number of substance in Schedule 3 to the 1993 Regulations	Below ambient temperature(b)		At ambient temperature(c)					Above ambient temperature(d)			
		Column 1(e)	Column 2(f)	Column 3(g)	Column 4(h)	Column 5(i)	Column 6(j)	Column 7(k)	Column 8(l)	Column 9(m)	Column 10(n)	Column 11(o)
		Largest capacity vessel	Highest vessel design pressure	Buried or mounded vessels largest capacity vessel	Buried or mounded vessels highest vessel design pressure	Non-buried or mounded vessels largest capacity vessel	Non-buried or 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

## 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.

- (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 Department is required to notify you within 2 weeks from receipt of the claim if, in its opinion, the claim is invalid and to give its reasons for that opinion. If the claim is valid the Department shall be deemed to have granted the hazardous substances consent claimed, subject to the conditions set out in Schedule 2 to The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993.



**DEEMED CONSENT CONDITIONS***The Standard Condition*

1. The maximum aggregate quantity of the substance that may be present—
  - (a) on, over or under the land to which the claim relates;
  - (b) on, over or under the other land which is within 500 metres of it and controlled by the same person; or
  - (c) in or on a structure controlled by the same person any part of which is within 500 metres of it;

at any one time shall not exceed the established quantity.

*Below Ambient Temperature Vessel Conditions*

2. 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 Condition*

3. 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.

4. 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*

5. 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 that vessel area if—

- (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.

6. 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*

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

*Moveable Container Storage Area Conditions*

8.—(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 12(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.

## 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
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

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
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(a) as amended by the Compressed Acetylene Order 1947(b), or when contained in a homogeneous porous substance in cylinders in accordance with Order of Secretary of State No. 9(c), made under the Explosives Act 1875(d)	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— (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 80/876/EEC(e); or (iii) compound fertilisers.	500
39. Aqueous solutions containing more than 90 parts by weight of ammonium nitrate per 100 parts by weight of solution	500

(a) S.R. &amp; O. 1937/54 (p. 729)

(b) S.R. &amp; O. 1947/805 (p. 717)

(c) S.R. &amp; O. 1919/809 (p. 702)

(d) 1875 c. 17

(e) OJ No L250. 23.9.80. p. 7

<i>Column 1</i> <i>Hazardous substances</i>	<i>Column 2</i> <i>Controlled quantities</i>
40. Ammonium nitrate based products manufactured chemically for use as fertilisers which comply with Council Directive 80/876/EEC and compound fertilisers where the nitrogen content derived from the ammonium nitrate exceeds 28% of the mixture by weight	1000
41. 2,2-Bis(tert-butylperoxy)butane (>70%)	5
42. 1,1-Bis(tert-butylperoxy)cyclohexane (>80%)	5
43. tert-Butyl peroxyacetate (>70%)	5
44. tert-Butyl peroxyisobutyrate (>80%)	5
45. tert-Butyl peroxyisopropylcarbonate (>80%)	5
46. tert-Butyl peroxy maleate (>80%)	5
47. tert-Butyl peroxy pivalate (>77%)	5
48. Cellulose nitrate other than—	
(i) cellulose nitrate to which the Explosives Act 1875 applies; or	50
(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	
49. Dibenzyl peroxydicarbonate (>90%)	5
50. Diethyl peroxydicarbonate (>30%)	5
51. 2,2-Dihydroperoxypropane (>30%)	5
52. Di-isobutyl 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

## 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>
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	(in tonnes, unless otherwise stated) 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
70. A liquefied gas or any mixture of 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	50
71. 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

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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.
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## ENFORCEMENT — MODIFICATIONS OF THE 1991 ORDER

## PART I

## APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

<i>Provisions of the 1991 Order Applied</i>	<i>Modifications</i>
Article 69 (appeal against enforcement notice)	
Paragraph (1)	For the words "an enforcement notice" substitute the words "a hazardous substances contravention notice".
(2)	In sub-paragraph (a) for the words "enforcement notice" substitute "hazardous substances contravention notice".
(3)	For paragraph (3) substitute— "(3) 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 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 in the notice do not constitute a contravention of hazardous substances control; (c) that the matters alleged to constitute a contravention of hazardous substances control have not taken place; (d) that copies of the hazardous substances contravention notice were not served as required by Article 81(4); (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 the period specified in the notice pursuant to Article 81(5)(b) falls short of what should reasonably be allowed."
(4)	None
(5)	For the words "an enforcement notice" substitute the words "a hazardous substances contravention notice".
(6)	None
(7)	None
(8)	Omit
(9)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice".



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**Provisions of the 1991  
Order Applied**
**Modifications**


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Paragraph (10)

For the words "enforcement notice" in each place where they occur substitute "hazardous substances contravention notice".

Article 70  
(supplementary  
provision)

For the words "enforcement notice" wherever they occur substitute "hazardous substances contravention notice".

Article 71  
(supplementary  
provision)

Paragraph (1)

For sub-paragraphs (a) and (b) substitute—

"(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)

For paragraph (2) substitute—

"(2) In considering whether to grant hazardous substances consent under paragraph (1), the planning appeals commission shall have regard to the considerations specified in Article 55(2) and to any other material considerations; and the commission may—

(a) grant such hazardous substances consent subject to such conditions as it thinks fit; and

(b) where, under paragraph (1)(b) it discharges a condition, substitute another for it whether more or less onerous."

(3)

For the words "an enforcement notice" and "planning permission" wherever they occur substitute "hazardous substances contravention notice" and "hazardous substances consent"; for the word "development" substitute the words "presence of hazardous substance on, over or under the land", and for the words "permission granted under Part IV" substitute "consent granted under Part V".

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PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC

*Provisions of the 1991 Order Applied*

*Modifications*

Article 72 (penalties for non-compliance with enforcement notice)

Paragraph (1)-(3)

For paragraphs (1) to (3) 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.

(2) Where a person is in breach of a hazardous substances contravention notice he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In proceedings against any person for an offence under paragraph (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.”

(4) For the words “(1) to (3)” substitute “(2)”; for the words “enforcement notice” where it twice occurs substitute “hazardous substances contravention notice”; omit the words “(other than the discontinuance of a use of land)”.

(5) Omit

(6) For paragraph (6) substitute—

“(6) Where different periods are specified for different steps under Article 81(5)(b) in relation to a hazardous substances contravention notice, reference in this Article and in Article 74 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.”

Article 74 (execution and cost of works required by enforcement notice)

Paragraph (1)

For the words “an enforcement notice” substitute “a hazardous substances contravention notice”; for the words “Article 78(7)(a)” substitute “Article 81(3)(b)”; omit the words “(other than the discontinuance of a use of land)”.

*Provisions of the 1991  
Order Applied*

*Modifications*

Paragraph (2)

For the words "an enforcement notice" substitute "a hazardous substances contravention notice" and for the words "breach of planning control" in both places where they occur substitute "contravention of hazardous substances consent".

(3) to (8)

None

Article 75 (effect of  
planning permission on  
enforcement notice)

Paragraph (1)

For paragraph (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 land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent."

(2)

Omit

(3)

For "Paragraphs (1) and (2)" substitute "Paragraph (1)" and for the words "enforcement notice" in both places where they occur substitute "hazardous substances contravention notice".

Article 76

(enforcement notice to  
have effect against  
subsequent  
development)

For Article 76 substitute—

"(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to paragraph (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 paragraph (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 notices, shall be in contravention of that notice.

(4) Without prejudice to paragraph (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) Articles 72 and 74 shall apply to the contravention of a hazardous substances contravention notice to which this Article applies as if the period for compliance with the notice had expired on the date the contravention took place, but the Department shall not enter the land under Article 74(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of its intention to do so."

### PART 3

#### ARTICLES OF THE 1991 ORDER AS MODIFIED

##### *Appeal against hazardous substances contravention notice*

69.—(1) A person having an estate in the land to which a hazardous substances contravention notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on him.

- (2) This paragraph applies to a person who—
- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which it relates by virtue of a licence in writing; and
  - (b) continues to occupy the land as aforesaid when the appeal is brought.
- (3) 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 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 in the notice do not constitute a contravention of hazardous substances control;
  - (c) that the matters alleged to constitute a contravention of hazardous substances control have not taken place;
  - (d) that copies of the hazardous substances contravention notice were not served as required by Article 81(4);
  - (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 the period specified in the notice pursuant to Article 81(5)(b) falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by notice in writing to the planning appeals commission, and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(5) Where it receives a notice of appeal under this Article against a hazardous substances contravention notice relating to any land, the planning appeals commission shall notify the district council for the district within which the land is situated and in exercising its powers under Article 71 the commission shall take into account any representations received by the commission from the district council.

(6) Before determining an appeal under this Article, the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(7) Articles 21 and 25(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission to the Department.

(8) Omitted.

(9) Subject to paragraph (10), the validity of a hazardous substances contravention notice shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(10) Paragraph (9) shall not apply to proceedings brought under Article 72(5) against a person who—

(a) has held an estate in the land since before the hazardous substances contravention notice was issued;

(b) did not have a copy of the hazardous substances contravention notice served on him; and

(c) satisfies the court that—

(i) he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and

(ii) his interests have been substantially prejudiced by the failure to serve him with a copy of it.

*Appeal against hazardous substances contravention notice — general supplementary provisions*

70.—(1) On an appeal under Article 69 the planning appeals commission shall quash the hazardous substances contravention notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any informality, defect or error in the hazardous substances contravention notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Department.

(3) Where it would otherwise be a ground for determining such an appeal 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 planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

*Appeal against hazardous substances contravention notice — supplementary provisions relating to consent*

71.—(1) On the determination of an appeal under Article 69, the planning appeals commission 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 paragraph (1), the planning appeals commission shall have regard to the considerations specified in Article 55(2) and to any other material considerations; and the commission may—
- (a) grant such hazardous substances consent subject to such conditions as it thinks fit; and
  - (b) where under paragraph (1)(b) it discharges a condition, substitute another for it, whether more or less onerous.
- (3) Where an appeal against a hazardous substances contravention notice is brought under Article 69, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1)—
- (a) any hazardous substances consent granted under that paragraph shall be treated as granted on that application;
  - (b) in relation to a grant of hazardous substances consent or a determination under that paragraph, the decision of the planning appeals commission shall be final; and
  - (c) subject to sub-paragraph (b), any hazardous substances consent granted under that paragraph shall have the like effect as a consent granted under Part V.

*Penalties for non-compliance with hazardous substances contravention notice*

72.—(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 and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) In proceedings against any person for an offence under paragraph (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.

(4) If, after a person has been convicted under paragraph (2), he does not as soon as practicable do everything in his power to secure compliance with the hazardous substances contravention notice, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day following his first conviction on which any of the requirements of the hazardous substances contravention notice remain unfulfilled.

(5) Omitted.

(6) Where different periods are specified for different steps under Article 81(5)(b) in relation to a hazardous substances contravention notice, reference in this Article and in Article 74 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.

*Execution of works required by hazardous substances contravention notice*

74.—(1) If, within the period allowed for compliance with a hazardous substances contravention notice, any steps which by virtue of Article 81(3)(b) are required by the notice to be taken have not been taken, a person authorised in writing by the Department may enter upon the land and take those steps and the Department may recover from the person who is then the owner of the land any expenses reasonably incurred by it in that behalf and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with a hazardous substances contravention notice in respect of any contravention of hazardous substances control, and any sums paid by the owner of any land under paragraph (1), in respect of expenses incurred by the Department in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) The Department may sell any materials which have been removed by it from any land when carrying into effect this Part if, before the expiration of three days from their removal, they are not claimed by their owner and taken away by him.

(4) Where the Department sells any materials under paragraph (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

(5) Paragraphs (3) and (4) do not apply to refuse removed by the Department.

(6) Where the Department claims to recover any expenses under this Article from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that he—

- (a) is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of a demand for payment has not, had in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department;

his liability shall be limited to the total amount of the money which he has or has had in his hands as mentioned in sub-paragraph (b) but the Department where it is, or would be, debarred by this paragraph from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the Department under this Article shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from him.

(8) The charge created by paragraph (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgages by deed accordingly.

*Effect of hazardous substances consent on hazardous substances contravention notice on enforcement notice*

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

(2) Omitted.

(3) Paragraph (1) shall be without prejudice to the liability of any person for an offence in respect of a failure to comply with the hazardous substances contravention notice before the relevant provision of the hazardous substances contravention notice ceased to have effect.

*Hazardous substances contravention notice to have effect against subsequent presence of hazardous substance*

76.—(1) Compliance with a hazardous substances contravention notice shall not discharge the notice.

(2) Without prejudice to paragraph (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 paragraph (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 paragraph (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) Articles 72 and 74 shall apply to the contravention of a hazardous substances contravention notice to which this Article applies as if the period for compliance with the notice had expired on the date the contravention took place, but the Department shall not enter the land under Article 74(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of its intention to do so.



## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

Article 53 of the Planning (Northern Ireland) Order 1991 (the "1991 Order") provides that the presence on, over or under land, of a hazardous substance equal to or in excess of the controlled quantity (as specified by regulations) requires the consent of the Department of the Environment.

These regulations specify the substances which are hazardous substances for the purposes of the 1991 Order and the controlled quantities of those substances. They also lay down the procedure for applications for consent, ("express consent") determination of, and fees for, applications and prescribe conditions subject to which deemed consents under paragraph 4 of Schedule 4 to the Order are to be granted.

In addition they make provision for hazardous substances contravention notices, specify matters to be included in such notices and apply certain provisions of the 1991 Order with modifications to appeals against such notices, penalties for non-compliance, works required by and the effect of such notices.

The contents of the regulations are as follows—

- |                   |   |
|-------------------|---|
| Regulation 3      | with Schedule 3 specifies the substances which are hazardous substances and the controlled quantities of those substances.  |
| Regulation 4      | specifies certain exemptions from the need for hazardous substances consent.  |
| Regulations 5-8   | deal with applications for express consent, advertisement of notices of such applications, certificates to accompany applications and representations to be taken into account. |
| Regulation 9      | deals with persons who are to be treated as in actual possession of land.   |
| Regulations 10-12 | deal with consultations in respect of application for express consent, determination of such application and notification of decisions.   |
| Regulation 13     | deals with the notice to be served on the applicant where the Department considers that Article 56 of the 1991 Order (special procedures for major applications) applies.       |
| Regulations 14-16 | deal with claims for deemed consent under paragraph 4 of Schedule 4 to the 1991 Order, conditions on such consent and interpretation of deemed consent provisions.              |
| Regulations 17-19 | deal with enforcement of the hazardous substances provisions, ie, hazardous substances contravention notices and apply, with modifications, certain                             |

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- provisions of the 1991 Order to appeals against, and to the effect of, such notices.
- Regulation 20 prescribes fees for applications for express consent.
- Schedule 1 prescribes application forms and notices and certificates required in connection with such applications.
- Schedule 2 lists the conditions subject to which deemed hazardous substances consent is granted.
- Schedule 3 lists the substances which are to be regarded as hazardous substances for the purposes of the 1991 Order and the quantities of those substances which are to be the controlled quantities.
- Schedule 4 Parts 1 and 2 list provisions of the 1991 Order and modifications of those provisions which are applied for the purposes of hazardous substances control. Part 3 sets out those provisions as modified.

Under Article 72 of the 1991 Order (as applied and modified) where a person is in breach of hazardous substances contravention notice he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £2,000). If after conviction a person does not, as soon as practicable do everything in his power to secure compliance, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding 1/10 of level 5 on the standard scale (currently £200) for each day following his first conviction on which the requirements of the notice remain unfulfilled.