

SCHEDULE 1

Regulation 7

PRESCRIBED FORM

Planning Act (Northern Ireland) 2011, section 109(2)
The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015,
(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 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 |
|------------------|----------|---------------------------|
|------------------|----------|---------------------------|

OR

Certificate D

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 under mentioned 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—

| Names and Address | Date of Service of Notice |
|-------------------|---------------------------|
|-------------------|---------------------------|

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

SCHEDULE 2

Regulation 3(1) and (2)

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

PART 1

CATEGORIES OF SUBSTANCES

Column 1 Hazard categories in accordance with the CLP Regulation **Column 2 Controlled quantity(tonnes)**

Section 'H' – HEALTH HAZARDS

H1 ACUTE TOXIC Category 1, all exposure routes 5

H2 ACUTE TOXIC 50
 — Category 2, all exposure routes
 — Category 3, inhalation exposure route (see note 8)

H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE category 1 50

Section 'P' – PHYSICAL HAZARDS

P1a EXPLOSIVES (see note 9) 10
 — Unstable explosives or
 — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation (EC) No. 440/2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (see note 10) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures

P1b EXPLOSIVES (see note 9) 50
 Explosives, Division 1.4 (see note 11)

P2 FLAMMABLE GASES Flammable gases, Category 1 or 2 10

P3a FLAMMABLE AEROSOLS (see note 12(1)) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1 150 (net)

P3b FLAMMABLE AEROSOLS (see note 12(1)) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids Category 1 (see note 12(2)) 5,000 (net)

P4 OXIDISING GASES 50

| | |
|---|-------|
| Oxidising gases, Category 1 | |
| P5a FLAMMABLE LIQUIDS | 10 |
| — Flammable liquids, Category 1, or | |
| — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or | |
| — Other liquids with a flash point $\leq 60^{\circ}\text{C}$, maintained at a temperature above their boiling point (see note 13) | |
| P5b FLAMMABLE LIQUIDS | 50 |
| — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or | |
| — Other liquids with a flash point $\leq 60^{\circ}\text{C}$ where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 13) | |
| P5c FLAMMABLE LIQUIDS | 5,000 |
| Flammable liquids, Categories 2 or 3 not covered by P5a and P5b | |
| P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES | 10 |
| Self-reactive substances and mixtures, type A or B or organic peroxides, Type A or B | |
| P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES | 50 |
| Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F | |
| P7 PYROPHORIC LIQUIDS AND SOLIDS | 50 |
| Pyrophoric liquids, Category 1 | |
| Pyrophoric solids, Category 1 | |
| P8 OXIDISING LIQUIDS AND SOLIDS | 50 |
| Oxidising Liquids, Category 1, 2 or 3, or | |
| Oxidising Solids, Category 1, 2 or 3 | |
| Section 'E' - ENVIRONMENTAL HAZARDS | |
| E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1 | 100 |
| E2 Hazardous to the Aquatic Environment in Category Chronic 2 | 200 |
| Section 'O' – OTHER HAZARDS | |
| O1 Substances or mixtures with hazard statement EUH014 | 100 |
| O2 Substances and mixtures which in contact with water emit flammable gases, Category 1 | 100 |

O3 Substances or mixtures with hazard 50
statement EUH029

PART 2

NAMED SUBSTANCES

| <i>Column 1 Hazardous substances</i> | <i>CAS number¹</i> | <i>Column 2 Controlled quantity (tonnes)</i> |
|--|-------------------------------|---|
| 1. Ammonium nitrate (see note 14) | | 5,000 |
| 2. Ammonium nitrate (see note 15) | | 1,250 |
| 3. Ammonium nitrate (see note 16) | | 350 |
| 4. Ammonium nitrate (see note 17) | | 10 |
| 5. Potassium nitrate (see note 18) | | 5,000 |
| 6. Potassium nitrate (see note 19) | | 1,250 |
| 7. Arsenic pentoxide, arsenic (V) acid and/or salts | 1303-28-2 | 1 |
| 8. Arsenic trioxide, arsenious (III) acid and/or salts | 1327-53-3 | 0.1 |
| 9. Bromine | 7726-95-6 | 20 |
| 10. Chlorine | 7782-50-5 | 10 |
| 11. Nickel compounds in inhalable powder form; nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide | | 1 |
| 12. Ethyleneimine | 151-56-4 | 10 |
| 13. Fluorine | 7782-41-4 | 10 |
| 14. Formaldehyde (concentration $\geq 90\%$) | 50-00-0 | 5 |
| 15. Hydrogen | 1333-74-0 | 2* |
| 16. Hydrogen chloride (liquefied gas) | 7647-01-0 | 25 |
| 17. Lead alkyls | | 5 |
| 18. Liquefied flammable gases, Category 1 or 2 (Including LPG) and natural gas (see note 20) | | Natural gas (including liquefied natural gas): 15*) Liquefied petroleum gas: 25* Any other liquefied flammable gases: 50 |
| 19. Acetylene | 74-86-2 | 5 |
| 20. Ethylene oxide | 75-21-8 | 5 |

¹ The CAS number is shown only for indication

| | | |
|--|------------|-------|
| 21. Propylene oxide | 75-56-9 | 5 |
| 22. Methanol | 67-56-1 | 500 |
| 23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form | 101-14-4 | 0.01 |
| 24. Methylisocyanate | 624-83-9 | 0.15 |
| 25. Oxygen | 7782-44-7 | 200 |
| 26. 2,4 – Toluene diisocyanate | 584-84-9 | 10 |
| 2,6 - Toluene diisocyanate | 91-08-7 | |
| 27. Carbonyl dichloride (phosgene) | 75-44-5 | 0.3 |
| 28. Arsine (arsenic trihydride) | 7784-42-1 | 0.2 |
| 29. Phosphine (phosphorus trihydride) | 7803-51-2 | 0.2 |
| 30. Sulphur dichloride | 10545-99-0 | 1 |
| 31. Sulphur trioxide | 7746-11-9 | 15 |
| 32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 21) | | 0.001 |
| 33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or its salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoylchloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone | | 0.5 |
| 34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d) | | 2,500 |

¹ The CAS number is shown only for indication

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015. (See end of Document for details)

| | | |
|---|------------|-----|
| 35. Anhydrous ammonia | 7664-41-7 | 50 |
| 36. Boron trifluoride | 7637-07-2 | 5 |
| 37. Hydrogen sulphide | 7783-06-4 | 5 |
| 38. Piperidine | 110-89-4 | 50 |
| 39. Bis(2-dimethylaminoethyl) (methyl)amin | 3030-47-5 | 50 |
| 40. 3-(2-Ethylhexyloxy)propylamin | 5397-31-9 | 50 |
| 41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing less than 5% active chlorine and not classified under any of the other hazard categories in Part 1 of this Schedule provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute category 1 [h400] | | 200 |
| 42. Propylamine (see note 22) | 107-10-8 | 500 |
| 43. Tert-butyl-acrylate (see note 22) | 1663-39-4 | 200 |
| 44. 2-Methyl-3-butenenitrile (see note 22) | 16529-56-9 | 500 |
| 45. Tetrahydro-3,5-dimethyl-1,3,5-thiadiazine-2-thione (Dazomet) (see note 22) | 533-74-4 | 100 |
| 46. Methyl acrylate (see note 22) | 96-33-3 | 500 |
| 47. 3-Methylpyridine (see note 22) | 108-99-6 | 500 |
| 48. 1-Bromo-3-chloropropane (see note 22) | 109-70-6 | 500 |

¹ The CAS number is shown only for indication

PART 3

SUBSTANCES USED IN PROCESSES

| <i>Column 1 Hazardous substances</i> | <i>Column 2 Controlled quantity</i> |
|--|--|
| Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 (“HS”) may be generated during loss of control of the processes, including storage activities in any installation within an establishment, any substance which is used in that process (“S”). | The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant process) an amount equal to or exceeding the controlled quantity of the HS in question. |

PART 4

NOTES TO PARTS 1 TO 3

1. Substances and mixtures are classified in accordance with the CLP Regulation.

2. Mixtures shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.

3. Expressions appearing both in this Schedule and in the Directive have the same meaning for the purposes of this Schedule as they have for the purposes of the Directive.

4. The controlled quantities set out in Parts 1 to 3 of this Schedule relate to each establishment.

The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

5. The following rule governing the addition of hazardous substances, or categories of hazardous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements in these Regulations.

These Regulations apply to establishments if the sum $q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \dots$ is greater than or equal to 1, where q_x = the quantity of hazardous substance x (or category of hazardous substances) falling within Part 1 or Part 2 of this Schedule; and Q_{Lx} = the relevant controlled quantity for hazardous substance x (or category of hazardous substances x) from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule (except for those substances for which column 2 contains a quantity Q^* , in which case, for Hydrogen, Q is equal to 5, and for Liquefied petroleum gas and Natural Gas (including liquefied natural gas), Q is equal to 50).

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

- (a) for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2, or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;
- (b) for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;
- (c) for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

6. In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015. (See end of Document for details)

7. In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in note 5, the lowest controlled quantity for each group of categories in notes 5(a), 5(b) and 5(c) corresponding to the classification concerned must be used.

8. Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

9. The hazard class Explosives includes explosive articles (see Section 2.1 of Annex 1 to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

10. Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)^{M1} identifies the substance or mixture as potentially having explosive properties.

Marginal Citations

M1 More guidance on waiving of the test can be found in the A.14 method description in the Annex to Commission Regulation (EC) No. 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008.p.1).

11. If Explosives of Division 1.4 are unpacked or repacked, they shall be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

12.—(1) Flammable aerosols are classified in accordance with the Council Directive [75/324/EEC](#) of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers^{M2} (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive [75/324/EEC](#) correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

(2) In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

Marginal Citations

M2 O.J. L 147, 9.6.1975.,p. 40.

13. According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35°C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

14. Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-

sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

- (a) between 15.75% ^{M3} and 24.5% ^{M4} by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers ^{M5};
- (b) 15.75% by weight or less and unrestricted combustible materials.

Marginal Citations

- M3** 15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.
- M4** 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.
- M5** O.J. L 304, 21.11.2003, p. 1.

15. Ammonium nitrate (1,250/5,000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;
- (c) more than 28% by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

16. Ammonium nitrate (350/2,500): technical grade

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances;
- (b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

17. Ammonium nitrate (10/50): ‘off-specs’ material and fertilisers not fulfilling the detonation test

This applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in notes 15 and 16, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of notes 15 and 16.
- (b) fertilisers referred to in note 14(a), and note 15 to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003.

18. Potassium nitrate (5,000/10,000)

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015. (See end of Document for details)

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

19. Potassium nitrate (1,250/5,000)

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

20. Upgraded biogas

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of this Schedule where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

21. Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the following factors:

| WHO 2005 TEF¹ | | | |
|---------------------------------|--------|----------------------|--------|
| 2,3,7,8-TCDD | 1 | 2,3,7,8-TCDF | 0.1 |
| 1,2,3,7,8-PeCDD | 1 | 2,3,4,7,8-PeCDF | 0.3 |
| | | 1,2,3,7,8-PeCDF | 0.03 |
| 1,2,3,4,7,8-HxCDD | 0.1 | | |
| 1,2,3,6,7,8-HxCDD | 0.1 | 1,2,3,4,7,8-HxCDF | 0.1 |
| 1,2,3,7,8,9-HxCDD | 0.1 | 1,2,3,7,8,9-HxCDF | 0.1 |
| | | 1,2,3,6,7,8-HxCDF | 0.1 |
| 1,2,3,4,6,7,8-HpCDD | 0.01 | 2,3,4,6,7,8-HxCDF | 0.1 |
| OCDD | 0.0003 | 1,2,3,4,6,7,8,-HpCDF | 0.01 |
| | | 1,2,3,4,7,8,9-HpCDF | 0.01 |
| | | OCDF | 0.0003 |

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

¹ Van den Berg et.al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds

22. In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

23. Where a hazardous substance falls within both Parts 1 and 2 of this Schedule, the controlled quantity in Part 2 applies.

24. In relation to Part 3—

- (a) where S also falls within Part 1 or Part 2, the classification with the lowest controlled quantity applies; and

- (b) where S also falls within Part 1 and Part 2, the controlled quantity which is the lowest when the controlled quantities under Part 2 and Part 3 are compared applies.

SCHEDULE 3

Regulations 21 and 22

ENFORCEMENT – MODIFICATIONS OF THE 2011 ACT

PART 1

APPEALS AGAINST HAZARDOUS
SUBSTANCES CONTRAVENTION NOTICES

| <i>Provisions of the 2011 Act Applied</i> | <i>Modifications</i> |
|---|---|
| Section 143 (appeal against enforcement notice) Subsection (1) | For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”. |
| Subsection (2) | In subsection (a) for the words “enforcement notice” substitute “ hazardous substances contravention notice ”. |
| Subsection (3) | For subsection (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 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 |

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015. (See end of Document for details)

| | |
|--|---|
| | contravention notice were not served as required by section 162(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 any period specified in the notice in accordance with section 162(5)(b) falls short of what should reasonably be allowed.” |
| Subsection (4) | For the words “enforcement notice” substitute “ hazardous substances contravention notice ”. |
| Subsection (5) | None |
| Subsection (6) | None |
| Subsection (7) | Omit |
| Subsection (8) | For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”. |
| Subsection (9) | For the words “enforcement notice” in each place where they occur substitute “ hazardous substances contravention notice ”. |
| Section 144 (appeal against enforcement - general supplementary provisions) | For the words “enforcement notice” in each place where they occur substitute “ hazardous substances contravention notice ”. |
| Section 145 (appeal against enforcement - supplementary provisions relating to planning permission) | For subsections (a) and (b) substitute— |
| Subsection (1) | “(a) grant hazardous substances consent for the presence of hazardous substances 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.” |

| | |
|--------------------|---|
| Subsection (1) (c) | Omit |
| Subsection (2) | Omit |
| Subsection (3) | Omit |
| Subsection (4) | For subsection (4) substitute— “(4) In considering whether to grant hazardous substances consent under subsection (1), the planning appeals commission shall have regard to the considerations specified in section 110(2) and to any other material considerations; and the hazardous substances consent granted under subsection (1) is any hazardous substances consent that might be granted under Part 4; and where under that subsection the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous.” |
| Subsection (5) | For subsection (5) substitute— “(5) Where an appeal against a hazardous substances contravention notice is brought under section 143, 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 subsection (1)— (a) any hazardous substances consent granted under that subsection shall be treated as granted on that application; (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the decision of the planning appeals commission will be final; and (c) subject to sub-section (b), any hazardous substances consent granted under that subsection shall have the |

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015. (See end of Document for details)

like effect as a consent granted under Part 3.”

Subsection 6

None

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC.

| <i>Provisions of the 2011 Act Applied</i> | <i>Modifications</i> |
|---|--|
| Section 146 (execution and costs of works required by enforcement notice) | |
| Subsection (1) | For the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”. |
| Subsection (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 control ”. |
| Subsections (3) to (9) | None |
| Section 147 (offence where enforcement notice not complied with) | For subsection (1) substitute— |
| Subsection (1) | “(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.” |
| Subsection (2) | For the words “the owner of the land” substitute “ a person ” and for the words “an enforcement notice” substitute “ a hazardous substances contravention notice ”. |
| Subsection (3) | None |
| Subsection (4) | Omit |
| Subsection (5) | Omit |
| Subsection (6) | Omit the words “or (5)” |
| Subsection (7) | For the words “enforcement notice” substitute “ hazardous substances contravention notice. ” |

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| Subsection (8) | None |
| Subsection (9) | None |
| Section 148 (effect of planning permission, etc., on enforcement or breach of condition notice) | For paragraph (1) substitute— |
| Subsection (1) | “(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.” |
| Subsection (2) | Omit |
| Subsection (3) | For the words “an enforcement notice or breach of condition notice” substitute “ a hazardous substances contravention notice ”. |
| Section 149 (enforcement notice to have effect against subsequent development) | For Section 149 substitute— |
| | “(1) Compliance with a hazardous substances contravention notice shall not discharge that notice. |
| | (2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice, shall be in contravention of that notice. |
| | (3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity |

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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 146 and 147 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 a person authorised in writing by the council shall not enter the land under section 146(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of that person's intention to do so.”

PART 3

SECTIONS OF THE 2011 ACT AS MODIFIED

Appeal against hazardous substances contravention notice

143.—(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 that person.

(2) This subsection 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; 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 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 section 162(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 any period specified in the notice in accordance with section 162(5)(b) falls short of what should reasonably be allowed.

(4) An appeal under this section must be made by serving written notice of the appeal on the planning appeals commission before the date specified in the hazardous substances contravention notice as the date on which it is to take effect and such notice must indicate the grounds of the appeal and state the facts on which it is based.

(5) Before determining an appeal under this section, the planning appeals commission must, if either—

- (a) the appellant; or
- (b) the council or as the case may be, the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Sections 41 and 45(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this section as they apply to an application for planning permission to the council or the Department.

(7) Omitted.

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

(9) Subsection (8) shall not apply to proceedings brought under section 147 against a person who—

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

Appeal against hazardous substances contravention notice – general supplementary provisions

144.—(1) On an appeal under section 143 the planning appeals commission must 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 misdescription, 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 council, or as the case may be, 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 so 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 the copy of the hazardous substances contravention notice.

Appeal against hazardous substances contravention notice – supplementary provisions relating to hazardous substances consent

145.—(1) On the determination of an appeal under section 143, the planning appeals commission may—

- (a) grant hazardous substances consent for the presence of hazardous substances 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.
 - (c) Omitted
- (2) Omitted.
- (3) Omitted.

(4) In considering whether to grant hazardous substances consent under subsection (1), the planning appeals commission shall have regard to the considerations specified in section 110(2) and to any other material considerations; and the hazardous substances consent granted under subsection (1) is any hazardous substances consent that might be granted under Part 4; and where under that subsection the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under section 143, 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 subsection (1)—

- (a) any hazardous substances consent granted under that subsection shall be treated as granted on that application;
- (b) in relation to a grant of hazardous substances consent or a determination under that subsection, the decision of the planning appeals commission will be final; and
- (c) subject to sub-section (b), any hazardous substances consent granted under that subsection shall have the like effect as a consent granted under Part 3.

(6) Where—

- (a) the notice under subsection (4) of section 143 indicates the ground mentioned in subsection (3)(a) of that section;
- (b) any fee is payable under regulations made by virtue of section 223 in respect of the application deemed to be made by virtue of the appeal; and
- (c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

Execution and cost of works required by hazardous substances contravention notice

146.—(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the council may—

- (a) enter the land and take the steps; and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so 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 subsection (1), in respect of expenses incurred by the council 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 council may sell any materials which have been removed by it from any land when taking steps under subsection (1) if, before the expiration of 3 days from their removal, they are not claimed and taken away by their owner.

(4) Where the council sells any materials under subsection (3), it must pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from that person.

(5) Subsections (3) and (4) do not apply to refuse removed by the council.

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

- (a) that person 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 of a demand for payment has not had, on behalf of that other person sufficient money to discharge the whole demand of the council,

that person's liability shall be limited to the total amount of the money which that person has or has had as mentioned in paragraph (b), but the council where it is, or would be, debarred by this subsection 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 council under this section 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 the owner.

(8) The charge created by subsection (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the council by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the council may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 (c.41) on mortgagees by deed accordingly.

(9) Any person who wilfully obstructs a person acting in the exercise of powers under subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offence where hazardous substances contravention notice not complied with

147.—(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 that person shall be guilty of an offence.

(3) In proceedings against any person for an offence under subsection (2), it shall be a defence to show that that person did everything that person could be expected to do to secure compliance with the notice.

(4) Omitted.

(5) Omitted.

(6) An offence under subsection (2) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the paragraph in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where—

(a) a person charged with an offence under this section has not been served with a copy of the hazardous substances contravention notice; and

(b) the notice is not contained in the appropriate register kept under section 242,

it shall be a defence for that person to show that that person was not aware of the existence of the notice.

(8) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £100,000;

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.

Effect of hazardous substances consent on hazardous substances contravention notice

148.—(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) The fact that a hazardous substances contravention notice has wholly or partly ceased to have effect by virtue of this section does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Hazardous substances contravention notice to have effect against subsequent development

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

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under 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 146 and 147 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 a person authorised in writing by the council shall not enter the land under section 146(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of that person's intention to do so.

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