



Planning (Hazardous Substances) Act 1990

CHAPTER 10

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Planning (Hazardous Substances) Act 1990

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Planning (Hazardous Substances) Act 1990

1990 CHAPTER 10

An Act to consolidate certain enactments relating to special controls in respect of hazardous substances with amendments to give effect to recommendations of the Law Commission.

[24th May 1990]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Hazardous substances authorities

1. The council of the district or London borough in which land is situated shall be the hazardous substances authority in relation to the land except in cases where section 2 or 3 applies.

Hazardous
substances
authorities:
general.

2.—(1) The appropriate Minister shall be the hazardous substances authority for—

Hazardous
substances
authorities:
statutory
undertakers.

(a) operational land of statutory undertakers; and

(b) land in which statutory undertakers hold or propose to acquire an interest with a view to the land being used as operational land.

(2) For the purposes of this section a wharf or harbour land which is not operational land of statutory undertakers authorised to carry on a harbour shall be treated as if it were such operational land.

(3) Any question whether subsection (2) applies to land shall be determined by the Secretary of State and the Minister who is the appropriate Minister in relation to operational land of statutory undertakers who are authorised to carry on harbour undertakings.

(4) In this section “wharf” and “harbour land” have the same meaning as in the Harbours Act 1964.

1964 c. 40.

Hazardous substances authorities: other special cases.

3.—(1) The county council shall be the hazardous substances authority for land which is in a non-metropolitan county and—

- (a) is situated in a National Park;
- (b) is used for the winning and working of minerals (including their extraction from a mineral-working deposit); or
- (c) is situated in England and used for the disposal of refuse or waste materials,

unless subsection (2) applies.

(2) If the land is in a National Park for which a joint planning board or special planning board has been constituted, the board shall be the hazardous substances authority for the land.

(3) The Broads Authority is the hazardous substances authority for the Broads unless subsection (1) or (2) applies.

(4) If the land is in an area for which an urban development corporation is the local planning authority in relation to all kinds of development, the corporation shall be the hazardous substances authority for the land unless subsection (1) or (2) applies.

1988 c. 50.

(5) If the land is in an area for which a housing action trust established under Part III of the Housing Act 1988 is the local planning authority in relation to all kinds of development, the trust shall be the hazardous substances authority for the land unless subsection (1) or (2) applies.

(6) This section does not apply to land to which section 2 applies.

Control over presence of hazardous substances

Requirement of hazardous substances consent.

4.—(1) Subject to the provisions of this Act, the presence of a hazardous substance on, over or under land requires the consent of the hazardous substances authority (in this Act referred to as “hazardous substances consent”).

(2) Subsection (1) does not apply if the aggregate quantity of the substance—

- (a) on, over or under the land;
- (b) on, over or under 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,

is less than the quantity prescribed as the controlled quantity for that substance.

(3) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless it is unloaded.

(4) The Secretary of State may by regulations provide that hazardous substances consent is not required or is only required—

- (a) in relation to land of prescribed descriptions;
- (b) by reason of the presence of hazardous substances in prescribed circumstances.

(5) Regulations under this section may make different provision for different cases or descriptions of cases.

5.—(1) For the purposes of this Act the Secretary of State—

Power to prescribe hazardous substances.

- (a) shall by regulations specify—
 - (i) the substances that are hazardous substances; and
 - (ii) the quantity which is to be the controlled quantity of any such substance; and
- (b) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance.

(2) Regulations which—

- (a) are made by virtue of subsection (1)(a)(i); or
- (b) are made by virtue of subsection (1)(a)(ii) and reduce the controlled quantity of a substance,

may make such transitional provision as appears to the Secretary of State to be appropriate.

(3) The power to make such transitional provision includes, without prejudice to its generality, power to apply sections 11 and 26 subject to such modifications as appear to the Secretary of State to be appropriate.

(4) Regulations under this section may make different provision for different cases or descriptions of cases.

Obtaining hazardous substances consent

6.—(1) Hazardous substances consent—

Hazardous substances consent: general.

- (a) may be granted on an application under this Act, or
- (b) may be deemed to have been granted by virtue of section 11 or 12.

(2) Without prejudice to the provisions of this Act, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being interested in the land.

7.—(1) Provision may be made by regulations with respect to—

Applications for hazardous substances consent.

- (a) the form and manner in which applications for hazardous substances consent are to be made;
- (b) the particulars which they are to contain and the evidence by which they are to be verified;
- (c) the manner in which they are to be advertised; and
- (d) the time within which they are to be dealt with.

(2) Regulations—

- (a) may require an applicant for hazardous substances consent or the hazardous substances authority or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- (b) may require hazardous substances authorities to conduct appropriate consultations before determining applications for hazardous substances consent;

- (c) may provide for the manner in which such a consultation is to be carried out and the time within which—
 - (i) such a consultation; or
 - (ii) any stage in such a consultation, is to be completed;
 - (d) may require hazardous substances authorities to determine applications for hazardous substances consent within such time as may be prescribed;
 - (e) may require hazardous substances authorities to give prescribed persons or bodies prescribed information about applications for hazardous substances consent, including information as to the manner in which such applications have been dealt with.
- (3) In subsection (2) above “appropriate consultations” means—
- (a) consultations—
 - (i) in the case of a hazardous substances authority other than the appropriate Minister, with the Health and Safety Executive; and
 - (ii) in the case of the appropriate Minister, with the Health and Safety Commission; and
 - (b) consultations with such persons or bodies as may be prescribed.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

Certificates as to applicant's status etc.

8.—(1) Regulations under this Act may provide that an application for hazardous substances 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 unless it is accompanied by one of the following certificates in the prescribed form and signed by or on behalf of the applicant—

- (a) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of any of the land to which the application relates;
- (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than himself) who, at the beginning of that period, were owners of any of the land to which the application relates;
- (c) a certificate stating that—
 - (i) the applicant is unable to issue a certificate in accordance with paragraph (a) or (b);
 - (ii) he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) as are specified in the certificate;
 - (iii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
- (d) a certificate stating that—
 - (i) the applicant is unable to issue a certificate in accordance with paragraph (a);

(ii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) but has been unable to do so.

(2) Where such provision is made any such certificate as is mentioned in subsection (1)(b) or (c) must set out—

- (a) the names of those persons to whom the applicant has given the requisite notice of the application;
- (b) the addresses at which notice was given to them;
- (c) the date of service of each such notice.

(3) Such regulations may require that any such certificate as is mentioned in subsection (1)(c) or (d) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in subsection (1)(a)) been published in a local newspaper circulating in the locality in which the land in question is situated.

(4) Such regulations may also require that where an application is accompanied by such a certificate as is mentioned in subsection (1)(b),(c) or (d) the hazardous substances authority—

- (a) shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate or, if later, the date of publication of a notice as so mentioned;
- (b) in determining the application, shall take into account any representations relating to it which are made to them before the end of that period by any person who satisfies them that he is an owner of any land to which the application relates; and
- (c) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (b).

(5) Such regulations may also make provision as to who is to be treated as the owner of land for the purposes of any provisions of the regulations.

(6) If any person—

- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with those requirements and contains such a statement,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Regulations under this section may make different provision for different cases or descriptions of cases.

(8) Subject to subsection (5), in this section “owner,” in relation to any land, means a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain, of which not less than seven years remain unexpired.

Determination of applications for hazardous substances consent.

9.—(1) Subject to the following provisions of this Act, where an application is made to a hazardous substances authority for hazardous substances consent, that authority—

- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit; or
- (b) may refuse hazardous substances consent.

(2) In dealing with such an application the hazardous substances authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—

- (a) to any current or contemplated use of the land to which the application relates;
- (b) to the way in which land in the vicinity is being used or is likely to be used;
- (c) to any planning permission that has been granted for development of land in the vicinity;
- (d) to the provisions of the development plan; and
- (e) to any advice which the Health and Safety Executive or Health and Safety Commission have given following consultations in pursuance of regulations under section 7(2).

(3) If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each.

(4) It shall be the duty of a hazardous substances authority, when granting hazardous substances consent, to include in that consent—

- (a) a description of the land to which the consent relates;
- (b) a description of the hazardous substance or substances to which it relates; and
- (c) in respect of each hazardous substance to which it relates, a statement of the maximum quantity allowed by the consent to be present at any one time.

Power to impose conditions on grant of hazardous substances consent.

10.—(1) Without prejudice to the generality of section 9(1), a hazardous substances authority may make the grant of hazardous substances consent conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission or may grant hazardous substances consent subject to conditions with respect to any of the following—

- (a) how and where any hazardous substance to which the consent relates is to be kept or used;
- (b) the times between which any such substance may be present;
- (c) the permanent removal of any such substance—
 - (i) on or before a date specified in the consent; or
 - (ii) before the end of a period specified in it and commencing on the date on which it is granted.

(2) An authority who are a hazardous substances authority by virtue of section 1 or 3 may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject.

(3) It shall be the duty of a hazardous substances authority when granting hazardous substances consent to include in that consent in respect of each hazardous substance to which it relates a statement of all conditions relating to that substance subject to which the consent is granted.

11.—(1) Where a hazardous substance was present on, over or under any land at any time within the establishment period hazardous substances consent may be claimed in respect of its presence.

Deemed hazardous substances consent: established presence.

(2) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used immediately before the relevant date.

(3) Subject to subsections (4) to (6), the hazardous substances authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).

(4) If at the relevant date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this section if notification in respect of the substance was given before that date in accordance with those regulations.

(5) If at the relevant date such notification was not so required, hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of the substance not less than the controlled quantity was present at any one time within the establishment period.

(6) If it appears to the hazardous substances authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—

- (a) to notify the claimant that in their opinion the claim is invalid; and
- (b) to give their reasons for that opinion.

(7) Hazardous substances consent which is deemed to be granted under this section is subject to the conditions that—

- (a) the maximum aggregate quantity of the substance that may be present—
 - (i) on, over or under the land to which the claim for the consent relates;
 - (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
 - (iii) 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;

- (b) the substance shall be kept and used in the place and manner in which information supplied in pursuance of regulations made by virtue of subsection (2) shows that it was kept and used immediately before the relevant date; and
- (c) none of the substance shall be kept or used in a container greater in capacity than the container, or the largest of the containers, in which the substance was kept or used immediately before that date.

(8) In this section—

“establishment period” means the period of 12 months immediately preceding the relevant date;

“established quantity” means, in relation to any land—

(a) where before the relevant date there was a notification in respect of a substance in accordance with any of the Notification Regulations—

(i) the quantity notified or last notified before that date; or

(ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,

whichever is the greater;

(b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period;

S.I. 1982/1357.

“Notification Regulations” means the Notification of Installations Handling Hazardous Substances Regulations 1982;

1986 c. 63.

“the relevant date” means the date on which Part IV of the Housing and Planning Act 1986 came into force or, if that Part of that Act is not in force immediately before the date on which this Act comes into force, that date.

“the transitional period “ means the period of 6 months beginning with the relevant date.

Deemed
hazardous
substances
consent:
government
authorisation.

12.—(1) Where—

(a) the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority; and

(b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent,

the department may, on granting that authorisation, also direct that hazardous substances consent shall be deemed to be granted subject to such conditions (if any) as may be specified in the direction.

1989 c. 29.

(2) On granting a consent under section 36 of the Electricity Act 1989 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

(3) The department or, as the case may be, the Secretary of State shall consult the Health and Safety Commission before giving any such direction.

(4) For the purposes of this section development shall be taken to be authorised by a government department if—

- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
- (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
- (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
- (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
- (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,

and references in this section to the authorisation of a government department shall be construed accordingly.

(5) The provisions of this Act (except section 22) shall apply in relation to any hazardous substances consent deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 20.

Variation and revocation of consents

13.—(1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.

Application for hazardous substances consent without condition attached to previous consent.

(2) On such an application the hazardous substances authority shall consider only the question of the conditions subject to which hazardous substances consent should be granted.

(3) If on such an application the hazardous substances authority determine—

- (a) that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted; or
- (b) that it should be granted unconditionally,

they shall grant hazardous substances consent accordingly.

(4) If on such an application the hazardous substances authority determine that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, they shall refuse the application.

(5) Where—

- (a) hazardous substances consent has been granted or is deemed to have been granted for the presence on, over or under land of more than one hazardous substance; and

- (b) an application under this section does not relate to all the substances,

the hazardous substances authority shall only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.

- (6) Where—

- (a) more than one hazardous substances consent has been granted or is deemed to have been granted in respect of the same land; and

- (b) an application under this section does not relate to all the consents,

the hazardous substances authority shall only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate.

(7) Regulations may make provision in relation to applications under this section corresponding to any provision that may be made by regulations under section 7 or 8 in relation to applications for hazardous substances consent.

General power by order to revoke or modify hazardous substances consent.

14.—(1) The hazardous substances authority may by order revoke a hazardous substances consent or modify it to such extent as they consider expedient if it appears to them, having regard to any material consideration, that it is expedient to revoke or modify it.

(2) The hazardous substances authority may also by order revoke a hazardous substances consent if it appears to them—

- (a) that there has been a material change of use of land to which a hazardous substances consent relates; or

- (b) that planning permission has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced; or

- (c) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; or

- (d) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least five years been so present.

(3) An order made by virtue of subsection (2)(a) or (b) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance.

(4) An order under this section shall specify the grounds on which it is made.

Confirmation by Secretary of State of s. 14 orders.

15.—(1) An order under section 14 (other than an order relating to land to which section 2 applies) shall not take effect unless it is confirmed by the Secretary of State.

(2) The Secretary of State may confirm any such order submitted to him either without modification or subject to such modification as he considers expedient.

(3) Where a hazardous substances authority submit an order under section 14 to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order—

- (a) on any person who is an owner of the whole or any part of the land to which the order relates;
- (b) on any person other than an owner who appears to them to be in control of the whole or any part of that land;
- (c) on any other person who in their opinion will be affected by the order.

(4) A notice under subsection (3) shall specify the period (which must not be less than 28 days from the service of it) within which any person on whom the notice is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.

(5) If such a person so requires, the Secretary of State, before confirming the order, shall give that person and the hazardous substances authority such an opportunity.

(6) Where an order under section 14 has been confirmed by the Secretary of State, the hazardous substances authority shall serve a copy of the order on every person who was entitled to be served with notice under subsection (3).

16.—(1) This section applies where an order is made under section 14(1) revoking or modifying a hazardous substances consent.

Compensation in respect of s. 14 orders.

(2) If, on a claim made to the hazardous substances authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—

- (a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it; or
- (b) by being disturbed in his enjoyment of the land or of minerals in, on or under it,

the authority shall pay him compensation in respect of that damage.

(3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that subsection, to recover from the hazardous substances authority compensation in respect of any expenses reasonably incurred by him in that behalf.

(4) Any compensation payable to a person under this section by virtue of an order shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.

(5) Sections 117 and 118 of the principal Act (which contain general provisions as to the assessment of and the determination of claims for compensation) shall apply as if compensation under this section were compensation under section 115 of that Act.

Revocation of hazardous substances consent on change of control of land.

17.—(1) A hazardous substances consent is revoked if there is a change in the person in control of part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the hazardous substances authority.

(2) Regulations may make provision in relation to applications under subsection (1) corresponding to any provision that may be made by regulations under section 7 or 8 in relation to applications for hazardous substances consent.

Determination of applications for continuation of hazardous substances consent.

18.—(1) When an application is made under section 17 for the continuation of a hazardous substances consent the hazardous substances authority—

- (a) may modify the consent in any way they consider appropriate; or
- (b) may revoke it.

(2) In dealing with such an application the authority shall have regard to any material consideration and, in particular, but without prejudice to the generality of the foregoing—

- (a) to the matters to which a hazardous substances authority are required to have regard by section 9(2)(a) to (d); and
- (b) to any advice which the Health and Safety Executive or Health and Safety Commission have given following consultations in pursuance of regulations under section 17(2).

(3) If an application relates to more than one consent, the authority may make different determinations in relation to each.

(4) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.

(5) It shall be the duty of a hazardous substances authority, when continuing hazardous substances consent, to attach to the consent either—

- (a) a statement that it is unchanged in relation to the matters included in it by virtue of sections 9(4) and 10(3); or
- (b) a statement of any change in respect of those matters.

(6) The modifications which a hazardous substances authority may make by virtue of subsection (1)(a) include, without prejudice to the generality of that subsection, the making of the consent subject to conditions with respect to any of the matters mentioned in subsection (1) of section 10; and subsection (2) of that section shall apply as respects those conditions as it applies to the grant of consent subject to conditions.

(7) Where any application under section 17(1) is made to a hazardous substances authority then, unless within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority, the hazardous substances authority either—

- (a) give notice to the applicant of their decision on the application; or

- (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 20,

the application shall be deemed to have been granted.

19. Where on an application under section 17(1) the hazardous substances authority modify or revoke the hazardous substances consent, they shall pay to the person in control of the whole of the land before the change in control by virtue of which the application was made compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

Compensation on revocation or modification of consent under s. 18.

Secretary of State's powers

20.—(1) The Secretary of State may give directions requiring applications for hazardous substances consent or applications under section 17(1) to be referred to him instead of being dealt with by hazardous substances authorities,

Reference of applications to Secretary of State.

- (2) A direction under this section—

- (a) may be given either to a particular hazardous substances authority or to hazardous substances authorities generally; and
- (b) may relate either to a particular application or to applications of a class specified in the direction.

(3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

(4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(5) The decision of the Secretary of State on any application referred to him under this section shall be final.

(6) This section does not have effect in relation to applications for hazardous substances consent relating to land to which section 2 applies or to decisions on such applications.

21.—(1) Where a hazardous substances authority refuse an application for hazardous substances consent or an application under section 17(1) or an application for any consent, agreement or approval of the authority required by a condition imposed on the grant of such consent, or grant it subject to conditions, the applicant may, if he is aggrieved by their decision, appeal to the Secretary of State.

Appeals against decisions or failure to take decisions relating to hazardous substances.

(2) A person who has made an application for hazardous substances consent may also appeal to the Secretary of State if the hazardous substances authority have neither—

- (a) given notice to the applicant of their decision on the application; nor

- (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 20,

within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority; and for the purposes of this Act in such a case the authority shall be deemed to have decided to refuse the application.

(3) An appeal under this section must be made by notice served in the prescribed manner within such period as may be prescribed.

(4) The Secretary of State may allow or dismiss an appeal under this section or may reverse or vary any part of the decision of the hazardous substances authority (whether or not the appeal relates to that part of it) and may deal with the application as if it had been made to him in the first instance.

(5) Before determining an appeal under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) The decision of the Secretary of State on any appeal under this section shall be final.

(7) This section does not have effect in relation to applications for hazardous substances consent relating to land to which section 2 applies or to decisions on such applications.

(8) The Schedule to this Act applies to appeals under this section.

Validity of
decisions as to
applications.

22.—(1) If any person is aggrieved by any decision of the Secretary of State under section 20 or 21 and wishes to question the validity of that decision on the grounds—

- (a) that it is not within the powers of this Act; or
(b) that any of the relevant requirements have not been complied with in relation to that decision,

he may within six weeks from the date on which the decision is taken make an application to the High Court under this section.

(2) Without prejudice to subsection (1), if the hazardous substances authority who made the decision on the application to which the proceedings relate or, as the case may be, referred the application wish to question the validity of any such decision as is mentioned in that subsection on any of the grounds there mentioned, the authority may within six weeks from the date on which the decision is taken make an application to the High Court under this section.

(3) On any application under this section the High Court—

- (a) may by interim order suspend the operation of the decision the validity of which is questioned by the application until the final determination of the proceedings;
(b) if satisfied that the decision in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that decision.

(4) In this section “the relevant requirements”, in relation to any decision, means any requirements of this Act or the 1971 Act or of the Tribunals and Inquiries Act 1971, or of any order, regulations or rules made under this Act or under either of those Acts which are applicable to that decision. 1971 c. 62.

(5) Except as provided by this section, the validity of any such decision as is mentioned in subsection (1) shall not be questioned in any legal proceedings whatsoever.

(6) Nothing in subsection (5) shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is there mentioned.

Contraventions of hazardous substances control

23.—(1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence. Offences.

(2) There is a contravention of hazardous substances control—

- (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
 - (i) there is no hazardous substances consent for the presence of the substance; or
 - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
- (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.

(3) In subsection (1) “the appropriate person” means—

- (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
 - (i) any person knowingly causing the substance to be present on, over or under the land;
 - (ii) any person allowing it to be so present; and
- (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the person in control of the land.

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

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine,

and if the contravention is continued after the conviction he shall be guilty of a further offence and liable—

- (i) on summary conviction to a fine not exceeding £200 for each day on which it continues, or
- (ii) on conviction on indictment to a fine.

(5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—

- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or

(b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.

(6) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—

- (a) if the case falls within paragraph (a)(i)—
 - (i) that the substance was present; or
 - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
- (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.

(7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

Power to issue hazardous substances contravention notice.

24.—(1) Where it appears to the hazardous substances authority that there is or has been a contravention of hazardous substances control, they may issue a notice—

- (a) specifying an alleged contravention of hazardous substances control; and
- (b) requiring such steps as may be specified in the notice to be taken to remedy the contravention,

if they consider it expedient to do so having regard to any material consideration.

(2) Such a notice is referred to in this Act as a “hazardous substances contravention notice”.

(3) A hazardous substances authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.

(4) A copy of a hazardous substances contravention notice shall be served—

- (a) on the owner of the land to which it relates;
- (b) on any person other than the owner who appears to the hazardous substances authority to be in control of the land; and
- (c) on such other persons as may be prescribed.

(5) A hazardous substances contravention notice shall also specify—

- (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
- (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.

(6) Where a hazardous substances authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (1)(b), if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.

(7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substances which are required to be removed.

(8) The hazardous substances authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before it takes effect.

(9) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice.

25.—(1) The Secretary of State may by regulations—

- (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by section 24;
- (b) provide—
 - (i) for appeals to him against hazardous substances contravention notices;
 - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
 - (iii) for the procedure to be followed on such appeals;
 - (iv) for the directions that may be given on such an appeal;
 - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 174, 175(1) to (4) and (6), 176, 177, 285 and 289 of the principal Act;
- (c) direct that any of the provisions of sections 178(1) to (5) and (7), 179 to 181, 183, 184, 187 and 188 of that Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;
- (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.

Hazardous substances contravention notices: supplementary provisions.

(2) If any person appeals against a hazardous substances contravention notice, the notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(3) Regulations under section 24 or this section may make different provision for different cases or descriptions of cases.

(4) Where any person has appealed to the Secretary of State under this section against a hazardous substances contravention notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

Transitional
exemptions.

26.—(1) No offence is committed under section 23 and no hazardous substances contravention notice may be issued in relation to a hazardous substance which is on, over or under any land, if—

- (a) the substance was present on, over or under the land at any time within the establishment period; and
- (b) in a case in which at the relevant date notification in respect of that substance was required by any of the Notification Regulations, both the conditions specified in subsection (2) were satisfied; and
- (c) in a case in which at that date such notification was not so required, the condition specified in paragraph (b) of that subsection is satisfied.

(2) The conditions mentioned in subsection (1) are—

- (a) that notification required by the Notification Regulations was given before the relevant date; and
- (b) that the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.

(3) Expressions used in this section and in section 11 have the same meanings as in that section.

Miscellaneous provisions

Temporary
exemption
directions.

27.—(1) If it appears to the Secretary of State—

- (a) either—
 - (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or
 - (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and
- (b) that the presence of a hazardous substance on, over or under land specified in the direction in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity,

he may direct that, subject to such conditions or exceptions as he thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.

(2) A direction under this section—

- (a) may be withdrawn at any time;
- (b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Secretary of State's power to give a further direction.

(3) The Secretary of State shall send a copy of any such direction to the authority who are the hazardous substances authority for the land.

(4) Where the land is land to which section 2 applies subsection (3) shall not apply but instead the Secretary of State shall send the copy to the authority who would be the hazardous substances authority for the land but for that section.

28.—(1) Every authority who are a hazardous substances authority by virtue of section 1 or 3 shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect— Registers etc.

- (a) to applications for hazardous substances consent—
 - (i) made to that authority; or
 - (ii) made to the appropriate Minister with respect to land for which; but for section 2, that authority would be the hazardous substances authority;
 and including information as to the manner in which such applications have been dealt with;
- (b) to hazardous substances consent having effect by virtue of section 11 or 12 with respect to land for which that authority is, or but for section 2 would be, the hazardous substances authority;
- (c) to revocations or modifications of hazardous substances consent granted with respect to such land; and
- (d) to directions under section 27 sent to the authority by the Secretary of State.

(2) Where the appropriate Minister exercises any of the functions of a hazardous substances authority with respect to any land he shall send to the authority who, but for section 2, would be the hazardous substances authority for the land any such information as appears to him to be required by them for the purposes of maintaining a register under this section.

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

29.—(1) Nothing in—

- (a) any hazardous substances consent granted or deemed to be granted or having effect by virtue of this Act; or
- (b) any hazardous substances contravention notice issued under section 24,

Health and safety requirements.

shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions.

(2) To the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.

(3) Where it appears to a hazardous substances authority who have granted, or are deemed to have granted, a hazardous substances consent or who have issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by subsection (2), the authority shall, as soon as is reasonably practicable, consult the appropriate body with regard to the matter.

(4) If the appropriate body advise the authority that the consent or notice is rendered wholly void, the authority shall revoke it.

(5) If they advise that part of the consent or notice is rendered void, the authority shall so modify it as to render it wholly operative.

(6) In this section—

“the appropriate body” means—

(a) in relation to a hazardous substances authority other than the appropriate Minister, the Health and Safety Executive; and

(b) in relation to the appropriate Minister, the Health and Safety Commission; and

“relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in Part I of the Health and Safety at Work etc. Act 1974.

1974 c. 37.

General

Application of this Act to certain authorities and persons.

30.—(1) The provisions of this Act shall have effect, subject to such exceptions and modifications as may be prescribed, in relation to granting hazardous substances consent for authorities who are hazardous substances authorities by virtue of section 1 or 3.

(2) Subject to the provisions of section 12, any such regulations may in particular provide for securing—

(a) that any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance on, over or under land shall be made to the Secretary of State and not to the hazardous substances authority;

(b) that any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State and not by the hazardous substances authority.

Exercise of powers in relation to Crown land.

31.—(1) Notwithstanding any interest of the Crown in Crown land, but subject to subsection (2), any restrictions imposed or powers conferred by sections 4 to 29 (except section 22) shall apply and be exercisable in relation to Crown land to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown.

(2) Except with the consent of the appropriate authority, no order or notice shall be made, issued or served under any of the provisions of section 14, 15 or 24 in relation to land which for the time being is Crown land.

(3) In this section—

“Crown land” means land in which there is a Crown interest or a Duchy interest;

“Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

(4) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of subsection (1) as having an interest in land.

(5) For the purposes of this section “the appropriate authority”, in relation to any land—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;
- (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
- (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
- (d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.

(6) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

32.—(1) Subsections (2) to (4) have effect for the purpose of enabling Crown land, or an interest in Crown land, to be disposed of with the benefit of hazardous substances consent.

Application for hazardous substances consent in anticipation of disposal of Crown land.

(2) Notwithstanding the interest of the Crown in the land in question, an application for such consent may be made—

- (a) by the appropriate authority; or
- (b) by any person authorised by that authority in writing;

and, subject to subsections (3) and (4), all the statutory provisions relating to the making and determination of such an application shall accordingly apply as if the land were not Crown land.

(3) Any hazardous substances consent granted by virtue of this section shall apply only—

- (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land; and
- (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private interest in the land.

(4) The Secretary of State may by regulations—

- (a) modify or exclude any of the statutory provisions referred to in subsection (2) in their application by virtue of that subsection and any other statutory provisions in their application to consents granted by virtue of this section;
- (b) make provision for requiring a hazardous substances authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of this section; and
- (c) make such other provision in relation to the making and determination of applications by virtue of this section as he thinks necessary or expedient.

(5) This section shall not be construed as affecting any right to apply for hazardous substances consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land.

(6) In this section—

“private interest” means an interest which is neither a Crown interest nor a Duchy interest;

“statutory provisions” means provisions contained in or having effect under any enactment;

and references to the disposal of an interest in Crown land include references to the grant of an interest in such land.

(7) Subsections (3), (5) and (6) of section 31 apply for the purposes of this section as they apply for the purposes of that section.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this section as having an interest in land and references to the disposal or grant of an interest in Crown land and to a private interest in such land shall be construed accordingly.

British Coal.

33.—(1) The Secretary of State for the Environment and the Secretary of State for Energy with the consent of the Treasury may by regulations direct that any of the provisions specified in subsection (2) relating to statutory undertakers and to land of such undertakers—

- (a) shall apply to the British Coal Corporation as if it were a statutory undertaker; and
- (b) shall apply to land (including mines) of that Corporation of any such class as may be specified in the regulations as if it were operational land.

(2) Those provisions are sections 1 to 3, 16, 20, 21, 31 (the reference in subsection (1) to sections 4 to 29 not being construed as including a reference to section 8(1) to (3)), 34(1), (3) and (4), 36 and 38(1) to (5), and any other provisions of the planning Acts so far as they apply or have effect for the purposes of any of those provisions.

(3) Such regulations may apply those provisions subject to such adaptations, modifications and exceptions as may be specified in the regulations.

Ecclesiastical property.

34.—(1) Where under any of the provisions of this Act a notice or copy of a notice is required to be served on an owner of land and the land is ecclesiastical property, a similar notice or copy of a notice shall be served on the Church Commissioners.

(2) Where the fee simple of any ecclesiastical property is in abeyance and the property is situated elsewhere than in Wales, then for the purposes of this section, sections 8 and 22 and section 31(1), so far as it applies to section 8, and any other provisions of the planning Acts so far as they apply, or have effect for the purpose of, any of those provisions, the fee simple shall be treated as being vested in the Church Commissioners.

(3) Any compensation payable under section 16 in respect of land which is ecclesiastical property—

- (a) shall be paid to the Church Commissioners, and
- (b) shall be applied by them for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising or disposing of the proceeds of such a sale.

(4) In this section “ecclesiastical property” means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

35. In relation to land in the Isles of Scilly the provisions of this Act, and any other provisions of the planning Acts in so far as they apply or have effect for the purposes of those provisions, shall have effect as if those Isles were a district and the Council of the Isles were the council of that district.

Application of Act to Isles of Scilly.

36.—(1) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it in connection with—

Rights of entry.

- (a) any application for hazardous substances consent;
- (b) any proposal to issue a hazardous substances contravention notice.

(2) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 23.

(3) Any person who is an officer of the Valuation Office or a person duly authorised in writing by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of that land or any other land made by virtue of section 16 or 19.

(4) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land in respect of which a hazardous substances contravention notice has been issued for the purpose of ascertaining whether the notice has been complied with.

(5) Subject to subsection (6), any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

(6) Section 325 of the principal Act (supplementary provisions as to rights of entry) applies in relation to this section as it applies in relation to section 324 of that Act, but taking the reference in section 325(8) to section 324(8) as a reference to subsection (5).

37.—(1) The provisions of the principal Act specified in subsection (2) shall apply for the purposes of this Act as they apply for the purposes of that Act.

Application of certain general provisions of principal Act.

- (2) Those provisions are—
 section 320 (local inquiries)
 section 322 (orders as to costs of parties where no inquiry held)
 section 323 (procedure on certain appeals and applications)
 section 329 (service of notices)
 section 330 (power to require information as to interests in land)
 section 331 (offences by corporations).

Financial
provisions.

38.—(1) Where—

- (a) compensation is payable by a local authority under this Act in consequence of any decision or order given or made under sections 4 to 21 or the Schedule,
 (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,

the Minister responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine.

(2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a hazardous substances authority (being a local planning authority) in or in connection with the performance of any of their functions under sections 4 to 29.

(3) Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under sections 4 to 21, the Secretary of State may, if it appears to him to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation.

(4) For the purposes of subsections (2) and (3), contributions made by an authority towards the expenditure of a joint advisory committee shall be deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee.

(5) The council of a county may direct that any expenses incurred by them under sections 1 to 3, 16, 20, 21, 31, 34 and 36, the previous provisions of this section or the Schedule shall be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions.

(6) There shall be paid out of money provided by Parliament any expenses of the Secretary of State or any government department under this Act.

(7) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

Supplemental

Interpretation.

39.—(1) In this Act —

“contravention of hazardous substances control” has the meaning given in section 23(2);

“hazardous substances authority” is to be construed in accordance with sections 1 to 3;

“hazardous substances consent” means consent required by section 4;

“hazardous substances contravention notice” means such a notice as is mentioned in section 24(1);

“the principal Act” means the Town and Country Planning Act 1990 c. 8.

(2) In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section, the following expressions have the same meaning as in the principal Act—

“the 1971 Act”;

“the appropriate Minister”;

“the Broads”;

“development”;

“development plan”;

“enactment”;

“functions”;

“government department”;

“joint planning board”;

“land”;

“local authority”;

“local planning authority”;

“London borough”;

“mineral working deposit”;

“minerals”;

“Minister”;

“operational land”;

“owner”;

“the planning Acts”;

“prescribed”;

“public gas supplier”;

“statutory undertakers”;

“tenancy”;

“urban development area” and “urban development corporation”;

“use”;

“Valuation Office”;

but this subsection does not affect the meaning of “owner” in section 8.

(3) For the purposes of sections 4 to 21 and 23 to 26 any two bodies corporate are to be treated as being one person if—

(a) one of them is a body corporate of which the other is a subsidiary (within the meaning of section 736 of the Companies Act 1985); 1985 c. 6.
or

(b) both of them are subsidiaries (within the meaning of that Act) of one and the same body corporate.

(4) For the purposes of sections 2, 12 and 38(2) a public gas supplier shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking.

(5) For the purposes of sections 2, 12 and 38(2) the National Rivers Authority and every water or sewerage undertaker shall be deemed to be a statutory undertaker and its undertaking a statutory undertaking; and for the purposes of sections 2, 7, 28 and 29 and subsections (7) and (8) of this section, “the appropriate Minister”—

(a) in relation to the National Rivers Authority, means the Secretary of State or the Minister of Agriculture; and

(b) in relation to a water or sewerage undertaker, means the Secretary of State.

1989 c. 29.

(6) For the purposes of section 38(2) the Post Office, the Civil Aviation Authority and any holder of a licence under section 6(1) of the Electricity Act 1989 shall be deemed to be statutory undertakers and their undertakings statutory undertakings.

(7) If, in relation to anything required or authorised to be done under this Act, any question arises as to which Minister is or was the appropriate Minister in relation to any statutory undertakers, that question shall be determined by the Treasury.

(8) If any question so arises whether land of statutory undertakers is operational land, that question shall be determined by the Minister who is the appropriate Minister in relation to those undertakers.

Regulations.

40.—(1) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made under this Act, not being a purpose for which regulations are authorised or required to be made by another Minister.

(2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.

(3) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Short title,
commencement
and extent.
1986 c. 63.

41.—(1) This Act may be cited as the Planning (Hazardous Substances) Act 1990.

1990 c. 11.

(2) If an order has been made under section 57(2) of the Housing and Planning Act 1986 appointing a date during or at the end of the period of three months beginning with the day on which this Act is passed as the date on which all or any of the provisions of that Act relating to control over hazardous substances come into force, then the corresponding provisions of this Act (and, subject to Schedule 4 to the Planning (Consequential Provisions) Act 1990, the remaining provisions of it so far as they relate to them) shall come into force at the end of that period.

(3) Except so far as subsection (2) applies, the provisions of this Act (other than this section) shall come into force on such day as may be appointed by the Secretary of State by order made by statutory instrument and—

- (a) different days may be appointed for different provisions or for different purposes; and
 - (b) an order may make such transitional provision as the Secretary of State thinks appropriate.
- (4) This Act extends to England and Wales only.

Section 21.

SCHEDULE

DETERMINATION OF APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

Determination of appeals by appointed person

1.—(1) The Secretary of State may by regulations prescribe the classes of appeals under section 21 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.

(2) Appeals of a prescribed class shall be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State.

(3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

(4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.

(5) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

Powers and duties of appointed person

2.—(1) An appointed person shall have the same powers and duties as the Secretary of State has under subsection (4) of section 21.

(2) Subsection (5) of that section shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the hazardous substances authority whether they wish to appear before and be heard by the appointed person.

(3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.

(4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.

(5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.

(6) Except as provided by section 22, the validity of that decision shall not be questioned in any proceedings whatsoever.

(7) It shall not be a ground of application to the High Court under that section, that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the hazardous substances authority challenge the appointed person’s power to determine the appeal before his decision on the appeal is given.

(8) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating—

(a) to an appeal under section 21, or

(b) to any thing done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal,

then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.

Determination of appeals by Secretary of State

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3.—(1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.

(2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the hazardous substances authority, any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 8(4) or, as the case may be, regulations made under section 17(2) making provision corresponding to section 8(4) and, if any person has been appointed under paragraph 1, on him.

(3) Where in consequence of such a direction an appeal under section 21 falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.

(4) The Secretary of State shall give the appellant, the hazardous substances authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—

- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
- (b) in the case of the appellant or the hazardous substances authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so.

(5) Except as provided by sub-paragraph (4), the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.

(6) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

4.—(1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

(2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the hazardous substances authority and any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 8(4) or, as the case may be, regulations made under section 17(2) making provision corresponding to section 8(4).

(3) Where such a further direction has been given the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.

(4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.

Appointment of another person to determine appeal

5.—(1) At any time before the appointed person has determined the appeal the Secretary of State may—

- (a) revoke his appointment; and

SCH. (b) appoint another person under paragraph 1 to determine the appeal instead.

(2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.

(3) Nothing in sub-paragraph (2) shall require—

- (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
- (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Local inquiries and hearings

6.—(1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—

- (a) may hold a local inquiry in connection with the appeal; and
- (b) shall do so if the Secretary of State so directs.

(2) Where an appointed person—

- (a) holds a hearing by virtue of paragraph 2(4); or
- (b) holds an inquiry by virtue of this paragraph,

an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.

(3) Subject to sub-paragraph (4), the costs—

- (a) of any hearing held by virtue of paragraph 2(4); and
- (b) of any inquiry held under this paragraph,

shall be defrayed by the Secretary of State.

1972 c. 70.

(4) Section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) applies to an inquiry held by virtue of this paragraph with the following adaptations—

- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held there shall be substituted references to the Secretary of State; and
- (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held there shall be substituted a reference to the appointed person or the Secretary of State.

(5) Subject to sub-paragraph (6), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.

(6) If the Secretary of State is satisfied in the case of any such inquiry—

- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in sub-paragraph (7); and
- (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in that direction.

(7) The matters referred to in sub-paragraph (6)(a) are—

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- (a) national security; and
- (b) the measures taken or to be taken to ensure the security of any premises or property.

(8) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to costs of the parties) in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry. 1972 c. 70.

Supplementary provisions

7.—(1) The Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person. 1971 c. 62.

(2) Where an appointed person is an officer of the Department of the Environment or the Welsh Office the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the Parliamentary Commissioner Act 1967— 1967 c. 13.

- (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; and
- (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.

TABLE OF DERIVATIONS

Notes:

1. The following abbreviations are used in this Table:—

1969 c.48 =	The Post Office Act 1969
1971 c.78 =	The Town and Country Planning Act 1971
1973 c.41 =	The Fair Trading Act 1973
1981 c.41 =	The Local Government and Planning (Amendment) Act 1981
1982 c.16 =	The Civil Aviation Act 1982
1982 c.21 =	The Planning Inquiries (Public) Act 1982
1984 c.10 =	The Town and Country Planning Act 1984
1985 c.9 =	The Companies (Consequential Provisions) Act 1985
1986 c.44 =	The Gas Act 1986
1986 c.63 =	The Housing and Planning Act 1986
1988 c.4 =	The Norfolk and Suffolk Broads Act 1988
1988 c.50 =	The Housing Act 1988
1989 c.15 =	The Water Act 1989
1989 c.29 =	The Electricity Act 1989

2. The letter R followed by a number indicates that the provision gives effect to the Recommendation bearing that number in the Law Commission's Report on the Consolidation of Certain Enactments relating to Town and Country Planning (Cmnd.958).

3. The entry "drafting" indicates a provision of a mechanical or editorial nature only affecting the arrangement of the consolidation.

Provision	Derivation
1	1971 c.78 s.1A(1); 1986 c.63 s.30.
2(1)	1971 c.78 s.1B(1), (2); 1986 c.63 s.30.
(2)	1971 c.78 s.1B(3)(4); 1986 c.63 s.30.
(3)	1971 c.78 s.1B(5); 1986 c.63 s.30.
(4)	1971 c.78 s.1B(4); 1986 c.63 s.30.
3(1)	1971 c.78 s.1A(2); 1986 c.63 s.30.
(2)	1971 c.78 s.1A(3); 1986 c.63 s.30.
(3)	1971 c.78 s.1A(3A); 1988 c.4 Sch. 3 para.9; R 54.
(4)	1971 c.78 s.1A(4); 1986 c.63 s.30; R 54.
(5)	1988 c.50 s.67(6); R 54.
(6)	1971 c.78 s.1A(1)(part); 1986 c.63 s.30.
4(1),(2)	1971 c.78 s.58B(1); 1986 c.63 s.31.
(3)	1971 c.78 s.58B(2); 1986 c.63 s.31.
(4)	1971 c.78 s.58B(3)(b); 1986 c.63 s.31.
(5)	1971 c.78 s.58B(6); 1986 c.63 s.31.
5(1)	1971 c.78 s.58B(3)(a), (3)(c); 1986 c.63 s.31.

Provision	Derivation
(2)	1971 c.78 s.58B(4); 1986 c.63 s.31.
(3)	1971 c.78 s.58B(5); 1986 c.63 s.31.
(4)	1971 c.78 s.58B(6); 1986 c.63 s.31.
6(1)	1971 c.78 ss.58C, 58F; 1986 c.63 s.34.
(2)	1971 c.78 s.58J(1); 1986 c.63 s.31.
7(1)	1971 c.78 s.58C(1); 1986 c.63 s.31.
(2)	1971 c.78 s.58C(4); 1986 c.63 s.31.
(3)	1971 c.78 s.58C(5); 1986 c.63 s.31.
(4)	1971 c.78 s.58C(6); 1986 c.63 s.31.
8(1)to(5)	1971 c.78 s.58C(2); 1986 c.63 s.31.
(6)	1971 c.78 s.58C(3); 1986 c.63 s.31.
(7)	1971 c.78 s.58C(6); 1986 c.63 s.31.
(8)	1971 c.78 s.27(7).
9(1)	1971 c.78 s.58D(1)(part); 1986 c.63 s.31.
(2)	1971 c.78 s.58D(1)(2); 1986 c.63 s.31.
(3)	1971 c.78 s.58D(3); 1986 c.63 s.31.
(4)	1971 c.78 s.58D(4)(part); 1986 c.63 s.31.
10(1)	1971 c.78 s.58D(5); 1986 c.63 s.31.
(2)	1971 c.78 s.58D(5); 1986 c.63 s.31; R 55.
(3)	1971 c.78 s.58D(4)(c); 1986 c.63 s.31.
11(1)	1986 c.63 s.34(3).
(2)	1986 c.63 s.34(4).
(3)	1986 c.63 s.34(5).
(4)	1986 c.63 s.34(6).
(5)	1986 c.63 s.34(7).
(6)	1986 c.63 s.34(8).
(7)	1986 c.63 s.34(9).
(8)	1986 c.63 s.34(10).
12(1)	1971 c.78 s.58F(1); 1986 c.63 s.31.
(2)	1989 c. 29 Sch. 8 para. 7(2).
(3)	1971 c.78 s.58F(2); 1986 c.63 s.31; 1989 c. 29 Sch. 8 para. 7(2).
(4)	1971 c.78 s.58F(4); 1986 c.63 s.31.
(5)	1971 c.78 s.58F(3); 1986 c.63 s.31.
13(1)	1971 c.78 s.58G(1); 1986 c.63 s.31.
(2)to(4)	1971 c.78 s.58G(2); 1986 c.63 s.31.
(5)to(7)	1971 c.78 s.58G(3) to (5); 1986 c.63 s.31.
14(1)	1971 c.78 s.58H(3); 1986 c.63 s.31.
(2), (3)	1971 c.78 s.58H(1)(part), (2); 1986 c.63 s.31.
(4)	1971 c.78 s.58H(4); 1986 c.63 s.31.
15(1), (2)	1971 c.78 s.58H(5); 1986 c.63 s.31.
(3) to (5)	1971 c.78 s.58H(6); 1986 c.63 s.31.
(6)	1971 c.78 c.58H(7); 1986 c.63 s.31.

Provision	Derivation
16(1)	1971 c.78 s.58H(8); 1986 c.63 s.31.
(2) to (4)	1971 c.78 s.170(2) to (4).
(5)	Drafting.
17(1)	1971 c.78 s.58J(2); 1986 c.63 s.31.
(2)	1971 c.78 s.58J(3); 1986 c.63 s.31.
18(1)	1971 c.78 s.58J(4)(part); 1986 c.63 s.31.
(2)	1971 c.78 s.58J(4)(part),(5); 1986 c.63 s.31.
(3)	1971 c.78 s.58J(6); 1986 c.63 s.31.
(4)	1971 c.78 s.58J(7); 1986 c.63 s.31.
(5)	1971 c.78 s.58J(8); 1986 c.63 s.31.
(6)	1971 c.78 s.58J(9); 1986 c.63 s.31; R 56.
(7)	1971 c.78 s.58J(10),(11),(a),(d), s.37; 1986 c.63 s.31.
19	1971 c.78 s.58J(12); 1986 c.63 s.31.
20(1)	1971 c.78 ss.35(1), 58E, 58J(10),(11); 1986 c.63 s.31.
(2)	1971 c.78 ss.35(2), 58E, 58J(10),(11); 1986 c.63 s.31.
(3)	1971 c.78 ss.35(3), 58E, 58J(10),(11); 1986 c.63 s.31.
(4)	1971 c.78 ss.35(5), 58E, 58J(10),(11); 1986 c.63 s.31.
(5)	1971 c.78 ss.35(6), 58E, 58J(10),(11); 1986 c.63 s.31.
(6)	1971 c.78 s.58E(3); 1986 c.63 s.31.
21(1)	1971 c.78 ss.58E, 58J(10),(11), 36(1); 1986 c.63 s.31; R 57.
(2)	1971 c.78 ss.58E, 58J(10),(11), 37; 1986 c.63 s.31; R 8(a).
(3)	1971 c.78 ss.58E, 58J(10),(11), 36(2); 1986 c.63 s.31.
(4)	1971 c.78 ss.58E, 58J(10),(11), 36(3); 1986 c.63 s.31.
(5)	1971 c.78 ss.58E, 58J(10),(11), 36(4); 1986 c.63 s.31.
(6)	1971 c.78 ss.58E, 58J(10),(11) 36(6); 1986 c.63 s.31.
(7)	1971 c.78 s.58E(3); 1986 c.63 s.31.
(8)	1971 c.78 ss.36(8), 58E, 58J(10),(11); 1986 c.63 s.31.
22(1)	1971 c.78 s.245(1); R 57 and R 58.
(2)	1971 c.78 s.245(2) (7); R 57 and R 58.
(3)	1971 c.78 s.245(4).
(4)	1971 c.78 s.245(7)(part); 1972 c.70 Sch.16 para.46.
(5)	1971 c.78 s.242(1)(e), (3)(dd); 1986 c.63 Sch.7 para.2; R 57.
(6)	1971 c.78 s.242(4).
23	1971 c.78 s.58K; 1986 c.63 s.31.
24(1)	1971 c.78 s.101B(1),(3); 1986 c.63 s.32.
(2)	1971 c.78 s.101B(3)(part); 1986 c.63 s.32.
(3)	1971 c.78 s.101B(2); 1986 c.63 s.32.
(4) to (9)	1971 c.78 s.101B(4) to (9); 1986 c.63 s.32.
25(1) to (3)	1971 c.78 s.101B (10) to (12); 1986 c.63 s.32.
(4)	1971 c.78 s.110(2).
26	1986 c.63 s.34(1),(2),(10).
27	1971 c.78 s.58L; 1986 c.63 s.31.
28	1971 c.78 s.58M; 1986 c.63 s.31; R 55, R 59.

Provision	Derivation
29(1),(2)	1971 c.78 s.58N(1); 1986 c.63 s.31.
(3)	1971 c.78 s.58N(2); 1986 c.63 s.31.
(4)	1971 c.78 s.58N(3); 1986 c.63 s.31.
(5)	1971 c.78 s.58N(4); 1986 c.63 s.31.
(6)	1971 c.78 s.58N(5); 1986 c.63 s.31.
30(1)	1971 c.78 s.271A(1); 1986 c.63 Sch.7 Part I para.5.
(2)	1971 c.78 s.271A(2); 1986 c.63 Sch.7 Part I para.5.
31(1)	1971 c.78 s.266(1)(b).
(2)	1971 c.78 s.266(2)(a); 1981 c.41 Sch. para.20; 1986 c.63 Sch.7 Part I para. 3.
(3)	1971 c.78 s.266(7).
(4)	1984 c.10 s.4(1).
(5)	1971 c.78 s.266(7); 1984 c.10 s.6(1).
(6)	1971 c.78 s.266(7)(part).
32(1)	1984 c.10 s.1(1); 1986 c.10 Sch.7 Part I para. 8.
(2)	1984 c.10 s.1(2).
(3)	1984 c.10 s.1(3A); 1986 c.10 Sch.7 para. 8.
(4)	1984 c.10 s.1(5); R 60.
(5)	1984 c.10 s.1(7).
(6)	1984 c.10 ss.1(6), 6(1),(2).
(7)	1984 c.10 s.6(1),(2).
(8)	1984 c.10 s.4(1).
33	1971 c.78 s.273.
34(1)to(3)	1971 c.78 s.274(1)to(3).
(4)	1971 c.78 s.274(5).
35	1971 c.78 s.269(2); 1986 c.63 Sch.7 Part I para.4.
36(1)	1971 c.78 s.280(1A); 1986 c.63 Sch.7 Part I para.6.
(2)	1971 c.78 s.280(4)(part); 1986 c.63 Sch.7 Part I para.6.
(3)	1971 c.78 s.280(6),(6A); 1986 c.63 Sch.7 Part I para.6.
(4)	1971 c.78 s.280(8); 1986 c.63 Sch.7 Part I para.6; R 61.
(5)	1971 c.78 s.280(9).
(6)	1971 c.78 s.281, drafting.
37	1971 c. 28 ss. 282, 282A, 282B, 283, 284, 285; 1986 c.63 Sch. 11 paras. 9, 10.
38(1)	1971 c.78 s.254.
(2)	1971 c.78 s.255(2)(b); R 62.
(3)	1971 c.78 s.255(3).
(4)	1971 c.78 s.255(5).
(5)	1971 c.78 s.263(1); 1972 c.70 Sch. 29 Pt. I para. 3(b).
(6),(7)	1971 c.78 ss. 260(1)(part), 262; 1986 c.63 s.56.
39(1),(2)	1971 c.78 s.290(1); 1986 c. 44 Sch. 7 para. 2(9)(e); 1986 c.63 Sch.7 Part I para.7(a),(b).
(3)	1971 c.78 s.58B(7); 1973 c.41 s.137(5); 1985 c.9 Sch.2; 1986 c.63 s.31.

Provision	Derivation
(4)	1986 c.44 Sch.7 para.2(1),(9).
(5)	1989 c.15 Sch.25 para. 1(1),(2),(10).
(6)	1969 c.49 Sch. 4 para. 93;1982 c.16 Sch. 2 para. 4; 1989 c.29 Sch. 16 para. 1(1)(xxii).
(7),(8)	1971 c.78 s.290(2).
40(1)	1971 c.78 s.287(1)(b).
(2),(3)	1971 c.78 s.287(2).
41(1)	Drafting.
(2)	Drafting.
(3)	1986 c.63 s.57(2).
(4)	Drafting.
Sch. para.1(1)	1971 c.78 Sch.9 para.1(1).
(2)	1971 c.78 Sch.9 para.1(1).
(3)	1971 c.78 Sch.9 para.1(2).
(4)	1971 c.78 Sch.9 para.1(3).
(5)	Drafting.
para.2(1)	1971 c.78 Sch.9 para.2(1).
(2)	1971 c.78 Sch.9 para.2(2).
(3)	1971 c.78 Sch.9 para.2(2)(a).
(4)	1971 c.78 Sch.9 para.2(2)(b).
(5)	1971 c.78 Sch.9 para.3.
(6)	1971 c.78 Sch.9 para.2(3)(a).
(7)	1971 c.78 Sch.9 para.2(3)(b).
(8)	1971 c.78 Sch.9 para.2(4).
para.3(1)	1971 c.78 Sch.9 para.3(1).
(2)	1971 c.78 Sch.9 para.3(2); R 52.
(3)	1971 c.78 Sch.9 para.3(3).
(4)	1971 c.78 Sch.9 para.3(4); R 52.
(5)	1971 c.78 Sch.9 para.3(5).
(6)	1971 c.78 Sch.9 para.3(5).
para.4(1)	1971 c.78 Sch.9 para.3A(1); 1986 c.63 Sch.11 para.11.
(2)	1971 c.78 Sch.9 para.3A(2); 1986 c.63 Sch.11 para.11; R 52.
(3)	1971 c.78 Sch.9 para.3A(3); 1986 c.63 Sch.11 para.11.
(4)	1971 c.78 Sch.9 para.3A(4); 1986 c.63 Sch.11 para.11.
para.5(1)	1971 c.78 Sch.9 para.4(1).
(2)	1971 c.78 Sch.9 para.4(2)(a).
(3)	1971 c.78 Sch.9 para.4(2).
para.6(1)	1971 c.78 Sch.9 para.5(1).
(2)	1971 c.78 Sch.9 para.5(1A); 1986 c.63 Sch.11 para.12.
(3)	1971 c.78 Sch.9 para.5(2).
(4)	1971 c.78 Sch.9 para.5(3); 1986 c.63 Sch.11 para.8(2).
(5)	1982 c.21 s.1(1).
(6)	1982 c.21 s.1(2),(3).

Provision	Derivation
(7)	1982 c.21 s.1(4).
(8) para.7	1971 c.78 Sch.9 para.5(4); 1986 Sch.11 para.9(2). 1971 c.78 Sch.9 para.7.

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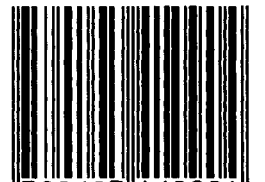
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