

SCHEDULES

SCHEDULE 3

LISTED BUILDINGS, CONSERVATION AREAS AND HAZARDOUS SUBSTANCES

PART I

CHANGES RELATING TO ENFORCEMENT

Planning (Hazardous Substances) Act 1990 (c. 10.)

- 10 In section 23(4) of the Planning (Hazardous Substances) Act 1990 (offences)—
- (a) for “the statutory maximum” there is substituted “£20,000”, and
 - (b) for the words following paragraph (b) there is substituted—
“(4A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence”.
- 11 In section 24 of that Act (hazardous substances contravention notices)—
- (a) in subsection (1)(b) after “remedy” there is inserted “wholly or partly”, and
 - (b) in subsection (8) after “before” there is inserted “or after”, and
 - (c) at the end of subsection (9) there is inserted “or would, if the notice were re-issued, be served with a copy of it”.
- 12 After that section there is inserted—
- “24A Variation of hazardous substances contravention notices**
- (1) A hazardous substances authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 24(5)(b) in the notice.
 - (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
 - (3) The hazardous substances authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.”
- 13 In section 25(2) of that Act (contravention notices: effect of appeal) after “shall” there is inserted “subject to regulations under this section”.
- 14 After section 26(2) of that Act (transitional exemptions) there is inserted—

“(2A) This section shall have effect until the end of the transitional period.”

15 After section 26 of that Act there is inserted—

“26AA Injunctions

(1) Where a hazardous substances authority consider it necessary or expedient for any actual or apprehended contravention of hazardous substances control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.

(2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.

(3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.

(4) In this section “the court” means the High Court or the county court.”

16 (1) Section 36 of that Act (rights of entry) is amended as follows.

(2) In subsection (4) after “contravention notice” there is inserted “or a notice under section 183 of the principal Act (as applied by regulations made by virtue of section 25)”.

(3) For subsection (6) there is substituted—

“36A Warrants to enter land

(1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

(a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 36; and

(b) that—

(i) admission to the land has been refused, or a refusal is reasonably apprehended; or

(ii) the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by a hazardous substances authority to enter the land.

(2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.

(3) A warrant authorises entry on one occasion only and that entry must be—

(a) within one month from the date of the issue of the warrant; and

(b) at a reasonable hour, unless the case is one of urgency.

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

36B Rights of entry: supplementary provisions

- (1) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 36 or 36A (referred to in this section as “a right of entry”)—
 - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
 - (b) may take with him such other persons as may be necessary; and
 - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.
- (4) Subsection (3) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (5) A person who is guilty of an offence under subsection (3) shall be liable—
 - (a) on summary conviction to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (6) If any damage is caused to land or chattels in the exercise of—
 - (a) a right of entry; or
 - (b) a power conferred by virtue of section 36(5) in connection with such a right,compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 118 of the principal Act shall apply in relation to compensation under this section as it applies in relation to compensation under Part IV of that Act.
- (7) The authority of the appropriate Minister shall be required for the carrying out of works in the exercise of a power under section 36 if—
 - (a) the land in question is held by statutory undertakers, and
 - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (8) Section 265(1) and (3) of the principal Act (meaning of “appropriate Minister”) applies for the purposes of subsection (7) as it applies for the purposes of section 325(9) of the principal Act.”