

SCHEDULES

SCHEDULE 4

Regulations 16, 18 and 20(1)

ENFORCEMENT – SPECIFIED MODIFICATIONS OF THE TCPA

PART 1

Appeals against hazardous substances contravention notices

1. In sections 174, 175, 176 and 177 of the TCPA as applied by regulation 16—
 - (a) each reference to an enforcement notice is to be read as if it were a reference to a hazardous substances contravention notice; and
 - (b) each reference to a local planning authority is to be read as if it were a reference to a hazardous substances authority.
2. Section 174 of the TCPA (appeals against enforcement notice), in its application in relation to a hazardous substances contravention notice, is to be read as if—
 - (a) subsection (2) read as follows—

“(2) An appeal may be brought on any of the following grounds—

 - (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
 - (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
 - (c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control;
 - (d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
 - (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
 - (f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed.”;
 - (b) subsection (4) read as follows—

“(4) A notice under subsection (3) must be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

 - (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
 - (b) setting out the appellant’s submissions in relation to each ground of appeal.”;
 - (c) in subsection (5)—

Status: This is the original version (as it was originally made).

- (i) the words “in that statement” were inserted immediately after “does not”;
- (ii) the words “in that statement” were inserted immediately after “failed”; and
- (iii) the words “within the prescribed time” and “within that time” were omitted.

3. Section 175 of the TCPA (appeals: supplementary provisions), in its application in relation to a hazardous substances contravention notice, is to be read as if in subsection (6), the words “section 25(1) of the Planning (Hazardous Substances) Act 1990” were substituted for “any other provisions of this Act”.

4. Section 176 of the TCPA (general provisions relating to determination of appeals), in its application in relation to a hazardous substances contravention notice, is to be read as if in subsection (3)—

- (i) in paragraph (a), “within the prescribed time” were omitted; and
- (ii) paragraph (b) read as follows—
 - “(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fails to comply with regulation 17(2) of the Planning (Hazardous Substances) (Wales) Regulations 2015.”

5. Section 177 of the TCPA (grant or modification of planning permission on appeal against enforcement notice), in its application in relation to a hazardous substances contravention notice, is to be read as if—

- (a) for paragraphs (a) and (b) were substituted—
 - “(a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land or on, over or under part of that land to which the hazardous substances contravention notice relates;
 - (b) discharge any condition subject to which hazardous substances consent was granted.”;
- (b) subsections (1A) to (1C) were omitted;
- (c) in subsection (2)—
 - (i) the words “hazardous substances consent” were substituted for “planning permission”; and
 - (ii) the words after “regard” were substituted with “to any considerations which a hazardous substances authority would have to have regard to under section 9(2) of the Planning (Hazardous Substances) Act 1990 when dealing with an application for hazardous substances consent.”;
- (d) in subsection (3)—
 - (i) the words “hazardous substances consent” were substituted for “planning permission” in both places where it occurs; and
 - (ii) the reference to “Part III” were a reference to “the Planning (Hazardous Substances) Act 1990”;
- (e) in subsection (4) both references to “or limitation” were omitted;
- (f) in subsection (5)—
 - (i) paragraph (b) were omitted;
 - (ii) for the words from “planning permission” to the end, were substituted “hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.”;

- (g) in subsection (5A), the words “section 26A of the Planning (Hazardous Substances) Act 1990” were substituted for “section 303”;
- (h) in subsections (6) and (7), the words “hazardous substances consent” were substituted for “planning permission”; and
- (i) in subsection (8)—
 - (i) the words “section 28 of the Planning (Hazardous Substances) Act 1990” were substituted for “section 69”; and
 - (ii) the words “hazardous substances consent” were substituted for “planning permission”.

PART 2

Effect of hazardous substances contravention notices, etc.

- 6. In sections 178, 179, 180 and 181 of the TCPA, as applied by regulation 18—
 - (a) each reference to an enforcement notice is to be read as if it were a reference to a hazardous substances contravention notice; and
 - (b) each reference to a local planning authority is to be read as if it were a reference to a hazardous substances authority.
- 7. Section 178 of the TCPA (execution and cost of works required by enforcement notices) as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
 - (a) in subsection (2), in both places where the words “breach of planning control” occur, it read “contravention of hazardous substances control”;
 - (b) subsections (3) to (5) were omitted; and
 - (c) the following subsection were inserted after subsection (6)—

“(7) Where different periods are specified for different steps in a hazardous substances contravention notice by virtue of section 24(5)(b) of the PHSA, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to a step, are to the period by the end of which the step is required to have been taken.”
- 8. Section 179 (offence where enforcement notice not complied with), as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
 - (a) subsection (1) read as follows—

“(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken before the end of that period have not been taken, any person other than the owner who is in control of the land and the owner of the land at that time is in breach of the notice.”;
 - (b) in subsection (2), for the words “the owner of the land” read “a person”;
 - (c) subsections (4) and (5) were omitted;
 - (d) in subsection (6), the words “or (5)” were omitted; and
 - (e) in subsection (7)(b), the words “section 188” read “regulation 19 of the Planning (Hazardous Substances) (Wales) Regulations 2015”.
- 9. Section 180 (effect of planning permission etc. on enforcement or breach of condition notice) as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
 - (a) subsection (1) read as follows—

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

“(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates or any part of that land, the notice ceases to have effect so far as inconsistent with that consent.”;

(b) subsection (2) were omitted; and

(c) in subsection (3), the words “or breach of condition notice” were omitted.

10. Section 181 (enforcement notice to have effect against subsequent development) as it has effect in relation to a hazardous substances contravention notice, is to be read as if the following were substituted for subsections (1) to (5) of that section—

“(1) Compliance with a hazardous substances contravention notice does not discharge that notice.

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

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, is in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps may be taken which would constitute a breach of that condition, and the taking of such further steps is in contravention of that notice.

(5) Sections 178 and 179 apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority must not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.”

PART 3

Validity

11.—(1) Section 285 of the TCPA (validity of enforcement notices and similar notices), as applied by regulation 20(1), is to be read as if—

(a) each reference to an enforcement notice were a reference to a hazardous substances contravention notice; and

(b) subsections (3) and (4) were omitted.

(2) Section 289 of the TCPA (appeals to High Court relating to enforcement notices etc.), as applied by regulation 20(1), is to be read as if—

- (a) each reference to an enforcement notice were a reference to a hazardous substances contravention notice; and
- (b) each reference to a local planning authority in subsections (1) and (4A) were a reference to a hazardous substances authority.