

## SCHEDULES

### SCHEDULE 4

#### 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.”;
  - [<sup>F1</sup>(b) for subsection (4) there were substituted—

“(4) A notice under subsection (3) must be accompanied by a copy of the hazardous substances contravention notice.

(4A) A person who gives notice under subsection (3) must submit to the Welsh Ministers a full statement of case either—

    - (a) when giving the notice, or
    - (b) so that it is received by the Welsh Ministers before the end of the period specified in subsection (4B).

**Changes to legislation:** There are currently no known outstanding effects for the *The Planning (Hazardous Substances) (Wales) Regulations 2015, PART 1*. (See end of Document for details)

(4B) The period specified in this subsection is—

- (a) 7 days beginning with the day on which the notice of appeal under subsection (3) is received by the Welsh Ministers; or
- (b) such longer period as the Welsh Ministers may allow provided that any such longer period is authorised in writing by them before the date stated in the hazardous substances contravention notice as the date on which it is to take effect.

(4C) The appellant must send to the hazardous substances authority that issued the notice, as soon as reasonably practicable, a copy of the notice of appeal and the full statement of case.”]

(c) in subsection (5)—

- (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.

[<sup>F2</sup>(d) subsection (6) read as follows—

“(6) In this section—

“full statement of case” means and is comprised of—

- (a) a statement in writing specifying the grounds of the appeal, stating the facts on which the appeal is based and containing full particulars of the case the appellant proposes to put forward in relation to the appeal; and
- (b) copies of any supporting documents the appellant proposes to refer to or put forward in evidence;

“relevant occupier” means a person who—

- (a) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and
- (b) continues so to occupy the land when the appeal is brought.”.]

#### Textual Amendments

- F1** Sch. 4 para. 2(b) substituted (5.5.2017) by [The Planning \(Hazardous Substances\) \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/547\)](#), regs. 1(1), **7(2)(a)** (with reg. 8)
- F2** Sch. 4 para. 2(d) inserted (5.5.2017) by [The Planning \(Hazardous Substances\) \(Wales\) \(Amendment\) Regulations 2017 \(S.I. 2017/547\)](#), regs. 1(1), **7(2)(b)** (with reg. 8)

**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”.

**Changes to legislation:**

There are currently no known outstanding effects for the The Planning (Hazardous Substances) (Wales) Regulations 2015, PART 1.