



## 2011 CHAPTER 25

### **Part 4**

#### Additional planning control

#### CHAPTER 2

#### HAZARDOUS SUBSTANCES

#### **Offences**

**117.**—(1) Subject to the provisions of this Part, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.

(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)

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(i) any person knowingly causing the substance to be present on, over or under the land;

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*Changes to legislation: There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Section 117. (See end of Document for details)*

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- (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 £100,000;
  - (b) on conviction on indictment, to a fine,
- and in determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence.
- (5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that the accused 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 the accused did not know, and had no reason to believe,—
- (a) if the case falls within paragraph (a)(i) of that subsection—
    - (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) of that subsection, 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 the accused 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.

**Modifications etc. (not altering text)**

- C1** Pt. 4 (except chpts. 1, 2) applied with modification(s) (1.4.2015) by [The Planning General Regulations \(Northern Ireland\) 2015 \(S.R. 2015/39\)](#), regs. 1(1), 2 (with regs. 3-10)
- C2** [Ss. 105-155: transfer of functions \(8.5.2016\) by The Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2016 \(S.R. 2016/76\)](#), art. 1(2), **Sch. 5 Pt. 2** (with art. 9(2))

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**Changes to legislation:** There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Section 117. (See end of Document for details)

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**Commencement Information**

- I1** S. 117 in operation at 13.2.2015 for specified purposes by [S.R. 2015/49](#), art. 2, [Sch. 1](#)
- I2** S. 117 in operation at 1.4.2015 in so far as not already in operation by [S.R. 2015/49](#), art. 3, [Sch. 1](#) (with [Sch. 2](#)) (as amended (16.3.2016) by [S.R. 2016/159](#), art. 2)

**Changes to legislation:**

There are currently no known outstanding effects for the Planning Act (Northern Ireland) 2011, Section 117.