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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1597 (W. 196)**

**TOWN AND COUNTRY PLANNING, WALES**

**The Planning (Hazardous Substances) (Wales) Regulations 2015**

<i>Made</i>	- - - -	<i>3 August 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>7 August 2015</i>
<i>Coming into force</i>	- -	<i>4 September 2015</i>

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(1)</sup> (“the 1972 Act”) in relation to the prevention and limitation of the effects of accidents involving dangerous substances insofar as they relate to land-use planning, transport routes or fisheries<sup>(2)</sup>.

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 4, 5, 7, 8, 17, 21, 21B, 24, 25, 26A, 28, 30 and 40 of the Planning (Hazardous Substances) Act 1990<sup>(3)</sup>, section 2(2) and paragraph 1A of Schedule 2 to the 1972 Act and section 26 of the Welsh Language Act 1993<sup>(4)</sup>. These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Welsh Ministers that it is expedient for the references in these Regulations to Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures<sup>(5)</sup>, to be construed as references to that instrument as amended from time to time.

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- (1) 1972 c. 68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2015/814.
- (3) 1990 c. 10. The functions of the Secretary of State under those sections were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), the functions being relevant Assembly functions as defined in paragraph 30(2). See section 39(2) for the meaning of “prescribed”. Section 4 was amended by S.I. 1999/981 to which there are other amendments not relevant to these Regulations. Section 7(1) was amended by section 144 of and paragraph 3 of Part 1 of Schedule 13 to the Environmental Protection Act 1990 (c. 43) (“the EPA 1990”), section 21(3A) was inserted by section 197 of, and paragraph 6 of Schedule 11 to, the Planning Act 2008 (c. 29) (“the 2008 Act”), section 21B was inserted by regulation 2(3) of S.I. 2014/2773 (W. 280), section 25 has been amended by section 144 of, and paragraph 8 of Part 1 of Schedule 13 to, the EPA 1990, sections 25 and 84 of, and paragraphs 13 and 30 of Schedule 3 and Part 1 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and section 196(4) and paragraphs 25, 28(a) and 28(b) of Schedule 10 to, the 2008 Act, section 26A was inserted by section 144 of, and paragraph 9 of Part 1 of Schedule 13 to, the EPA 1990, section 28 has been amended by sections 144 and 162 of, and paragraph 2(4) of Part 1 of Schedule 13 and Part 7 of Schedule 16 to, the EPA 1990 and section 40(4) was inserted by section 118(1) of and paragraph 27 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5).
- (4) 1993 c. 38. The functions of the Secretary of State under this section were transferred to the National Assembly for Wales by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). Those functions were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.
- (5) O.J. L 345, 23.12.2008, p. 68.

## PART 1

### General

#### Title, commencement and application

1.—(1) The title of these Regulations is the Planning (Hazardous Substances) (Wales) Regulations 2015 and they come into force on 4 September 2015.

(2) These Regulations apply in relation to Wales.

#### Interpretation

2.—(1) In these Regulations—

“the 1992 Regulations” (“*Rheoliadau 1992*”) means the Planning (Hazardous Substances) Regulations 1992(6);

“COMAH competent authority” (“*awdurdod COMAH cymwys*”) means—

- (a) in relation to a nuclear site the Office of Nuclear Regulation and the Natural Resources Body for Wales acting jointly,
- (b) otherwise, the Health and Safety Executive and the Natural Resources Body for Wales acting jointly;

“commencement date” (“*dyddiad cychwyn*”) means 4 September 2015;

“the Directive” (“*y Gyfarwyddeb*”) means Directive 2012/18/EU of the European Parliament and the Council on the control of major-accident hazards involving dangerous substances(7);

“electronic communications” (“*cyfathrebiadau electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000;

“nuclear site” (“*safle niwclear*”) has the same meaning as in section 112(1) of the Energy Act 2013(8);

“the PHSA” (“*y DCSP*”) means the Planning (Hazardous Substances) Act 1990; and

“TCPA” (“*DCGTh*”) means the Town and Country Planning Act 1990(9).

(2) In these Regulations a reference to a numbered form is a reference to the correspondingly numbered form in Schedule 3.

(3) Parts 1 to 3 of Schedule 1 (hazardous substances and controlled quantities) are to be construed in accordance with the notes to that Schedule and a reference in that Schedule to a note is a reference to a note in Part 4 of that Schedule.

(4) References in these Regulations to Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 (“the CLP Regulation”) on classification, labelling and packaging of substances and mixtures are references to that regulation as amended from time to time.

(6) S.I. 1992/656; relevant amendments were made by section 76(7) of the Utilities Act 2000 (c. 27) and by S.I. 1999/981, S.I. 2006/1282, S.I. 2996/1283, S.I. 2009/1901, S.I. 2010/1050 and S.I. 2014/162.

(7) O.J. No. L 197, 24.7.2012, p. 1.

(8) 2013 c. 32.

(9) 1990 c. 8.

## PART 2

### Hazardous substances, controlled quantities and exemptions

#### **Hazardous substances and controlled quantities**

3. For the purposes of the PHSA—
  - (a) hazardous substances are substances, mixtures or preparations—
    - (i) falling within a category in column 1 of Part 1 of Schedule 1 to these Regulations (hazardous substances and controlled quantities),
    - (ii) specified in column 1 of Part 2 of that Schedule, or
    - (iii) meeting the description in column 1 of Part 3 of that Schedule,and present as raw materials, products, by-products, residues or intermediates; and
  - (b) the controlled quantity of a hazardous substance is the quantity specified in column 2 of Schedule 1 to these Regulations corresponding to that substance.

#### **Exemptions**

4. Schedule 2 to these Regulations has effect.

## PART 3

### Hazardous substances consent procedures

#### **Applications for hazardous substances consent**

5.—(1) Subject to paragraph (2) and regulation 25 (application of the PHSA to hazardous substances authorities), an application for hazardous substances consent must—

- (a) be made to the hazardous substances authority;
- (b) include the name and address of the applicant;
- (c) include a site map and a substance location plan;
- (d) include details of—
  - (i) the location of the land to which the application relates;
  - (ii) the person in control of the land to which the application relates;
  - (iii) each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each relevant substance proposed to be present;
  - (iv) the main activities carried out or proposed to be carried out on the land to which the application relates;
  - (v) how and where each relevant substance is to be kept and used;
  - (vi) how each relevant substance is proposed to be transported to and from the land to which the application relates,
  - (vii) the vicinity of the relevant land, where such details are relevant to the risks or consequences of a major accident; and
  - (viii) the measures taken or proposed to be taken to limit the consequences of a major accident; and
- (e) be accompanied by the notices and certificates required by regulations 6 and 7.

(2) Subject to regulation 25 (application of the PHSA to hazardous substances authorities), an application to which section 13 of the PHSA applies (application for hazardous substances consent without a condition subject to which a previous consent was granted) must—

- (a) be made to the hazardous substances authority;
- (b) include the name and address of the applicant;
- (c) include a change of location plan, if the application relates to a condition restricting the location of a hazardous substance;
- (d) include in relation to any relevant consent, a copy of—
  - (i) the consent, where the relevant consent is a consent granted on an application under the PHSA;
  - (ii) the relevant claim, where the relevant consent is a consent deemed to be granted under section 11 of the PHSA; or
  - (iii) the relevant direction, where the relevant consent is a consent deemed to be granted under section 12;
- (e) identify any condition previously imposed on the relevant consent which—
  - (i) it is proposed should no longer be imposed on the consent; or
  - (ii) it is proposed should only be imposed in a modified form;
- (f) for any condition identified under sub-paragraph (e)(i), give the reasons why it should not be imposed;
- (g) for any condition identified under sub-paragraph (e)(ii)—
  - (i) indicate the proposed modification; and
  - (ii) give the reasons why it should only be imposed in a modified form;
- (h) describe any relevant changes in circumstances since the date of the relevant consent; and
- (i) be accompanied by the notices and certificates required by regulations 6 and 7.

(3) An application under section 17 of the PHSA (application for the continuation of consent following a change of control) must—

- (a) be made to the hazardous substances authority;
- (b) include the name and address of the applicant;
- (c) include a change of control plan;
- (d) include, in relation to any relevant consent, whichever of the documents listed in paragraph (2)(d) is applicable to the relevant consent;
- (e) state the date on which the change in the person in control of part of the land is to take place, where known;
- (f) describe the use of each area of the site identified in the change of control plan;
- (g) describe any relevant changes in circumstances since the relevant consent was granted; and
- (h) be accompanied by the notices and certificates required by regulations 6 and 7.

(4) Any application to which this regulation applies and anything required to accompany it must, if requested by the hazardous substances authority, be submitted in triplicate.

(5) In this regulation—

“change of control plan” (“*plan newid rheolaeth*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies each area of the site under separate control after the proposed change of control;

“change of location plan” (“*plan newid lleoliad*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application;

“relevant consent” (“*cydsyniad perthnasol*”) means the existing hazardous substances consent to which the application relates;

“site map” (“*map safle*”) is a map, reproduced from, or based on, an Ordnance Survey map with a scale of not less than 1:10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers; and

“substance location plan” (“*plan lleoliad sylwedd*”) is a plan of the land to which the application relates, drawn to a scale of not less than 1:2,500, which identifies—

- (a) any area of the land intended to be used for the storage of the substance;
- (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; and
- (c) access points to and from the land.

(6) Regulations 6 to 13 apply to applications made under section 17 of the PHSA (revocation of hazardous substances consent on change of control of land) as they apply to applications for hazardous substances consent.

### **Publication of notices of applications**

6.—(1) Before making an application for hazardous substances consent to the hazardous substances authority, the applicant must, during the 21 day period immediately preceding the application—

- (a) inform the public by notice published in a local newspaper circulating in the locality in which the land to which the application relates is situated, or by other appropriate means, including electronic communications, of the following matters—
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the hazardous substances authority (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the hazardous substances authority;
  - (v) details of how such representations should be made and the time period for making representations, which must be not less than 21 days beginning with the day after the day on which an application under regulation 5 is sent to the hazardous substances authority;
  - (vi) an indication of the times and places where, or means by which, relevant information will be made available; and
- (b) subject to paragraphs (2) and (3), post a notice containing the information referred to in sub-paragraph (a) on the land to which the application relates for not less than 7 days sited and displayed in such a way as to be easily legible without entering onto the land.

(2) An applicant is not required to comply with paragraph (1)(b) if—

- (a) the applicant has no right of access or other rights in respect of the land which would enable the applicant to post the notice as required; and
  - (b) the applicant has taken all reasonable steps to acquire the rights but has failed.
- (3) The applicant is not to be treated as having failed to comply with paragraph (1)(b) if the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the 7 days referred to in that paragraph have elapsed, so long as the applicant has taken reasonable steps for protection of the notice and, if need be, its replacement.
- (4) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by—
- (a) a copy of the notice referred to in paragraph (1) certified by, or on behalf of, the applicant as having been published in accordance with paragraph (1)(a);
  - (b) where published in a local newspaper, details of the name of the newspaper and the date of its publication;
  - (c) where published by other means, details of those other means; and
  - (d) the appropriate certificate on Form 1, signed by or on behalf of the applicant.

#### **Notification of applications to owners**

- 7.—(1) An application for hazardous substances consent must not be entertained by the hazardous substances authority unless it is accompanied by whichever of certificates A to D set out in Form 2 is appropriate, signed by or on behalf of the applicant.
- (2) The required notice referred to in certificates B and C of Form 2 must, in the case of an application for hazardous substances consent, be a notice given on Form 3 and must attach a copy of the notice required to be published under regulation 6(1)(a).

#### **Inspection of applications**

8. Following receipt of an application under regulation 5, the hazardous substances authority must ensure that a copy of the application is available for inspection at the offices of the hazardous substances authority during the period allowed for making representations pursuant to regulation 6(1).

#### **Receipt of applications by hazardous substances authority**

- 9.—(1) When the hazardous substances authority receive a valid application for hazardous substances consent or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, they must, as soon as practicable—
- (a) acknowledge receipt of the application in writing; and
  - (b) send a copy of the application to the COMAH competent authority.
- (2) Where, in the opinion of the hazardous substances authority, an application received by the authority is not a valid application, the authority must, as soon as practicable, notify the applicant of their opinion, giving their reasons.
- (3) For the purposes of this regulation and regulations 10 and 11—
- (a) an application is valid if it complies with regulation 5 and is accompanied by any documents required by regulations 6 and 7; and
  - (b) a valid application for hazardous substances consent is to be taken to have been received when—
    - (i) it is lodged with the hazardous substances authority; and

(ii) any fee required to be paid in respect of the application has been paid to that authority.

### **Consultation before the grant of hazardous substances consent**

**10.**—(1) Except where the body or person concerned has notified the hazardous substances authority that they do not wish to be consulted, the authority must, before determining an application for hazardous substances consent, consult—

- (a) the COMAH competent authority;
- (b) the county or county borough council concerned, where that council is not also the hazardous substances authority;
- (c) the community or town council concerned;
- (d) the fire and rescue authority concerned, where that authority is not also the hazardous substances authority;
- (e) the person concerned to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licencing of gas transporters)(**10**);
- (f) the person concerned to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply etc.)(**11**);
- (g) where the land to which the application relates is within 2 kilometres of a royal palace, park or residence, the Secretary of State;
- (h) where the land to which the application relates is in an area designated as a new town, the development corporation for the new town;
- (i) where the land to which the application relates is situated within 2 kilometres of—
  - (i) an adjacent county, county borough, or district, the council for that county, county borough or district;
  - (ii) the area of an adjacent fire and rescue authority, that authority; or
  - (iii) an adjacent new town, the development corporation for the new town;
- (j) where it appears to the hazardous substances authority dealing with the application that land in the area of any other hazardous substances authority may be affected, that authority;
- (k) where the application relates to land in an area to which section 28(1) of the Wildlife and Countryside Act 1981(**12**) applies (sites of special scientific interest) or where it appears to the hazardous substances authority dealing with the application that an area of particular natural sensitivity or interest may be affected, in Wales, the Natural Resources Body for Wales or in England, Natural England;
- (l) where the application relates to land in an area of coal working notified to the hazardous substances authority by the Coal Authority, the Coal Authority; and
- (m) where the application relates to land which is used for disposal or storage of controlled waste, the waste disposal authority concerned, where that authority is not also the hazardous substances authority.

(2) The hazardous substances authority must also, before determining an application for hazardous substances consent, consult any other persons, including any non-governmental

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(10) 1986 c. 44. Section 7 was substituted by section 5 of the Gas Act 1995 (c. 45) and subsection (2) was amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Part 1 of Schedule 6 to, the Utilities Act 2000 and by S.I. 2011/2704.

(11) 1989 c. 29. Section 6 was substituted by section 30 of the Utilities Act 2000 (c. 27), subsection (1)(b) was substituted by section 136(1) of the Energy Act 2004 (c. 20) and subsection (1)(c) was amended by section 197(9) of, and Part 1 of Schedule 23 to, the Energy Act 2004.

(12) 1981 c. 69. Section 28 was substituted by paragraph 1 of Schedule 9 to the Countryside and Rights of Way Act 2000 (c. 37) and amended by section 105(1) of, and paragraph 79 of Part 1 of Schedule 11 to, the Natural Environment and Rural Communities Act 2006 (c. 16) and paragraph 2 of Part 2 of Schedule 13 to the Marine and Coastal Access Act 2009 (c. 23).

organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the application, and who in the authority's opinion are unlikely to become aware of the application through the notices under regulation 6.

(3) When it consults under paragraph (1) or (2) of this regulation, the hazardous substances authority must also, within 7 days of receiving an application—

- (a) notify in writing the body or person concerned that they have received an application for hazardous substances consent and inform them of the following matters—
  - (i) a description of the proposal and the address or location of the land to which the application relates;
  - (ii) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) that the hazardous substances authority (from which relevant information can be obtained) will decide whether or not to grant consent, and if to grant, will decide on what conditions to grant;
  - (iv) that representations (including comments or questions) may be made to the hazardous substances authority;
  - (v) details of how such representations should be made and the time period for making representations, which must be not less than 28 days beginning with the day after the day on which the person or body is notified that a valid application has been received by the hazardous substances authority;
  - (vi) an indication of the times and places where, or means by which, relevant information will be made available; and
- (b) ensure that a copy of the application is available for inspection at the offices of the hazardous substances authority during the period or periods allowed for making representations.

(4) Where a hazardous substances authority is required to consult a body under—

- (a) paragraph (1)(a), or
- (b) paragraph (1)(k), where it appears to the authority that an area of particular natural sensitivity or interest may be affected,

the exception in paragraph (1) does not apply.

(5) In this regulation—

- (a) “area of particular natural sensitivity or interest” (“*ardal o sensitifrwydd naturiol penodol neu o ddiddordeb penodol*”) has the same meaning as it has for the purposes of the Directive;
- (b) “controlled waste” (“*gwastraff a reolir*”) has the meaning given to that expression by section 75(4) of the Environmental Protection Act 1990<sup>(13)</sup> and “waste disposal authority” (“*awdurdod gwaredu gwastraff*”) is to be construed in accordance with section 30(2)<sup>(14)</sup> of that Act; and
- (c) “county” (“*sir*”), “county borough” (“*bwrdeistref sirol*”) and “district” (“*dosbarth*”) have the same meanings as in the Local Government Act 1972<sup>(15)</sup>.

<sup>(13)</sup> 1990 c. 43. Section 75(1) was amended by S.I. 2006/937. Section 75(2) was amended by S.I. 2011/988.

<sup>(14)</sup> Section 30(2) was amended by section 22(3) of, and paragraph 17(2) of Schedule 9 to, the Local Government (Wales) Act 1994. There are other amendments to this section which are not relevant to these Regulations.

<sup>(15)</sup> 1972 c. 70.



### **Determination of applications for hazardous substances consent**

**11.**—(1) A hazardous substances authority must not determine an application for hazardous substances consent before the expiry of the period or periods allowed for making representations pursuant to regulations 6(1) and 10(3).

(2) In determining an application for hazardous substances consent, the hazardous substances authority must take into account the results of the consultation undertaken in relation to that application.

(3) Subject to paragraph (1), a hazardous substances authority must, within the period specified in paragraph (4), give the applicant written notice of their decision or notice that the application has been referred to the Welsh Ministers for determination.

(4) The period specified for the purposes of paragraph (3) is—

- (a) a period of 8 weeks from the date when the application is received by the hazardous substances authority; or
- (b) except where the applicant has already given notice of appeal to the Welsh Ministers, such extended period as may be agreed in writing by the applicant and the hazardous substances authority.

(5) When a hazardous substances authority give notice of a decision on an application the notice must, where hazardous substances consent is refused or is granted subject to conditions—

- (a) state, clearly and precisely, their full reasons for the refusal or for any condition imposed; and
- (b) include a statement to the effect that if the applicant is aggrieved by the decision the applicant may appeal to the Welsh Ministers under section 21 of the PHSA within 6 months of the date of the notice of the decision, or such longer period as the Welsh Ministers may at any time allow.

(6) The hazardous substances authority must, as soon as is practicable, inform the following persons of the terms of their decision—

- (a) the Health and Safety Executive;
- (b) where the land to which the decision relates is, or is on, a nuclear site, the Office for Nuclear Regulation;
- (c) the county or county borough council concerned, where that council is not also the hazardous substances authority concerned;
- (d) any other consultees who have made representations to them on the application; and
- (e) any owners who have made representations to them on the application.

(7) The hazardous substances authority must make available for inspection at the offices of the hazardous substances authority—

- (a) the contents of the decision and the reasons on which it is based, including any subsequent notices received from the COMAH competent authority pursuant to paragraph 17 of Schedule 2; and
- (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.

### **Notice of reference of applications to the Welsh Ministers**

**12.** On referring any application to the Welsh Ministers pursuant to a direction under section 20 of the PHSA, a hazardous substance authority must serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Welsh Ministers;

- (b) setting out the reasons given by the Welsh Ministers for issuing the direction; and
- (c) containing a statement that the Welsh Ministers will, if the applicant so desires, give the applicant an opportunity of appearing before and being heard by a person appointed by the Welsh Ministers for that purpose.

## Appeals

**13.**—(1) Any appeal to the Welsh Ministers under section 21(1) of the PHSA (appeals against decisions relating to hazardous substances) must be made within 6 months of the date of the notice of the decision giving rise to the appeal, or within such longer period as the Welsh Ministers may, at any time, allow.

(2) Any appeal under section 21 of the PHSA (appeals against decisions or failure to take decisions relating to hazardous substances) must—

- (a) be made to the Welsh Ministers on a form obtained from the Welsh Ministers;
- (b) include the information specified in the form; and
- (c) be accompanied by the documents specified in paragraph (3) and the certificate required by paragraph (4).

(3) The documents mentioned in paragraph (2)(c) are—

- (a) the application made to the hazardous substances authority which has occasioned the appeal;
- (b) any notices and certificates required by regulations 6 and 7 which accompanied the application;
- (c) any correspondence with the authority relating to the application; and
- (d) the notice of decision, if any.

(4) An appeal under section 21 of the PHSA must not be entertained by the Welsh Ministers unless it is accompanied by whichever of certificates A to D is appropriate in Form 2, signed by or on behalf of the appellant.

(5) The required notice referred to in certificates B and C must, in the case of an appeal under section 21 of the PHSA, be a notice given on Form 4.

(6) The appellant must send a copy of the completed notice of appeal form and accompanying certificate to the hazardous substances authority at the same time as the appeal is made to the Welsh Ministers.

## Period for determination of procedure under sections 20 and 21 of the PHSA

**14.**—(1) For the purposes of section 21B(3) of the PHSA (determination by the Welsh Ministers of procedure for applications under section 20 of the PHSA and appeals under section 21) the prescribed period is seven working days from the relevant date.

(2) In this regulation—

“working day” (“*diwrnod gwaith*”) means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday in Wales; and

“the relevant date” (“*y dyddiad perthnasol*”) means—

- (a) in relation to referrals under section 20(16) of the PHSA (reference of applications to Welsh Ministers), the day on which the Welsh Ministers receive notice of the referral from the hazardous substances authority; and

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(16) There are amendments to section 20 which are not relevant to this provision.

- (b) in relation to an appeal under section 21 of the PHSA (appeals against decisions or failure to take decisions relating to hazardous substances), the day on which the Welsh Ministers receive notice of the appeal accompanied by information as may be prescribed.

## PART 4

### Enforcement (hazardous substances contravention notices – appeals, effect and register)

#### **Hazardous substances contravention notices: supplementary provisions**

**15.**—(1) In addition to the matters required by section 24 of the PHSA to be included in a hazardous substances contravention notice, a notice must also identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) In addition to serving a hazardous substances contravention notice on the persons mentioned in section 24(4)(a) and (b) of the PHSA, a hazardous substances authority must serve a copy of the notice on all other persons having an interest in the land to which the notice relates.

(3) Every copy of a hazardous substances contravention notice served pursuant to section 24(4) of the PHSA must be accompanied by a statement setting out—

- (a) the hazardous substances authority's reasons for issuing the notice; and
- (b) the right of appeal to the Welsh Ministers against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought.

#### **Appeals against hazardous substances contravention notices**

**16.** Section 174(1), (2) and (3) to (6) and sections 175(3) and (6), 176 and 177 of the TCPA apply in relation to hazardous substances contravention notices, subject to the modifications set out in Part 1 of Schedule 4.

#### **Appeals: supplementary**

**17.**—(1) A person who appeals under section 174(1) of the TCPA against a hazardous substances contravention notice must, at the same time as notice of the appeal is given or sent to the Welsh Ministers under section 174(3) of the TCPA, serve on the hazardous substances authority that issued the notice a copy of the notice of appeal and the accompanying material required by section 174(4) of that Act.

(2) The hazardous substances authority must, within 28 days of being served with the notice of appeal, serve on the Welsh Ministers and on the appellant a statement—

- (a) setting out the authority's submissions in relation to each ground of appeal; and
- (b) indicating whether the authority would be prepared to grant hazardous substances consent for the presence on, over or under the land of any quantity of the hazardous substance to which the hazardous substances contravention notice relates and, if so, particulars of the conditions, if any, which they would wish to impose on the consent.

(3) The hazardous substances authority must, within that 28 day period, give notice of the appeal to occupiers of properties in the locality of the site to which the hazardous substances contravention notice relates.

**Effect of non-compliance with hazardous substances contravention notices, etc.**

18. Sections 178 to 181 of the TCPA have effect in relation to hazardous substances contravention notices, subject to the modifications set out in Part 2 of Schedule 4.

**Register of hazardous substances contravention notices**

19.—(1) A hazardous substances authority must keep a register containing the following information in respect of each hazardous substances contravention notice issued by them—

- (a) the address of the land to which the notice relates;
- (b) the date of service of copies of the notice;
- (c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- (d) the date specified in the notice as the date on which it is to take effect;
- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Welsh Ministers against the notice and the date of the final determination of the appeal.

(2) The entry relating to the hazardous substances contravention notice and everything relating to the notice must be removed from the register if the notice is quashed by the Welsh Ministers or withdrawn.

(3) The register must include an index of entries in the register.

(4) Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority.

(5) The register must be kept at the principal office of the hazardous substances authority.

(6) Every register kept under this regulation must be available for inspection by the public at all reasonable hours.

**Validity, etc.**

20.—(1) Sections 285 and 289(1), (3) to (4A) and (5) to (7) of the TCPA apply in relation to hazardous substances contravention notices, subject to the modifications set out in Part 3 of Schedule 4.

(2) Section 25(2) of the PHSA is subject to any order under section 289(4A) of the TCPA, as applied by paragraph (1).

**Interpretation of TCPA for the purposes of this Part**

21.—(1) This regulation applies for the purposes of the interpretation of the TCPA in its application, by virtue of this Part, to hazardous substances contravention notices.

(2) Where a section of the TCPA refers to another section of the TCPA modified by these Regulations, the reference is to be read as a reference to the section as modified.

## PART 5

### Other matters relating to hazardous substances consent (consents register, fees, application of the PHSA to hazardous substances authorities and notification of other establishments)

#### Consents register

- 22.—(1) The register required by section 28(1) of the PHSA must be kept in 6 parts—
- (a) Part 1 must contain details of every application for hazardous substances consent made to the hazardous substances authority and not finally determined;
  - (b) Part 2 must contain, in respect of every application for hazardous substances consent made to the hazardous substances authority—
    - (i) details of the application;
    - (ii) particulars of any direction given under section 20 of the PHSA;
    - (iii) details of the decision (if any) of the authority, including details of any conditions subject to which consent was granted and the date of the decision; and
    - (iv) the reference number, date and effect of any decision of the Welsh Ministers, whether on a reference under section 20 of the PHSA or on an appeal under section 21 of the PHSA;
  - (c) Part 3 must contain details of every order revoking or modifying hazardous substances consent made by the hazardous substance authority and the date and effect of any confirmation by the Welsh Ministers in accordance with section 15 of the PHSA;
  - (d) Part 4 must contain, in respect of every hazardous substances consent deemed to be granted under section 11(3) of the PHSA, details of the claim;
  - (e) Part 5 must contain details of every hazardous substances consent deemed to be granted by virtue of a direction given by the Welsh Ministers or a department of the government of the United Kingdom under section 12 of the PHSA; and
  - (f) Part 6 must contain details of any direction under section 27 of the PHSA sent to the authority by the Welsh Ministers.
- (2) Where the Welsh Ministers grant hazardous substances consent under section 177 of the TCPA on the determination of an appeal against a hazardous substances contravention notice, the hazardous substances authority for the land covered by the consent must enter the date and effect of that decision in Part 2 of the register.
- (3) The register must include an index of entries in the register.
- (4) Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority.
- (5) The register must be kept at the principal office of the hazardous substances authority.
- (6) For the purposes of paragraph (1)(a), an application is not to be treated as finally determined unless—
- (a) it has been decided by the hazardous substances authority and the period specified in regulation 13(1) has expired without any appeal having been made to the Welsh Ministers;
  - (b) it has been referred to the Welsh Ministers under section 20 of the PHSA or an appeal has been made to the Welsh Ministers under section 21 of the PHSA, the Welsh Ministers' decision has been issued and the period of 6 weeks specified in section 22(1) of the PHSA has expired without any application having been made to the High Court under that section;

- (c) an application has been made to the High Court under section 22 of the PHSA and the matter has been determined, either by final dismissal of the application by a Court or by the quashing of the Welsh Ministers' decision and the issue of a fresh decision (without a further application under section 22 of the PHSA being duly made); or
  - (d) it has been withdrawn by the applicant before being determined; or
  - (e) an appeal under section 21 or an application under section 22 has been withdrawn by the applicant before the Welsh Ministers' decision has been issued.
- (7) Where this regulation requires details of an application, direction, consent, claim form or notice to be provided in the register, the following must be provided—
- (a) details of the person in control of the land to which the application, direction, consent, claim form or notice relates, where applicable; and
  - (b) the category in Column 1 of Part 1 of Schedule 1 to these Regulations in which any substance that is the subject of the application, direction, consent, claim form or notice falls.

### **Fees for applications**

**23.**—(1) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for hazardous substances consent as follows—

- (a) if section 13(1) of the PHSA applies (new consent without previous conditions), £200;
- (b) if section 13(1) of the PHSA does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400; and
- (c) in all other cases, £250.

(2) Subject to paragraph (3), a fee must be paid to a hazardous substances authority on an application for the continuation of hazardous substances consent under section 17(1) of the PHSA of £200.

(3) Where applications relating to the same site are made to two or more hazardous substances authorities, a fee is to be paid only to the authority in whose area the largest part of the site is situated and the amount payable is the amount that would have been payable if the application had fallen to be made to one authority in relation to the whole site.

(4) Any fee due in respect of an application must accompany the application when it is made to the hazardous substances authority.

(5) Any fee paid pursuant to this regulation must be refunded if the application is rejected as invalidly made.

### **Fees for deemed applications**

**24.**—(1) Subject to paragraph (5), a fee must be paid to the Welsh Ministers in every case where an application for hazardous substances consent is deemed to have been made by virtue of section 177(5) of the TCPA (in consequence of an appeal under section 174 of that Act against a hazardous substances contravention notice).

(2) The fee mentioned in paragraph (1) is payable by every person who has made a valid appeal against the relevant hazardous substances contravention notice and whose appeal has not been withdrawn before the date on which the Welsh Ministers issue a notice under paragraph (4).

(3) Subject to paragraph (7), the fee payable is the amount which would be payable under regulation 23 if the application were an application to which that regulation applied.

(4) The fee due must be paid at such time as the Welsh Ministers may in the particular case specify by notice in writing to the appellant.

(5) This regulation does not apply where the appellant had—

- (a) before the date when the hazardous substances contravention notice was issued, applied to the hazardous substances authority for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid to the authority the fee payable in respect of that application, or
- (b) before the date specified in the notice as the date on which it is to take effect, made an appeal to the Welsh Ministers against the refusal of the hazardous substances authority to grant consent,

and at the date when the relevant notice was issued that application or, in the case of an appeal made before that date, that appeal, had not been determined.

(6) Any fee paid in respect of the deemed application must be refunded to the appellant by the Welsh Ministers if—

- (a) the Welsh Ministers decline jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the requirements of subsections (1) to (3) of section 174 of the TCPA;
- (b) the Welsh Ministers dismiss the relevant appeal in exercise of the powers under section 176(3)(a) of the TCPA (on the grounds that the appellant has failed to comply with section 174(4) of that Act);
- (c) the Welsh Ministers allow the relevant appeal and quash the relevant hazardous substances contravention notice in exercise of the powers under section 176(3)(b) of the TCPA (on the grounds that the hazardous substances authority have failed to comply with regulation 17(2) of these Regulations);
- (d) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which notice in writing of the withdrawal is received by the Welsh Ministers and—
  - (i) the date (or in the event of postponement, the latest date) appointed for the holding of an inquiry or hearing into that appeal; or
  - (ii) in the case of an appeal which is being dealt with by written representations, the date (or in the event of postponement, the latest date) appointed for the inspection of the site to which the notice relates;
- (e) the hazardous substances authority withdraws the relevant hazardous substances contravention notice before it takes effect, or the Welsh Ministers decide that the notice is a nullity;
- (f) the Welsh Ministers allow the relevant appeal on any of the grounds set out in section 174(2)(b) to (e) of the TCPA; or
- (g) the Welsh Ministers allow the relevant appeal on the ground that the notice is invalid, or that it contains a defect, error or misdescription which cannot be corrected under section 176(1)(a) of the TCPA.

(7) Where a hazardous substances contravention notice is varied under section 176(1) of the TCPA otherwise than to take account of a grant of hazardous substances consent under section 177(1) of the TCPA, and the fee calculated in accordance with paragraph (3) would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable is that lesser amount and any excess amount already paid must be refunded.

(8) In determining a fee under paragraph (7) no account is to be taken of any change in fees which takes effect after the making of the deemed application.

**Application of the PHSA to hazardous substances authorities**

**25.**—(1) Any application by a hazardous substances authority for hazardous substances consent must be made to the Welsh Ministers.

(2) Regulations 5 to 8, 10 and 11(2) apply to the making of such an application as they apply to applications made to a hazardous substances authority.

(3) For the purpose of regulation 22, an application made to the Welsh Ministers by a hazardous substances authority is to be treated as an application made to the hazardous substances authority and referred to the Welsh Ministers under section 20 of the PHSA.

(4) Section 9 (other than subsection (2)(e)) of the PHSA applies in relation to an application made to the Welsh Ministers by a hazardous substances authority as it applies in relation to an application made to a hazardous substances authority.

(5) For the purpose of section 22 of the PHSA, a decision of the Welsh Ministers on an application made to them by a hazardous substances authority is to be treated as a decision under section 20 of the PHSA.

**PART 6****Policies and public consultation and participation****Policies**

**26.**—(1) In preparing, reviewing or modifying any relevant policy, the Welsh Ministers must ensure that the following matters are taken into account—

- (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and
- (b) the matters referred to in Article 13(2) of the Directive.

(2) In this regulation “relevant policy” (*“polisi perthnasol”*) means the Wales Spatial Plan; and any current national land-use planning, transport routes or fishery harbour policy where in the opinion of the Welsh Ministers that policy concerns matters affecting the risks or consequences of a major accident.

(3) Expressions appearing both in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

**Plans and programmes**

**27.**—(1) Subject to paragraph (3), this regulation applies where a responsible authority proposes to prepare, review or modify a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

- (a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and
- (b) in doing so, take such measures as it considers appropriate to ensure that—

- (i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;
- (ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;



- (iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan and programme are made; and
  - (iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;
  - (c) take into account the results of the public participation in making those decisions; and
  - (d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.
- (3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under Part 3 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004<sup>(17)</sup>.
- (4) In this regulation—
- “public consultees” (*“ymgyngoreion cyhoeddus”*) means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;
- “relevant plan or programme” (*“cynllun neu raglen berthnasol”*) means a general plan or programme relating to—
- (a) planning for new establishments pursuant to Article 13 of the Directive, or
  - (b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13 of the Directive; and
- “responsible authority” (*“awdurdod cyfrifol”*) means—
- (a) the authority by which or on whose behalf a relevant plan or programme is prepared; and
  - (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.
- (5) This regulation does not apply to a Minister of the Crown (as defined in section 8(1) of the Ministers of the Crown Act 1975<sup>(18)</sup>) or a department of the Government of the United Kingdom.
- (6) This regulation applies to a relevant plan or programme relating to the whole or any part of Wales, but this is subject to paragraph (5).
- (7) Any steps taken before 4 September 2015 in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

### **Other planning approvals for projects**

**28.**—(1) Subject to paragraph (4), this regulation applies where a consent, permission or other authorisation for a relevant project is sought from a competent authority.

(2) A competent authority must, before deciding to give any land-use planning, transport route or fishery harbour consent, permission or other authorisation for a relevant project, take such measures as it considers appropriate to ensure that—

- (a) the public is informed by public notices or other appropriate means, including electronic communications where available, of the following matters early in the procedure for

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<sup>(17)</sup> S.I. 2004/1656 (W. 170), amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

<sup>(18)</sup> 1975 c. 26.

the taking of a decision or, at the latest, as soon as the information can reasonably be provided—

- (i) the subject of the relevant project;
  - (ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
  - (iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;
  - (iv) an indication of the times and places where, or means by which, the relevant information will be made available;
  - (v) details of the period for transmitting comments or questions; and
  - (vi) the nature of possible decisions or, where there is one, the draft decision;
- (b) the COMAH competent authority is consulted about the project;
- (c) the main reports and advice issued to the competent authority at the time when the public concerned was informed pursuant to paragraph (2)(a) are made available to the public concerned at that time;
- (d) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and
- (e) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.
- (3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the competent authority must make available to the public—
- (a) the content of the decision and the reasons on which it is based, including any subsequent updates;
  - (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.
- (4) To the extent that the competent authority is already required by any enactment to take any of the actions set out in paragraphs (2) or (3) of this regulation, those paragraphs do not apply.
- (5) In this regulation—
- “competent authority” (“*awdurdod cymwys*”) means the Welsh Ministers, local authority or other authority with responsibility for deciding whether to give a consent, permission or other authorisation referred to in paragraph (1);
- “the public concerned” (“*y cyhoedd dan sylw*”) means persons, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and
- “relevant project” (“*prosiect perthnasol*”) means—
- (a) development falling within paragraphs (c), (ca) or (x) of Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(19)</sup>;
  - (b) works beyond the mean low water mark which are proposed in relation to a fishery harbour in Wales either—

<sup>(19)</sup> S.I. 2012/801 (W. 110), amended by S.I. 2014/469 and S.I. 2013/755 (W. 90). There are other amendments which are not relevant to this instrument.

- (i) in an area which has been notified by the COMAH competent authority to the competent authority for the purposes of this paragraph and which are likely to result in a material increase in the number of persons living in, working in or visiting the notified area; or
  - (ii) where the siting or works may otherwise increase the risk or consequences of a major accident; or
  - (c) a new establishment.
- (6) In this regulation, a reference to giving consent, permission or other authorisation means—
- (a) granting planning permission on an application under Part 3 of the TCPA(20) (control over development);
  - (b) granting planning permission on an application under section 293A of that Act(21) (urgent Crown development)(22);
  - (c) granting planning permission, or upholding a decision of the local planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the local planning authority), on determining an appeal under section 78 of that Act (right to appeal against planning decisions)(23) in respect of such an application;
  - (d) granting planning permission under—
    - (i) section 141(2)(a) of that Act (action in relation to purchase notice); or
    - (ii) section 177(1)(a) of that Act (grant or modification of planning permission on appeals against enforcement notices);
  - (e) directing under subsection (1) or (2A) of section 90 of that Act (development with government authorisation) that planning permission is deemed to be granted;
  - (f) making—
    - (i) a local development order under section 61A of the TCPA(24);
    - (ii) a simplified planning zone under section 82 of that Act;
    - (iii) an order designating an enterprise zone under Schedule 32 to the Local Government, Planning and Land Act 1980(25);
    - (iv) an order under section 102 of the TCPA (orders requiring discontinuance of use or alteration or removal of buildings or works)(26), including an order made under that section by virtue of section 104 of that Act (powers in relation to section 102 orders)

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(20) 1990 c. 8. The functions of the Ministers of the Crown under the TCPA except (a) section 90(2), (b) the functions of the Ministers of the Crown other than the Secretary of State for Wales under sections 90(1), 101 and Schedule 8, 170(12), 238(1)(a), 239(1)(a), 263(3) and (4), 266, 268, 279(5) and (6), 305, 325(9) and 336(3); (c) the functions of the Secretary of State for Trade and Industry under section 272(5) and (6); and (d) the Treasury functions under sections 293(3) and 336(2) were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as amended by the National Assembly for Wales (Transfer of Functions) Order (S.I. 2000/253). There are other limitations on that transfer which are not relevant to these Regulations. Those functions were subsequently transferred to the Welsh Ministers by section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(21) Section 293A was inserted by section 82(1) of the [Planning and Compulsory Purchase Act 2004](#) (“the 2004 Act”) (c. 5). Section 118(3) of the 2004 Act provides that a reference in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 to an enactment amended by this Act must be taken to be a reference to the enactment as so amended.

(22) Section 293A was inserted by section 82(1) of the 2004 Act.

(23) Section 78 was amended by section 17(2) of [Planning and Compensation Act 1991](#) (c. 34), sections 40(2)(e) and 43(2) of the 2004 Act and paragraphs 1 and 3 of Schedule 10 and paragraphs 1 and 2 of Schedule 11 to the [Planning Act 2008](#) (c. 9).

(24) Section 61A was inserted by section 40(1) of the 2004 Act and has been amended by sections 188 and 238 of, and Schedule 13 to the [Planning Act 2008](#).

(25) 1980 c. 65.

(26) Section 102 was amended by paragraph 6 of Schedule 1 and paragraph 21 of Schedule 7 to the [Planning and Compensation Act 1991](#) (c. 34).

- which grants planning permission, or confirming any such order under section 103 of that Act (confirmation of section 102 orders);
- (v) an order under paragraph 1 of Schedule 9 to that Act (order requiring discontinuance of mineral working)**(27)**, including an order made under that paragraph by virtue of paragraph 11 of that Schedule to that Act (powers in relation to orders under Schedule 9) which grants planning permission;
  - (vi) an order under section 14(1) (Ministers' powers, on application of harbour authorities, or others, to make orders for securing harbour efficiency, etc.) or section 16(1) or (2) (Ministers' powers, on application of intending undertakers, or others, to make orders conferring powers for improvement, construction, etc., of harbours) of the Harbours Act 1964**(28)**;
  - (g) authorising works in a fishery harbour pursuant to powers contained in an order under section 14(1) or 16(1) or (2) of the Harbours Act 1964;
  - (h) directing under the following provisions that if an application is made for planning permission it must be granted under—
    - (i) section 141(3) of that Act (action in relation to purchase notice); or
    - (ii) section 35(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (action in relation to listed building purchase notice)**(29)**;
  - (i) making an order under any of the following provisions of the Highways Act 1980**(30)** in relation to works carried out by the Welsh Ministers—
    - (i) section 10 (general provision as to trunk roads);
    - (ii) section 14 (powers as respects roads that cross or join trunk or classified roads);
    - (iii) section 18 (supplementary orders relating to special roads);
  - (j) making a scheme under section 16 of the Highways Act 1980 in relation to works carried out by the Welsh Ministers;
  - (k) directing under section 12 of the PHSA that hazardous substances consent is deemed to be granted;
  - (l) granting hazardous substances consent under section 20 of the PHSA; and
  - (m) granting hazardous substances consent under section 177(1)(a) of the TCPA (as applied to hazardous substances contravention notices and modified by regulation 16 and Schedule 4).

(7) This regulation applies to a decision to carry out works under section 24(1) of the Highways Act 1980 (construction of new highways), which does not relate to the exercise of any of the provisions of paragraph (6)(i) or (j) as if it were “a consent, permission or other authorisation” referred to in paragraph (1).

(8) In relation to any consent, permission or authorisation falling within paragraph (6) or (7) which is capable of being varied or modified, the modification or variation must be treated by the competent authority as if it is a consent, permission or other authorisation for a relevant project for the purposes of this regulation where that modification or variation authorises development falling within paragraph (x) of the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

**(27)** Paragraph 1 of Schedule 9 was amended by paragraph 15 of Schedule 1 to the Planning and Compensation Act 1991 (c. 34).

**(28)** 1964 c. 40. The functions of the Minister in relation to fishery harbours under sections 14 and 16 of the PHSA were transferred to the Welsh Ministers by article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253).

**(29)** 1990 c. 9.

**(30)** 1980 c. 66. Section 10(2)(a)(i) was amended by section 22(2)(a) of the New Roads and Street Works Act 1991. There are other amendments to the Act which are not relevant to this instrument.

(9) In this regulation, “new establishment” (“*sefydliad newydd*”) has the same meaning as in Article 3 of the Directive.

## PART 7

### Revocations, amendments, savings and transitional provisions and application to the Crown

#### Interpretation of this Part

**29.** In this Part, “commencement date” (“*dyddiad cychwyn*”) means 4 September 2015.

#### Revocations

**30.—**(1) The following Regulations are revoked to the extent specified, subject to the savings and transitional provisions set out in this Part—

<i>(1) Regulations revoked</i>	<i>(2) References</i>	<i>(3) Extent of revocation</i>
The Planning (Hazardous Substances) Regulations 1992	<a href="#">S.I. 1992/656</a>	The whole Regulations
The Planning (Control of Major-Accident Hazards) Regulations 1999	<a href="#">S.I. 1999/981</a>	The whole Regulations
The Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006	<a href="#">S.I. 2006/1282</a>	Article 10
The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2010	<a href="#">S.I. 2010/450 (W.48)</a>	The whole Regulations
The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2014	<a href="#">S.I. 2014/375 (W.43)</a>	The whole Regulations
The Planning (Hazardous Substances) (Determination	<a href="#">S.I. 2014/2777 (W.283)</a>	The whole Regulations

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<i>(1) Regulations revoked</i>	<i>(2) References</i>	<i>(3) Extent of revocation</i>
of Procedure) (Prescribed Period) (Wales) Regulations 2014		

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### **Transitional applications and appeals**

**31.**—(1) If an application or appeal relating to a hazardous substances consent made in accordance with the 1992 Regulations has not been determined by the commencement date, the application or appeal is taken to be made under these Regulations.

(2) Anything done under the 1992 Regulations in relation to that application or appeal before the commencement date is taken to be done under these Regulations.

### **Interpretation of existing consents**

**32.**—(1) In this regulation, “relevant consent” (“*cydsyniad perthnasol*”) means a hazardous substances consent granted under the 1992 Regulations or a deemed consent claimed before the commencement date under which the following are expressly authorised—

- (a) the presence of a category of substance listed in column 1 of Part B of Schedule 1 to the 1992 Regulations; or
- (b) the presence of a substance named in column 1 of Part A of Schedule 1 to the 1992 Regulations.

(2) This regulation applies to a relevant consent where the category or substance referred to in paragraph (1) above—

- (a) is not contained in Schedule 1 to these Regulations; or
- (b) is differently named or defined under Schedule 1 to these Regulations.

(3) Where this regulation applies references in a relevant consent to a category or substance referred to in paragraph (1) are to be interpreted as if these Regulations had not come into force.

### **Saving for deemed consent conditions**

**33.**—(1) This regulation applies to any consent that was deemed to be granted under section 11 or 30B of the PHSA before the commencement date.

(2) In relation to any consent to which this regulation applies—

- (a) the conditions set out in Schedule 3 of the 1992 Regulations continue to apply (unless any condition was removed following an application under section 13 of the PHSA); and
- (b) those conditions continue to be interpreted in accordance with regulation 15 of the 1992 Regulations.

### **Notification of other establishments**

**34.**—(1) This regulation applies where—

- (a) hazardous substance consent would be required but for the exemption in paragraph 12 of Schedule 2 to these Regulations<sup>(31)</sup>; and

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(31) Presence of established substances.

- (b) a hazardous substance authority receives from the person in control of the land to which the notice relates a notice in writing which contains—
  - (i) details of the location of the land to which the notice relates and the person in control of the land;
  - (ii) details of the hazardous substances held at the site, including the quantities; and
  - (iii) an explanation of why paragraph 12 of Schedule 2 to these Regulations applies.
- (2) The hazardous substances authority must, as soon as practicable after receiving the notice, send the COMAH competent authority a copy of the notice.
- (3) The COMAH competent authority must, within 8 weeks of receiving notification from the hazardous substances authority under paragraph (2), determine whether the notice concerns an establishment within the meaning of the Directive and, if so, notify the local planning authority for the area in which the establishment is located.

#### **Amendments**

**35.** Schedule 5 to these Regulations has effect.

#### **Application to the Crown**

**36.** These Regulations apply to the Crown as if, in Schedule 2 to these Regulations, after paragraph 1 there were inserted—

##### **“Military land**

(1A) Hazardous substances consent is not required for the presence of a hazardous substance in, on, over or under land at military establishments, installations or storage facilities.”

3 August 2015

*Carl Sargeant*  
Minister for Natural Resources, one of the Welsh  
Ministers

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

# SCHEDULES

## SCHEDULE 1

Regulation 3

### HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

#### PART 1

##### Categories of substances

This Part covers all hazardous substances falling under the hazard categories listed in Column 1:

<i>Column 1</i>	<i>Column 2</i>
<b>Hazard categories in accordance with the CLP Regulation</b>	<b>Controlled quantity in tonnes</b>
<b>Section 'H' – HEALTH HAZARDS</b>	
H1 ACUTE TOXIC Category 1, all exposure routes	5
H2 ACUTE TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 7)	50
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE Category 1	50
<b>Section 'P' – PHYSICAL HAZARDS</b>	
P1a EXPLOSIVES (see note 8) — Unstable explosives or — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation <a href="#">(EC) No 440/2008</a> (see note 9) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures	10
P1b EXPLOSIVES (see note 8) Explosives, Division 1.4 (see note 10)	50



<i>Column 1</i>	<i>Column 2</i>
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10
P3a FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)
P3b FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids category 1 (see note 11.2)	5,000 (net)
P4 OXIDISING GASES  Oxidising gases, Category 1	50
P5a FLAMMABLE LIQUIDS  — Flammable liquids, Category 1, or  — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or  — Other liquids with a flash point $\leq 60$ °C, maintained at a temperature above their boiling point (see note 12)	10
P5b FLAMMABLE LIQUIDS  — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or  — Other liquids with a flash point $\leq 60$ °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 12)	50
P5c FLAMMABLE LIQUIDS  Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000
P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES  Self-reactive substances and mixtures, Type A or B or organic peroxides, Type A or B	10
P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES  Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F	50
P7 PYROPHORIC LIQUIDS AND SOLIDS	50

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

<i>Column 1</i>	<i>Column 2</i>
Pyrophoric liquids, Category 1	
Pyrophoric solids, Category 1	
P8 OXIDISING LIQUIDS AND SOLIDS	50
Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	
<b>Section 'E' – ENVIRONMENTAL HAZARDS</b>	
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200
<b>Section 'O' – OTHER HAZARDS</b>	
O1 Substances or mixtures with hazard statement EUH014	100
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100
O3 Substances or mixtures with hazard statement EUH029	50

## PART 2

### Named hazardous substances

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
<b>Hazardous substances</b>		<b>Controlled quantity (tonnes)</b>
1. Ammonium nitrate (see note 13)		5,000
2. Ammonium nitrate (see note 14)		1,250
3. Ammonium nitrate (see note 15)		350
4. Ammonium nitrate (see note 16)		10
5. Potassium nitrate (see note 17)		5,000
6. Potassium nitrate (see note 18)		1,250
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	0.1
9. Bromine	7726-95-6	20
10. Chlorine	7782-50-5	10
11. Nickel compounds in inhalable powder form: nickel monoxide, nickel		1

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide		
12. Ethyleneimine	151-56-4	10
13. Fluorine	7782-41-4	10
14. Formaldehyde (concentration $\geq$ 90%)	50-00-0	5
15. Hydrogen	1333-74-0	2
16. Hydrogen chloride (liquefied gas)	7647-01-0	25
17. Lead alkyls		5
18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (including Liquefied Natural Gas) (see note 19)		Natural Gas (including Liquefied Natural Gas) (LNG): 15  Liquefied Petroleum Gas (LPG): 25  Any other liquefied flammable gases : 50
19. Acetylene	74-86-2	5
20. Ethylene oxide	75-21-8	5
21. Propylene oxide	75-56-9	5
22. Methanol	67-56-1	500
23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	101-14-4	0.01
24. Methylisocyanate	624-83-9	0.15
25. Oxygen	7782-44-7	200
26. 2,4 -Toluene diisocyanate	584-84-9	10
2,6 -Toluene diisocyanate	91-08-7	
27. Carbonyl dichloride (phosgene)	75-44-5	0.3
28. Arsine (arsenic trihydride)	7784-42-1	0.2
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2
30. Sulphur dichloride	10545-99-0	1
31. Sulphur trioxide	7446-11-9	15
32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 20)		0.001

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

Column 1	CAS number (1)	Column 2
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoil chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone		0.5
34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)		2,500
35. Anhydrous Ammonia	7664-41-7	50
36. Boron trifluoride	7637-07-2	5
37. Hydrogen sulphide	7783-06-4	5
38. Piperidine	110-89-4	50
39. Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50
40. 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50
41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing less than 5 % active chlorine and not classified under any of the other hazard categories in Part 1 of Schedule 1. _____  (* ) Provided that the mixture in the absence of sodium hypochlorite		200

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
would not be classified as Aquatic Acute Category 1 [H400].		
42. Propylamine (see note 21)	107-10-8	500
43. Tert-butyl acrylate (see note 21)	1663-39-4	200
44. 2-Methyl-3-butenitrile (see note 21)	16529-56-9	500
45. Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (Dazomet) (see note 21)	533-74-4	100
46. Methyl acrylate (see note 21)	96-33-3	500
47. 3-Methylpyridine (see note 21)	108-99-6	500
48. 1-Bromo-3-chloropropane (see note 21)	109-70-6	500

## PART 3

### Substances used in an industrial chemical process

<i>Column 1 Hazardous Substances</i>	<i>Column 2 Controlled quantity</i>
Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 (“HS”) may be generated during loss of control of the processes, including storage activities in any installation within an establishment, any substance which is used in that process (“S”).	The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant process) an amount equal to or exceeding the controlled quantity of the HS in question.

(See note 23)

## PART 4

### Notes to Parts 1 to 3

1. Substances and mixtures are classified in accordance with the CLP Regulation(32).
2. Mixtures must be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.
3. The controlled quantities set out in Parts 1 to 3 of this Schedule relate to each establishment. The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

(32) Regulation (EC) No 1272/2008 of the European Parliament and the Council.

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4. The following rule governing the addition of hazardous substances, or categories of dangerous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements of these Regulations. These

Regulations apply to establishments if the sum  $\frac{q^1}{Q_{L1}} + \frac{q^2}{Q_{L2}} + \frac{q^3}{Q_{L3}} + \frac{q^4}{Q_{L4}} + \frac{q^5}{Q_{L5}} + \dots$  is greater than or equal to 1,

where

$q_x$  = the quantity of dangerous substance  $x$  (or category of dangerous substances) falling within Part 1 or Part 2 of this Schedule; and

$Q_{Lx}$  = the relevant controlled quantity for hazardous substance or category  $x$  from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule, except as set out in the following paragraph.

For the purposes of calculating  $Q_{Lx}$  only, where the hazardous substance is one specified in column 1 of the following table, the relevant controlled quantity is as set out in column 2 of the following table A:

**Table A**

<i>Column 1</i>	<i>CAS number</i>	<i>Column 2</i>
15. Hydrogen	1333-74-0	5
18. Liquified flammable gases, Category 1 or 2 (including LPG) and natural gas (including liquid natural gas)		50

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

- for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;
- for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;
- for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

5. In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

**6.** In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in Note 4, the lowest controlled quantity for each group of categories in Notes 4(a), 4(b) and 4(c) corresponding to the classification concerned must be used.

**7.** Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

**8.** The hazard class Explosives includes explosive articles (see Section 2.1 of Annex I to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

**9.** Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)(33) identifies the substance or mixture as potentially having explosive properties.

**10.** If Explosives of Division 1.4 are unpacked or repacked, they must be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

**11.—(1)** Flammable aerosols are classified in accordance with the Council Directive [75/324/EEC](#) of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers(34) (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive [75/324/EEC](#) correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

(2) In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

**12.** According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35°C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

**13.** Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

(a) between 15.7%(35) and 24.5%(36) by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to

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(33) More guidance on waiving of the test can be found in the A.14 method description, see [Commission Regulation \(EC\) No. 440/2008](#) of 30 May 2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008, p. 1).

(34) O.J. L 147, 9.6.1975, p. 40.

(35) 15.7% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

(36) 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.

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

Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers<sup>(37)</sup>;

- (b) 15.75% by weight or less and unrestricted combustible materials.

**14. Ammonium nitrate (1,250/5,000): fertiliser grade**

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;
- (c) more than 28%<sup>(38)</sup> by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

**15. Ammonium nitrate (350/2,500): technical grade**

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances;
- (b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

**16. Ammonium nitrate (10/50): ‘off-specs’ material and fertilisers not fulfilling the detonation test**

This applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 14 and 15, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 14 and 15;
- (b) fertilisers referred to in Note 13(a), and Note 14 to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

**17. Potassium nitrate (5,000/10,000)**

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

**18. Potassium nitrate (1,250/5,000)**

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

**19. Upgraded biogas**

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of Schedule 1 where it has been processed in accordance with applicable standards

<sup>(37)</sup> O.J. L 304, 21.11.2003, p. 1.

<sup>(38)</sup> 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate.



for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

**20. Polychlorodibenzofurans and polychlorodibenzodioxins**

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the factors in Table 1—

**Table 1**

**WHO 2005 TEF\***

2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

\*Reference — Van den Berg et al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.

**21.** In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

**22.** Where a hazardous substance is covered by Part 1 of this Schedule and is also listed in Part 2, the controlled quantity set out in Column 2 of Part 2 apply.

**23.** In relation to Part 3—

- (a) where S also falls within Part 1 or Part 2, the classification with the lowest controlled quantity applies; and
- (b) where S also falls within Part 1 and Part 2, the controlled quantity which is lowest when the controlled quantities under Part 2 and Part 3 are compared applies.

**24.** Expressions appearing both in this Schedule and in the Directive have the same meaning for the purposes of this Schedule as they have for the purposes of the Directive.

## SCHEDULE 2

Regulation 4

## EXEMPTIONS

**Loading, unloading and intermediate storage**

1. Hazardous substances consent is not required for the intermediate temporary presence of a hazardous substance on, over or under land where that presence is directly related to the transport of hazardous substances by road, rail, internal waterways, sea or air, outside establishments covered by these Regulations, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards.

**Pipelines**

2. Hazardous substances consent is not required for the presence of a hazardous substance where it is being transported in a pipeline, including a pumping station, outside any land in respect of which—

- (a) there is a hazardous substances consent for any substance, or
- (b) (not taking into account the quantity of the substance in the pipeline or pumping station) there is required to be such a consent for any substance.

**Emergency unloading from ships**

3. Hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency until the expiry of the period of 14 days beginning with the day it was unloaded.

4. For the purpose of paragraph 3, a substance is to be treated as having been unloaded from a craft in an emergency if—

- (a) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985<sup>(39)</sup> (directions by Secretary of State to harbour master) applied; or
- (b) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2 of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(40)</sup>, without requiring notification under paragraph (1) of regulation 6 of those Regulations by virtue of an exemption under paragraph (5) of that regulation.

**Landfill sites**

5. Subject to paragraph 7, hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage.

6. Paragraph 5 does not apply to—

- (a) a site used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury<sup>(41)</sup>;
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage related to those operations; or

<sup>(39)</sup> 1985. c. 22.

<sup>(40)</sup> S.I. 1987/37, to which there are amendments not relevant to these Regulations.

<sup>(41)</sup> O.J. No. L 304, 14.11.2008, p. 75.

- (d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

### **Nuclear sites**

7. Hazardous substances consent is not required for the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965(42).

### **Minerals**

8. Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes, except where present in connection with the matters referred to in paragraph 6(b) to (d) of this Schedule.

9. Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of—

- (a) the offshore exploration and exploitation of minerals, including hydrocarbons; or
- (b) the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.

### **Explosives**

10. Hazardous substances consent is not required for the presence of an explosive within the meaning of regulation 2(1) of the Explosives Regulations 2014(43) in relation to which—

- (a) a licence is required and has been granted under those Regulations by the Health and Safety Executive where it is the licensing authority by virtue of—
  - (i) paragraph 1(b) of Schedule 1 to those Regulations in cases where the assent of the local authority was required pursuant to regulation 13(3) of those Regulations or would have been required but for regulation 13(4)(b), (c), (d), (e), (f) or (g) of those Regulations, or
  - (ii) paragraph 1(d) of Schedule 1 to those Regulations; or
- (b) a licence is required and has been granted under those Regulations by the Office for Nuclear Regulation in cases where the assent of the local authority was required pursuant to regulation 13(3) of those Regulations or would have been required but for regulation 13(4)(b), (c), (d), (e), (f) or (g) of those Regulations.

11. Hazardous substance consent is not required where an explosive license within the meaning of regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987(44) has been issued.

### **Presence of established substances**

12. Hazardous substances consent is not required in relation to a hazardous substance which is on, over or under any land (“the relevant substance”) if—

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(42) 1965 c. 57; section 1 was substituted by paragraphs 16 and 17 of Schedule 12 to the Energy Act 2013 (c. 32).

(43) S.I. 2014/1638. There are amendments to this regulation which are not relevant to these Regulations.

(44) S.I. 1987/37. Regulation 2(1) was amended by article 6(2) of, and paragraphs 37 and 38(b) of Part 3 of Schedule 3 to, S.I. 2014/469 There are other amendments to this regulation which are not relevant to these Regulations.

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

- (a) the relevant substance was present on, over or under the land at any time during the establishment period;
- (b) hazardous substances consent was not required for the presence of the relevant substance at the time it was present during the establishment period; and
- (c) hazardous substances consent would have been required for the presence of the relevant substance had these Regulations been in force at that time.

13. Paragraph 12 does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any one time during the establishment period.

#### **Presence of exempted substances**

14. The presence of a substance for which an exemption is provided under paragraphs 1 to 13 is not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the PHSA or these Regulations.

#### **Presence of small quantities of substances**

15. The presence of a quantity of a hazardous substance—
- (a) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site, and
  - (b) which is equal to or less than two per cent of the relevant controlled quantity for that substance,

is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the PHSA or these Regulations.

#### **Minor changes to types and quantities of substances**

16. Where the conditions in paragraph 17 are met, hazardous substances consent is not required for a relevant minor change.

17. The conditions are—
- (a) that before the relevant minor change occurs, the hazardous substances authority receives from the COMAH competent authority, notice in writing, which must be copied by the COMAH competent authority to the person in control of the land to which the hazardous substances consent in question relates, confirming—
    - (i) details of the relevant minor change, including details about how substances are to be kept and used;
    - (ii) that the relevant minor change will not result in a safety hazard change; and
    - (iii) that the relevant minor change will not result in a lower-tier establishment becoming an upper-tier establishment or vice versa; and
  - (b) that any hazardous substances that are held without hazardous substances consent in reliance on this exemption are kept and used in accordance with the details set out in the notice from the COMAH competent authority.

#### **Interpretation of this Schedule**

18. In this Schedule—
- “establishment period” (*“cyfnod sefydlu”*) means the period of 12 months ending on—

- (a) 4 September 2015; or
- (b) (if later) the date on which hazardous substances consent was first required for the relevant substance;

“relevant minor change” (“*mân newid perthnasol*”) means a change to the quantity or type of hazardous substances present in, on or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for this Schedule;

“safety hazard change” (“*newid o ran perygl diogelwch*”) means a change to an area notified to a local planning authority by the Health and Safety Executive or the Office of Nuclear Regulation for the purposes of paragraphs (c) or (ca) of the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(45)</sup>, where that change results in—

- (a) that area encompassing land which it did not previously encompass; or
- (b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

**19.** Expressions appearing both in this Schedule and in the Directive have the same meaning for the purposes of this Schedule as they have for the purposes of the Directive.

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<sup>(45)</sup> S.I. 2012/801 (W. 110).

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SCHEDULE 3

Regulations 6(4), 7, 13(4) and 13(5)

PRESCRIBED FORMS, NOTICES AND CERTIFICATES

Form 1

**Posting of Notice of Application Certificate**

**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 6)**

**Certificate A**

I certify that:

I/the applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

The notice was left in position for not less than 7 days during the 21 day period preceding the application.

or

**Certificate B**

I certify that:

I have/the applicant has\* been unable to post the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application because I have/the applicant has\* no right of access or other rights in respect of the land that would enable me/the applicant\* to do so.

I have/the applicant has\* taken the following steps to acquire those rights, but have/has\* been unsuccessful.

(Give description of steps taken) .....

.....

or

**Certificate C**

I certify that:

I/the applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

The notice was, however, left in position for less than 7 days during the 21 day period preceding the application.

This happened because it was removed/obscured/defaced\* before 7 days had elapsed.

This was not my/the applicant's\* fault or intention.

I/the applicant\* took the following steps to protect and replace the notice:

(Give description of steps taken) .....

Signed.....

\*on behalf of.....

Date.....

\* delete where inappropriate

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Form 2

Certificates under Regulation 7(1)\* or 13(4)\*(a)

The Planning (Hazardous Substances) Act 1990

The Planning (Hazardous Substances) (Wales) Regulations 2015

Certificate A

I certify that:

at the beginning of the period of 21 days ending with the date of the accompanying application/appeal\* nobody, except the applicant/appellant\*, was the owner (b) of any part of the land to which the application/appeal\* relates.

Signed.....

\*on behalf of.....

Date.....

Certificate B

I certify that:

I have/the applicant has/the appellant has\* given the required notice (c) to everyone else who, at the beginning of the period of 21 days ending with the date of the accompanying application/appeal, was the owner (b) of any part of the land to which the application/appeal\*relates, as listed below.

Owner's name .....

Address at which notice was served .....

Date on which notice was served .....

Signed.....

\*on behalf of.....

Date.....

Certificate C

I certify that:

I/the applicant/the appellant\* cannot issue a Certificate A or B in respect of the accompanying application/appeal\*.

I have/the applicant has/the appellant has\* given the required notice (c) to the persons specified below, being persons who at the beginning of the period of 21 days ending with the date of the



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

application/appeal\*, were owners **(b)** of any part of the land to which the application/appeal \*relates.

Owner’s name .....

Address at which notice was served .....

Date on which notice was served .....

I have/the applicant has/the appellant has\* taken all reasonable steps open to me/the applicant/the appellant\* to find out the names and addresses of the remaining owners **(b)** of the land, or of a part of it, but have/has\* been unable to do so. These steps were as follows:—

**(d)** .....  
.....

Signed.....

\*on behalf of.....

Date.....

**Certificate D**

I certify that:

I/the applicant/the appellant\* cannot issue a Certificate A in respect of the accompanying application/appeal\*

I/the applicant/the appellant\* have/has\* taken all reasonable steps open to me/the applicant/the appellant\* to find out the names and addresses of everyone else who, at the beginning of the period of 21 days ending with the date of the application/appeal\*, was the owner (b) of any part of the land to which the application/appeal\* relates, but have/has\* been unable to do so. These steps were as follows:—

**(d)**.....  
.....

Signed.....

\*on behalf of.....

Date.....

\* delete where inappropriate

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**(a)** These Certificates are for use both with applications and appeals for hazardous substances consent. References to either regulation 7(1) or 13(4) should therefore be deleted as appropriate. One of certificates A, B, C or D must be completed.

**(b)** “Owner” means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

**(c)** Form 3 (for applications) or Form 4 (for appeals).

**(d)** Insert description of steps taken.

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### Form 3

**Notice of Application for Hazardous Substances Consent/Continuation of Hazardous Substances Consent\***  
**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 7)**

**To be served on an owner(a)**

I give notice that (b).....

is applying to the (c).....

for hazardous substances consent/the continuation of hazardous substances consent\*

(d).....

at (e).....

Details about how you may inspect a copy of the application and make representations to (c).....are set out in the attached public notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

---

(a) "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(b) Insert applicant's name.

(c) Insert name of Council or other body to whom the application is to be made.

(d) Insert brief details of the consent being sought.

(e) Insert address or location of the application site.

Form 4

Notice of Appeal  
The Planning (Hazardous Substances) Act 1990

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 13)**

To be served on an owner (a)

I give notice that (b).....

having applied to the (c)..... for hazardous substances consent/the continuation of hazardous substances consent\*

for (d).....

at (e).....

is appealing to the Welsh Ministers against the decision of the (b).....

—on the failure of the (b).....to give notice of a decision\*

If you wish to make representations about this appeal you should write to the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff CF14 0NS within 21 days of the date of service of this notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

---

(a) "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(b) Insert appellant's name.

(c) Insert name of Council or other body to whom the application was made.

(d) Insert a description of the proposals.

(e) Insert address or location of the application site.

## 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)—
    - (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—

“(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.

## SCHEDULE 5

Regulation 35

## AMENDMENTS TO LEGISLATION

**Amendment of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005**

1.—(1) The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005<sup>(46)</sup> are amended as follows.

(2) In regulation 13 (LDP: additional matters to which regard is to be had)—

(a) for paragraph (1)(c) substitute—

“(c) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment by pursuing those objectives through the controls described in Article 13 of Directive 2012/18/EU;”

(b) for paragraph (d) substitute—

“(d) the need, in the long term—

(i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;

(ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;

(iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of Directive 2012/18/EU so as not to increase the risks to human health and the environment.”;

(c) in paragraph (2), for “Council Directive 96/82/ EC (as amended by Council Directive 2003/105/EC)” substitute “Directive 2012/18/EU”.

**Amendment of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012**

2.—(1) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(47)</sup> is amended as follows.

(2) In the Table in Schedule 4 (consultations before the grant of permission), in paragraph (x)—

(a) for the words in the second column (description of development) substitute—

“Development—

(i) involving the siting of new establishments;

(ii) consisting of modifications to existing establishments covered by Article 11 of Directive 2012/18/EU; or

(iii) which is new, including transport routes, locations of public use and residential areas in the vicinity of existing establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident.”;

(b) for the words in the third column (consultee) substitute—

<sup>(46)</sup> S.I. 2005/2839 (W. 203), to which there have been amendments which are not relevant to this instrument.

<sup>(47)</sup> S.I. 2012/801 (W. 110).



“The COMAH competent authority, and in relation to development falling within paragraph (iii), any person who is, according to the register held by the hazardous substances authority under regulation 22 of the Planning (Hazardous Substances) (Wales) Regulations 2015, the person who is in control of the land on which any existing establishment in question is located”;

- (c) in Schedule 4 in the paragraph dealing with the Interpretation of Table, for paragraph (k) substitute—

“(k) in paragraph (x)—

- (i) expressions appearing both in that paragraph and in Directive 2012/18/EU have the same meaning as in that Directive; and
- (ii) “COMAH competent authority” (“*awdurdod COMAH cymwys*”) means—
  - (aa) in relation to a relevant nuclear site, the Office of Nuclear Regulation and the Natural Resources Body for Wales, acting jointly;
  - (bb) otherwise, the Health and Safety Executive and the Natural Resources Body for Wales acting jointly.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate, with amendments, the Planning (Hazardous Substances) Regulations 1992 (S.I. 1992/656) and subsequent amending instruments insofar as they apply to Wales. They also include provision relating to the period for determination of procedure under sections 20 and 21 of the Planning (Hazardous Substances) Act 1990 (“the PHSA”).

These Regulations also implement the land-use aspects of Directive 2012/18/EU of the European Parliament and the Council on the control of major-accident hazards involving dangerous substances (O.J. No. L 197, 24.7.2012, p. 1) (the “Seveso III Directive”). That Directive amends and repeals Council Directive 96/82/EC. In order to fully implement those requirements, parts of regulations 24 and 26 of the Planning (Hazardous Substances) Regulations 2015 (S.I. 2015/627) apply to Wales. They apply to the extent that they relate to non-devolved infrastructure planning matters. The non-planning aspects of the Seveso III Directive are implemented through The Control of Major-Accident Hazards Regulations 2015 (S.I. 2015/483).

Consequently the following Regulations are revoked so far as they apply to Wales:

- (1) The Planning (Hazardous Substances) Regulations 1992;
- (2) The Planning (Control of Major-Accident Hazards) Regulations 1999 (S.I. 1999/981);
- (3) Regulation 10 of The Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 (S.I. 2006/1282);
- (4) The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2010 (S.I. 2010/450 (W. 48));
- (5) The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2014 (S.I. 2014/375 (W. 43)); and

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(6) The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014 (S.I. 2014/2777 (W. 283)).

The main changes in these Regulations are as follows—

(1) existing exemptions to the requirement to obtain hazardous substances consent are extended in regulation 4 and Schedule 2;

(2) a new exemption to the requirement for hazardous substances consent in the case of certain minor changes is provided for in regulation 4 and paragraphs 16 and 17 of Schedule 2;

(3) the prescribed form for making an application for consent is replaced with a list of information required by regulation 5;

(4) public participation in the hazardous substances consent regime is enhanced in regulations 6, 7, 10, and 11(2);

(5) regulation 13 provides that a 6 month time limit to appeal under section 21 of the PHSA applies only to appeals under section 21(1);

(6) there is a requirement on the Welsh Ministers in regulation 26 to take into account, in their national land-use planning, transport route and fishery harbour policies, certain objectives and other considerations which relate to the prevention of major accident-hazards and the limitation of the consequences of such accidents for human health and the environment;

(7) there are public consultation requirements in regulation 27 for general plans and programmes which relate to planning for new hazardous substances establishments, where the siting or development may increase the risk or consequences of a major accident. These requirements do not apply to plans and programmes which are subject to public participation under Part 3 of the [Environmental Assessment of Plans and Programmes \(Wales\) Regulations 2004 \(S.I. 2004/ 1656 \(W. 70\)\)](#);

(8) there are new requirements for public consultation before decisions are made on development around hazardous substances establishments in regulation 28 where the siting or development may be the source of or increase the risk or consequences of a major accident;

(9) the list of substances controlled has changed in Schedule 1 and the controlled quantities in Schedule 1 are aligned with those establishments referred to as “tier 1” in the Seveso III Directive, (except the quantities for hydrogen and certain liquefied flammable gases); and

(10) in Part 3 of Schedule 1 there are controls on substances that could be generated by the loss of control of an industrial process where it is reasonable to foresee that a hazardous substance might be generated.

These Regulations apply to Wales and set out—

(1) in Part 2 and Schedule 1, the substances which are hazardous substances for the purposes of the Act, the controlled quantities of those substances;

(2) in Part 2 and Schedule 2, exemptions from the need for hazardous substances consent;

(3) in Part 3 and Schedule 3, the procedures to be followed for an application for hazardous substances consent;

(4) in Part 4 and Schedule 4, provisions relating to hazardous substances contravention notices, including appeals against them, their effect and a requirement on hazardous substances authorities to maintain a register of them;

(5) in Part 5, other matters relating to hazardous substances consent, including the information to be held in a consents register, the fees required in connection with an application for hazardous substances consent and deemed applications, how hazardous substances control applies to hazardous substances authorities and notification requirements on hazardous substances authorities and the COMAH competent authority (being either HSE, or the Office for Nuclear Regulation, and the

Natural Resources Body for Wales) relating to claims for exemption for the presence of established substances;

(6) in Part 6, the obligation to take certain matters in the Seveso III Directive into account in land-use planning, transport route and fishery harbour policies; public consultation and participation obligations in relation to certain plans, programmes and projects; and

(7) in Part 7 and Schedule 5, revocations, amendments, savings, transitional provisions and application to the Crown.

A regulatory impact assessment has been prepared in relation to this Order. Copies may be obtained from Planning Division, the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the website at <https://www.wales.gov>.