

2005 No. 320

PLANNING

**The Planning (Hazardous Substances) (Amendment)
Regulations (Northern Ireland) 2005**

Made - - - - - *29th June 2005*

Coming into operation *31st July 2005*

The Department of the Environment, in exercise of the powers conferred on it by Article 81(10) and (12) of the Planning (Northern Ireland) Order 1991(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 31st July 2005.

Amendment of the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993

2.—(1) The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993(b) shall be amended in accordance with paragraph (2).

(2) For Schedule 4 (Enforcement – Modifications of the 1991 Order), there shall be substituted the Schedule 4 as set out in the Schedule to these Regulations.

Sealed with the Official Seal of the Department of the Environment on 29th June 2005.

(L.S.)

Marianne Fleming
A senior officer of the Department of the Environment

(a) S.I. 1991/1220 (N.I. 11). Art. 2(2) contains definitions of “the Department” and “prescribed”
(b) S.R. 1993 No. 275 as amended by S.R. 2000 No. 101

SCHEDULE

Regulation 2(2)

SUBSTITUTION OF SCHEDULE 4 TO THE PLANNING (HAZARDOUS SUBSTANCES)
REGULATIONS (NORTHERN IRELAND) 1993

“SCHEDULE 4

Regulations 18 and 19

ENFORCEMENT – MODIFICATIONS OF THE 1991 ORDER

PART 1

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

<i>Provisions of the 1991 Order Applied</i>	<i>Modifications</i>
Article 69 (appeal against enforcement notice)	
Paragraph (1)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Paragraph (2)	In sub-paragraph (a) for the words “enforcement notice” substitute “hazardous substances contravention notice”.
Paragraph (3)	For paragraph (3) substitute – “(3) 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 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 Article 81(4); (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 Article 81(5)(b) falls short of what should reasonably be allowed.”
Paragraph (4)	For the words “enforcement notice” substitute “hazardous substances contravention notice”.
Paragraph (5)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Paragraph (6)	None
Paragraph (7)	None
Paragraph (8)	Omit
Paragraph (9)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Paragraph (10)	For the words “enforcement notice” in each place where they occur substitute “hazardous substances contravention notice”.
Article 70 (supplementary provisions)	For the words “enforcement notice” in each place where they occur substitute “hazardous substances contravention notice”.

<i>Provisions of the 1991 Order Applied</i>	<i>Modifications</i>
Article 71 (supplementary provisions)	
Paragraph (1)	For sub-paragraphs (a) and (b) substitute – “(a) grant hazardous substances consent for the presence of hazardous substances on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land; (b) discharge any condition subject to which hazardous substances consent was granted.”
Paragraph (1)(c)	Omit
Paragraph (2)	Omit
Paragraph (3)	Omit
Paragraph (4)	For paragraph (4) substitute – “(4) In considering whether to grant hazardous substances consent under paragraph (1), the planning appeals commission shall have regard to the considerations specified in Article 55(2) and to any other material considerations; and the hazardous substances consent granted under paragraph (1) is any hazardous substances consent that might be granted under Part V; and where under that paragraph the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous.”
Paragraph (5)	For paragraph (5) substitute – “(5) Where an appeal against a hazardous substances contravention notice is brought under Article 69, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1) – (a) any hazardous substances consent granted under that paragraph shall be treated as granted on that application; (b) in relation to a grant of hazardous substances consent or a determination under that paragraph, the decision of the planning appeals commission will be final; and (c) subject to sub-paragraph (b), any hazardous substances consent granted under that paragraph shall have the like effect as a consent granted under Part V.”
Paragraph (6)	None

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC.

<i>Provisions of the 1991 Order Applied</i>	<i>Modifications</i>
Article 72 (Offence where enforcement notice not complied with)	
Paragraph (1)	For paragraph (1) substitute – “(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 have not been taken, the

<i>Provisions of the 1991 Order Applied</i>	<i>Modifications</i>
	person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.”
Paragraph (2)	For the words “the owner of the land” substitute “a person” and for the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Paragraph (3)	None
Paragraph (4)	Omit
Paragraph (5)	Omit
Paragraph (6)	Omit the words “or (5)”.
Paragraph (7)	For the words “enforcement notice” substitute “hazardous substances contravention notice”.
Paragraph (8)	None
Paragraph (9)	None
Article 74 (execution and costs of works required by enforcement notice)	
Paragraph (1)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice”.
Paragraph (2)	For the words “an enforcement notice” substitute “a hazardous substances contravention notice” and for the words “breach of planning control” in both places where they occur substitute “contravention of hazardous substances control”.
Paragraph (3) to (9)	None
Article 75 (effect of planning permission, etc., on enforcement or breach of condition notice)	
Paragraph (1)	For paragraph (1) substitute – “(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 land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.”
Paragraph (2)	Omit
Paragraph (3)	For the words “an enforcement notice or breach of condition notice” substitute “a hazardous substances contravention notice”.
Article 76 (enforcement notice to have effect against subsequent development)	For Article 76 substitute – “(1) Compliance with a hazardous substances contravention notice shall not discharge that notice. (2) Without prejudice to paragraph (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, shall be in contravention of that notice. (3) Without prejudice to paragraph (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, shall be in contravention of that notice.

(4) Without prejudice to paragraph (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 shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Articles 72 and 74 shall apply to the contravention of a hazardous substances contravention notice to which this Article applies as if the period for compliance with the notice had expired on the date the contravention took place, but the Department shall not enter the land under Article 74(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of its intention to do so.”

PART 3

ARTICLES OF THE 1991 ORDER AS MODIFIED

Appeal against hazardous substances contravention notice

69.—(1) A person having an estate in the land to which a hazardous substances contravention notice relates or a person to whom paragraph (2) applies may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the planning appeals commission against the notice, whether or not a copy of it has been served on him.

(2) This paragraph applies to a person who –

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

(3) 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 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 Article 81(4);
- (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 Article 81(5)(b) falls short of what should reasonably be allowed.

(4) An appeal under this Article shall be made by serving written notice of the appeal on the planning appeals commission before the date specified in the hazardous substances contravention notice as the date on which it is to take effect and such notice shall indicate the grounds of the appeal and state the facts on which it is based.

(5) Where it receives a notice of appeal under this Article against a hazardous substances contravention notice relating to any land, the planning appeals commission shall notify the district council for the district within which the land is situated and in exercising its powers under Article 71

the commission shall take into account any representations received by the commission from the district council.

(6) Before determining an appeal under this Article, the planning appeals commission shall, if either the appellant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(7) Articles 21 and 25(2) shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission to the Department.

(8) Omitted.

(9) Subject to paragraph (10), the validity of a hazardous substances contravention notice shall not, except by way of an appeal under this Article, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

(10) Paragraph (9) shall not apply to proceedings brought under Article 72 against a person who –

(a) has held an estate in the land since before the hazardous substances contravention notice was issued;

(b) did not have a copy of the hazardous substances contravention notice served on him; and

(c) satisfies the court that –

(i) he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued; and

(ii) his interests have been substantially prejudiced by the failure to serve him with a copy of it.

Appeal against hazardous substances contravention notice – general supplementary provisions

70.—(1) On an appeal under Article 69 the planning appeals commission shall quash the hazardous substances contravention notice, vary the terms of the notice or uphold the notice.

(2) On such an appeal the planning appeals commission may correct any misdescription, defect or error in the hazardous substances contravention notice, or vary its terms, if it is satisfied that the correction or variation can be made without injustice to the appellant or to the Department.

(3) Where it would otherwise be a ground for determining such an appeal in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not served, the planning appeals commission may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

Appeal against hazardous substances contravention notice – supplementary provisions relating to hazardous substances consent

71.—(1) On the determination of an appeal under Article 69, the planning appeals commission may –

(a) grant hazardous substances consent for the presence of hazardous substances on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land;

(b) discharge any condition subject to which hazardous substances consent was granted.

(2) Omitted.

(3) Omitted.

(4) In considering whether to grant hazardous substances consent under paragraph (1), the planning appeals commission shall have regard to the considerations specified in Article 55(2) and to any other material considerations; and the hazardous substances consent granted under paragraph (1) is any hazardous substances consent that might be granted under Part V; and where under that paragraph the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous.

(5) Where an appeal against a hazardous substances contravention notice is brought under Article 69, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1) –

(a) any hazardous substances consent granted under that paragraph shall be treated as granted on that application;

(b) in relation to a grant of hazardous substances consent, the decision of the planning appeals commission shall be final; and

(c) subject to sub-paragraph (b), any hazardous substances consent granted under that paragraph shall have the like effect as a consent granted under Part V.

(6) Where –

(a) the notice under paragraph (4) of Article 69 indicates the ground mentioned in paragraph (3)(a) of that Article;

(b) any fee is payable under regulations made by virtue of Article 127 in respect of the application deemed to be made by virtue of the appeal; and

(c) the planning appeals commission gives notice in writing to the appellant specifying the period within which the fee must be paid,

then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

Offence where hazardous substances contravention notice not complied with

72.—(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 have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice.

(2) Where a person is in breach of a hazardous substances contravention notice he shall be guilty of an offence.

(3) In proceedings against any person for an offence under paragraph (2), it shall be a defence for him to show that he did everything he could be expected to do to secure compliance with the notice.

(4) Omitted.

(5) Omitted.

(6) An offence under paragraph (2) may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence under the paragraph in question by reference to any period of time following the preceding conviction for such an offence.

(7) Where –

(a) a person charged with an offence under this Article has not been served with a copy of the hazardous substances contravention notice; and

(b) the notice is not contained in the appropriate register kept under Article 124,

it shall be a defence for him to show that he was not aware of the existence of the notice.

(8) A person guilty of an offence under this Article shall be liable –

(a) on summary conviction, to a fine not exceeding £30,000;

(b) on conviction on indictment, to a fine.

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this Article, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

Execution and cost of works required by hazardous substances contravention notice

74.—(1) Where any steps required by a hazardous substances contravention notice to be taken are not taken within the period allowed for compliance with the notice, a person authorised in writing by the Department may –

(a) enter the land and take the steps; and

(b) recover from the person who is then the owner of the land any expenses reasonably incurred by it in doing so and those expenses shall be a civil debt recoverable summarily.

(2) Any expenses incurred by the owner or occupier of any land for the purposes of complying with a hazardous substances contravention notice in respect of any contravention of hazardous substances control, and any sums paid by the owner of any land under paragraph (1), in respect of expenses incurred by the Department in taking steps required to be taken by such a notice, shall be deemed to be incurred for the use and at the request of the person by whom the contravention of hazardous substances control was committed.

(3) The Department may sell any materials which have been removed by it from any land when carrying into effect this Part if, before the expiration of three days from their removal, they are not claimed by their owner and taken away by him.

(4) Where the Department sells any materials under paragraph (3), it shall pay the proceeds to the person to whom the materials belonged after deducting the amount of any expenses recoverable by it from him.

(5) Paragraphs (3) and (4) do not apply to refuse removed by the Department.

(6) Where the Department claims to recover any expenses under this Article from a person as being the owner of the land in respect of which the expenses were incurred and that person proves that he –

- (a) is receiving the rent of that land merely as agent or trustee for some other person; and
- (b) has not, and since the date of the service on him of a demand for payment has not had, in his hands on behalf of that other person sufficient money to discharge the whole demand of the Department,

his liability shall be limited to the total amount of the money which he has or has had in his hands as mentioned in sub-paragraph (b), but the Department where it is, or would be, debarred by this paragraph from recovering the whole of any such expenses from an agent or trustee may recover the whole of any unpaid balance thereof from the person on whose behalf the agent or trustee receives the rent.

(7) Any expenses recoverable by the Department under this Article shall, until recovered, be deemed to be charged on and payable out of the estate in the land in relation to which they have been incurred, of the owner of the land and of any person deriving title from him.

(8) The charge created by paragraph (7) shall be enforceable in all respects as if it were a valid mortgage by deed created in favour of the Department by the person on whose estate the charge has been created (with, where necessary, any authorisation or consent required by law) and the Department may exercise the powers conferred by sections 19, 21 and 22 of the Conveyancing Act 1881 on mortgagees by deed accordingly.

(9) Any person who wilfully obstructs a person acting in the exercise of powers under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Effect of hazardous substances consent on hazardous substances contravention notice

75.—(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 land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.

(2) Omitted.

(3) The fact that a hazardous substances contravention notice has wholly or partly ceased to have effect by virtue of this Article shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice.

Hazardous substances contravention notice to have effect against subsequent development

76.—(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.

(2) Without prejudice to paragraph (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 shall be in contravention of that notice.

(3) Without prejudice to paragraph (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, shall be in contravention of that notice.

(4) Without prejudice to paragraph (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 shall be taken which would constitute a breach of that condition, and the taking of such further steps shall be in contravention of that notice.

(5) Articles 72 and 74 shall apply to the contravention of a hazardous substances contravention notice to which this Article applies as if the period for compliance with the notice had expired on the date the contravention took place, but the Department shall not enter the land under Article 74(1) without, at least 28 days before entry, serving on the owner or occupier of the land a notice of its intention to do so.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Schedule 4 of the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 to reflect the amended modifications of the enforcement provisions of the Planning (Northern Ireland) Order 1991 (“the 1991 Order”) introduced by the Planning (Amendment) (Northern Ireland) Order 2003.

Parts 1 and 2 of Schedule 4 list provisions of the 1991 Order and modifications of those provisions which are applied for the purposes of hazardous substances control. Part 3 sets out those provisions as modified.

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