



# Planning (Hazardous Substances) Act 1990

## 1990 CHAPTER 10

An Act to consolidate certain enactments relating to special controls in respect of hazardous substances with amendments to give effect to recommendations of the Law Commission. [24th May 1990]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 A Table showing the derivation of the provisions of this consolidation Act will be found at the end of the Act. The Table has no official status.
- C2 Act amended by [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) (c. 9, SIF 123:1), [ss. 72\(2\), 91\(4\)](#)
- C3 Act modified by [Planning \(Consequential Provisions\) Act 1990](#) (c. 11, SIF 123:1, 2), s. 5, [Sch. 3 paras. 13, 14](#)
- C4 Act amended by [Town and Country Planning Act 1990](#) (c. 8, SIF 123:1), [s. 1\(1\)\(3\)\(5\)](#)
- C5 Power to modify Act conferred by [Town and Country Planning Act 1990](#) (c. 8, SIF 123:1), [s. 6\(5\)](#)
- C6 Act amended by [Town and Country Planning Act 1990](#) (c. 8, SIF 123:1), [s. 336\(9\)](#)  
Act amended (19.9.1995) by 1995 c. 25, ss. 70, 125(2), [Sch. 9 para. 14\(1\)](#) (with ss. 7(6), 115, 117, [Sch. 8 para. 7](#))  
Act amended (1.4.1996) by S.I. 1996/593, reg. 2, [Sch. 1](#)
- C7 Act modified by [Town and Country Planning Act 1990](#) (c. 8, SIF 123:1), ss. 28, 54, 173(8), [Sch. 2 Pt. III para. 3\(a\)](#)  
Act modified (1.4.1996) by 1994 c. 19, s. 20(3), [Sch. 5 Pt. III para. 15\(1\)](#) (with ss. 54(5)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1995/3198, art. 4, [Sch. 2](#)  
Act modified (1.4.1996) by 1994 c. 19, s. 20(3), [Sch. 5 Pt. III para. 20](#) (with ss. 54(5)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); S.I. 1995/3198, art. 4, [Sch. 2](#)
- C8 Power to modify Act conferred by [Town and Country Planning Act 1990](#) (c. 8, SIF 123:1), ss. 314–319, [Sch. 16](#)

*Status: Point in time view as at 01/04/2013.*

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- Act (except ss. 12(2), 31(6)): transfer of certain functions in relation to Wales (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**
- C9** Act modified (28.9.2004 for E., 15.10.2005 for W.) by **Planning and Compulsory Purchase Act 2004** (c. 5), **s. 38** (with s. 111); S.I. 2004/2202, art. 2(c); S.I. 2005/2847, art. 2(a) (with art. 3(1)(2))
- C10** Act modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by **The Environmental Permitting (England and Wales) (Amendment) Regulations 2011** (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

*Hazardous substances authorities*

**1 Hazardous substances authorities: general.**

The council of the district [<sup>F1</sup>, Welsh county, county borough]or London borough in which land is situated shall be the hazardous substances authority in relation to the land except in cases where section <sup>F2</sup>. . . 3 applies. [<sup>F3</sup>But, in the case of a London borough, see also section 2B(5) of the principal Act (Mayor of London to be the hazardous substances authority in certain circumstances).]

**Textual Amendments**

- F1** Words in s. 1 inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 26(1)** (with ss. 54(5)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F2** Words repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, **art. 3**
- F3** Words in s. 1 inserted (23.10.2007 for specified purposes, 6.4.2008 in so far as not already in force) by Greater London Authority Act 2007 (c. 24), **ss. 31(4), 59(4)(b)**; S.I. 2008/582, art. 2(a)

**Commencement Information**

- I1** S. 1 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 1 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

<sup>F4</sup>2 .....

**Textual Amendments**

- F4** S. 2 repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 144, 162(2), Sch. 13 para. 2(1), **Sch. 16 Pt. VII**; S.I. 1991/2829, **art. 3**

**3 Hazardous substances authorities: other special cases.**

- (1) The county council shall be the hazardous substances authority for land which is in a non-metropolitan county [<sup>F5</sup>in England] and—
    - <sup>F6</sup>(a) .....
    - (b) is used for the winning and working of minerals (including their extraction from a mineral-working deposit); or
    - (c) is situated in England and used for the disposal of refuse or waste materials,
- <sup>F6</sup> . . .

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<sup>F6</sup>(2) . . . . .

(3) The Broads Authority is the hazardous substances authority for the Broads unless subsection (1) <sup>F7</sup> . . . applies.

(4) If the land is in an area for which an urban development corporation [<sup>F8</sup> or a Mayoral development corporation] is the local planning authority in relation to all kinds of development, the corporation shall be the hazardous substances authority for the land unless subsection (1) <sup>F7</sup> . . . applies.

(5) If the land is in an area for which a housing action trust established under Part III of the <sup>M1</sup>Housing Act 1988 is the local planning authority in relation to all kinds of development, the trust shall be the hazardous substances authority for the land unless subsection (1) <sup>F7</sup> . . . applies.

<sup>F9</sup>[<sup>F10</sup>(5A) The power to make a designation order under section 13 of the Housing and Regeneration Act 2008 which contains provision of the kind mentioned in section 14(3) of that Act does not extend to providing for the Homes and Communities Agency to be the hazardous substances authority (whether instead of, or concurrently with, a county council) in relation to land to which subsection (1) above applies.

(5B) Subject to this, section 1 and this section are subject to any provision made by such an order.]

<sup>F11</sup>(6) . . . . .]

#### Textual Amendments

- F5** Words in s. 3(1) inserted (1.4.1996) by 1994 c. 19, s. 20(4), **Sch. 6 Pt. II para. 26(2)** (with ss. 54(5) (7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1996/396, art. 3, **Sch. 1**
- F6** S. 3(1)(a)(2) and words in s. 3(1) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F7** Words in s. 3(3)-(5A) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**
- F8** Words in s. 3(4) inserted (15.1.2012) by Localism Act 2011 (c. 20), s. 240(1)(l), **Sch. 22 para. 38**
- F9** S. 3(5A) inserted (10.11.1993) by 1993 c. 28, ss. 187(1), **Sch. 21 para. 32**; S.I. 1993/2762, art. 3
- F10** S. 3(5A)(5B) substituted (1.12.2008) for s. 3(5A) (1.12.2008) by Housing and Regeneration Act 2008 (c. 17), s. 325(1), **Sch. 8 para. 54**; S.I. 2008/3068, art. 2(1)(w)(3) (with arts. 6, 6-13)
- F11** S. 3(6) repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3

#### Commencement Information

- I2** S. 3 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; S. 3 in force for certain purposes at 11.3.1992 see S. I. 1992/725, art 2

#### Marginal Citations

- M1** 1988 c. 50.

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### *Control over presence of hazardous substances*

#### **4 Requirement of hazardous substances consent.**

- (1) Subject to the provisions of this Act, the presence of a hazardous substance on, over or under land requires the consent of the hazardous substances authority (in this Act referred to as “hazardous substances consent”).
- (2) Subsection (1) does not apply if the aggregate quantity of the substance—
- (a) on, over or under the land;
  - <sup>[F12]</sup>(aa) on, over or under other land which is controlled by the same person and which, in all the circumstances (including in particular the purposes for which the land and the land mentioned in paragraph (a) is used) forms with the land so mentioned a single establishment;
  - (b) on, over or under other land which is within 500 metres of <sup>[F13]</sup>the land mentioned in paragraph (a)] and controlled by the same person; or
  - (c) in or on a structure controlled by the same person any part of which is within 500 metres of <sup>[F13]</sup>the land mentioned in paragraph (a)],
- is less than the quantity prescribed as the controlled quantity for that substance.
- <sup>[F14]</sup>(2A) A quantity of a substance which falls within more than one paragraph of subsection (2) shall only be counted once.]
- <sup>[F15]</sup>(3) The temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless—
- (a) it is unloaded; or
  - (b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.]
- (4) The Secretary of State may by regulations provide that hazardous substances consent is not required or is only required—
- (a) in relation to land of prescribed descriptions;
  - (b) by reason of the presence of hazardous substances in prescribed circumstances.
- (5) Regulations under this section may make different provision for different cases or descriptions of cases.

#### **Textual Amendments**

- F12** S. 4(2)(aa) inserted (20.4.1999) by S.I. 1999/981, **reg. 2(2)(a)**
- F13** Words in s. 4(2)(b)(c) substituted (20.4.1999) by S.I. 1999/981, **reg. 2(2)(b)(c)**
- F14** S. 4(2A) inserted (20.4.1999) by S.I. 1999/981, **reg. 2(2)(d)**
- F15** S. 4(3) substituted (20.4.1999) by S.I. 1999/981, **reg. 2(2)(e)**

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

- C11** S. 4 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art. 3**

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#### Commencement Information

**I3** S. 4 wholly in force at 1.6.1992; s. 4 in force for certain purposes at 11.3.1992 see S. I. 1992/725, art. 2, 3

### 5 Power to prescribe hazardous substances.

- (1) For the purposes of this Act the Secretary of State—
  - (a) shall by regulations specify—
    - (i) the substances that are hazardous substances; and
    - (ii) the quantity which is to be the controlled quantity of any such substance; and
  - (b) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance.
- (2) Regulations which—
  - (a) are made by virtue of subsection (1)(a)(i); or
  - (b) are made by virtue of subsection (1)(a)(ii) and reduce the controlled quantity of a substance,may make such transitional provision as appears to the Secretary of State to be appropriate.
- (3) The power to make such transitional provision includes, without prejudice to its generality, power to apply sections 11 and 26 subject to such modifications as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

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

**C12** S. 5 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

#### Commencement Information

**I4** S. 5 in force for certain purposes at 11.3.1992; s. 5 wholly in force at 1.6.1992 see S.I. 1992/725, art. 2, 3

#### *Obtaining hazardous substances consent*

### 6 Hazardous substances consent: general.

- (1) Hazardous substances consent—
  - (a) may be granted on an application under this Act, or
  - (b) may be deemed to have been granted by virtue of section 11 or 12.
- (2) Without prejudice to the provisions of this Act, any hazardous substances consent shall (except in so far as it otherwise provides) enure for the benefit of the land to which it relates and of all persons for the time being interested in the land.

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

**C13** S. 6 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

#### Commencement Information

**I5** S. 6 wholly in force at 1.6.1992; s. 6 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2, 3

## 7 Applications for hazardous substances consent.

- (1) Provision may be made by regulations with respect to—
- (a) the form and manner in which applications [<sup>F16</sup>under this Act] for hazardous substances consent are to be made;
  - (b) the particulars which they are to contain and the evidence by which they are to be verified;
  - (c) the manner in which they are to be advertised; and
  - (d) the time within which they are to be dealt with.
- (2) Regulations—
- (a) may require an applicant for hazardous substances consent or the hazardous substances authority or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
  - (b) may require hazardous substances authorities to conduct appropriate consultations before determining applications for hazardous substances consent;
  - (c) may provide for the manner in which such a consultation is to be carried out and the time within which—
    - (i) such a consultation; or
    - (ii) any stage in such a consultation,
 is to be completed;
  - (d) may require hazardous substances authorities to determine applications for hazardous substances consent within such time as may be prescribed;
  - (e) may require hazardous substances authorities to give prescribed persons or bodies prescribed information about applications for hazardous substances consent, including information as to the manner in which such applications have been dealt with.
- (3) In subsection (2) above “appropriate consultations” [<sup>F17</sup>means consultations with the Health and Safety Executive and with] such persons or bodies as may be prescribed.
- (4) Regulations under this section may make different provision for different cases or descriptions of cases.

#### Textual Amendments

**F16** Words inserted (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, Sch. 13 Pt. I para. 3; S.I. 1991/2829, art. 3

**F17** Words substituted (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, Sch. 13 Pt. I para. 2(2); S.I. 1991/2829, art. 3

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

**C14** S. 7 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

#### **Commencement Information**

**I6** S. 7 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 7 in force for certain purposes at 11.3.1992 see S. I. 1992/725, art. 2

## **8 Certificates as to applicant's status etc.**

- (1) Regulations under this Act may provide that an application for hazardous substances consent or an appeal against the refusal of such an application or against the imposition of a condition on such a consent shall not be entertained unless it is accompanied by one of the following certificates in the prescribed form and signed by or on behalf of the applicant—
- (a) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of any of the land to which the application relates;
  - (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than himself) who, at the beginning of that period, were owners of any of the land to which the application relates;
  - (c) a certificate stating that—
    - (i) the applicant is unable to issue a certificate in accordance with paragraph (a) or (b);
    - (ii) he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) as are specified in the certificate;
    - (iii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
  - (d) a certificate stating that—
    - (i) the applicant is unable to issue a certificate in accordance with paragraph (a);
    - (ii) he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) but has been unable to do so.
- (2) Where such provision is made any such certificate as is mentioned in subsection (1) (b) or (c) must set out—
- (a) the names of those persons to whom the applicant has given the requisite notice of the application;
  - (b) the addresses at which notice was given to them;
  - (c) the date of service of each such notice.
- (3) Such regulations may require that any such certificate as is mentioned in subsection (1) (c) or (d) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in subsection (1)(a)) been published in a local newspaper circulating in the locality in which the land in question is situated.

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- (4) Such regulations may also require that where an application is accompanied by such a certificate as is mentioned in subsection (1)(b),(c) or (d) the hazardous substances authority—
- (a) shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate or, if later, the date of publication of a notice as so mentioned;
  - (b) in determining the application, shall take into account any representations relating to it which are made to them before the end of that period by any person who satisfies them that he is an owner of any land to which the application relates; and
  - (c) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (b).
- (5) Such regulations may also make provision as to who is to be treated as the owner of land for the purposes of any provisions of the regulations.
- (6) If any person—
- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
  - (b) recklessly issues a certificate which purports to comply with those requirements and contains such a statement,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) Regulations under this section may make different provision for different cases or descriptions of cases.
- (8) Subject to subsection (5), in this section “owner,” in relation to any land, means a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain, of which not less than seven years remain unexpired.

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

**C15** S. 8 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

**Commencement Information**

**I7** S. 8 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 8 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

**9 Determination of applications for hazardous substances consent.**

- (1) Subject to the following provisions of this Act, where an application is made to a hazardous substances authority for hazardous substances consent, that authority—
- (a) may grant hazardous substances consent, either unconditionally or subject to such conditions as they think fit; or
  - (b) may refuse hazardous substances consent.



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- (2) In dealing with such an application the hazardous substances authority shall have regard to any material considerations and, in particular, but without prejudice to the generality of the foregoing—
- (a) to any current or contemplated use of the land to which the application relates;
  - (b) to the way in which land in the vicinity is being used or is likely to be used;
  - (c) to any planning permission [<sup>F18</sup> or development consent] that has been granted for development of land in the vicinity;
  - (d) to the provisions of the development plan; and
  - (e) to any advice which the Health and Safety Executive <sup>F19</sup> . . . have given following consultations in pursuance of regulations under section 7(2).
- (3) If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (4) It shall be the duty of a hazardous substances authority, when granting hazardous substances consent, to include in that consent—
- (a) a description of the land to which the consent relates;
  - (b) a description of the hazardous substance or substances to which it relates; and
  - (c) in respect of each hazardous substance to which it relates, a statement of the maximum quantity allowed by the consent to be present at any one time.

#### Textual Amendments

**F18** Words in s. 9(2)(c) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 43** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

**F19** Words repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3

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

**C16** S. 9 applied (1.6.1992) by S.I. 1992/656, **reg. 26(4)**

**C17** S. 9 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**

**C18** S. 9(1): functions of local authority not to be the responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, **reg. 2(1)**, **Sch. 1**

#### Commencement Information

**I8** S. 9 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 9 in force for certain purposes at 11.3.1992 see S. I. 1992/725, art 2

## 10 Power to impose conditions on grant of hazardous substances consent.

- (1) Without prejudice to the generality of section 9(1), a hazardous substances authority may make the grant of hazardous substances consent conditional on the commencement or partial or complete execution of development on the land which is authorised by a specified planning permission [<sup>F20</sup> or development consent] or may grant hazardous substances consent subject to conditions with respect to any of the following—
- (a) how and where any hazardous substance to which the consent relates is to be kept or used;
  - (b) the times between which any such substance may be present;
  - (c) the permanent removal of any such substance—

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- (i) on or before a date specified in the consent; or
  - (ii) before the end of a period specified in it and commencing on the date on which it is granted.
- (2) [<sup>F21</sup>A hazardous substances authority] may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive have advised the authority that any consent they might grant should be subject.
- (3) It shall be the duty of a hazardous substances authority when granting hazardous substances consent to include in that consent in respect of each hazardous substance to which it relates a statement of all conditions relating to that substance subject to which the consent is granted.

#### Textual Amendments

- F20** Words in s. 10(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), [Sch. 2 para. 44](#) (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F21** Words "A hazardous substances authority" substituted (1.1.1992) for words commencing "An authority" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. 1 para. 2\(3\)](#); [S.I. 1991/2829](#), art. 3

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

- C19** S. 10 Power to apply conferred (10.11.1993) by [1993 c. 28](#), ss. [171\(4\)\(c\)](#); [S.I. 1993/2762](#), art. 3
- C20** S. 10: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of [S.I. 2000/2853](#), reg. 2(1), [Sch. 1](#)

#### Commencement Information

- I9** S. 10 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 10 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## 11 Deemed hazardous substances consent: established presence.

- (1) Where a hazardous substance was present on, over or under any land at any time within the establishment period hazardous substances consent may be claimed in respect of its presence.
- (2) A claim shall be made in the prescribed form before the end of the transitional period and shall contain the prescribed information as to the presence of the substance during the establishment period and as to how and where it was kept and used [<sup>F22</sup>while it was so present].
- (3) Subject to subsections (4) to (6), the hazardous substances authority shall be deemed to have granted any hazardous substances consent which is claimed under subsection (1).
- (4) If at the relevant date notification in respect of the substance was required by regulation 3 or 5 of the Notification Regulations, hazardous substances consent is only to be deemed to be granted under this section if notification in respect of the substance was given before that date in accordance with those regulations.
- (5) If at the relevant date such notification was not so required, hazardous substances consent is only to be deemed to be granted under this section if an aggregate quantity of

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the substance not less than the controlled quantity was present at any one time within the establishment period.

(6) If it appears to the hazardous substances authority that a claim for hazardous substances consent does not comply with subsection (2), it shall be their duty, before the end of the period of two weeks from their receipt of the claim—

- (a) to notify the claimant that in their opinion the claim is invalid; and
- (b) to give their reasons for that opinion.

(7) Hazardous substances consent which is deemed to be granted under this section is subject <sup>F23</sup> . . .—

(a) [<sup>F24</sup>to the condition that] the maximum aggregate quantity of the substance that may be present—

- (i) on, over or under the land to which the claim for the consent relates;
- (ii) on, over or under other land which is within 500 metres of it and controlled by the same person; or
- (iii) in or on a structure controlled by the same person any part of which is within 500 metres of it,

at any one time shall not exceed the established quantity;

[<sup>F25</sup>, and

(b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of that consent.]

(8) In this section—

“establishment period” means the period of 12 months immediately preceding the relevant date;

“established quantity” means, in relation to any land—

- (a) where before the relevant date there was a notification in respect of a substance in accordance with any of the Notification Regulations—
  - (i) the quantity notified or last notified before that date; or
  - (ii) a quantity equal to twice the quantity which was so notified or last notified before the start of the establishment period,

whichever is the greater;

- (b) where a notification was not required before that date by any of those regulations, a quantity exceeding by 50 per cent. the maximum quantity which was present on, over or under the land at any one time within that period;

“Notification Regulations” means the <sup>M2</sup>Notification of Installations Handling Hazardous Substances Regulations 1982;

“the relevant date” means the date on which Part IV of the <sup>M3</sup>Housing and Planning Act 1986 came into force or, if that Part of that Act is not in force immediately before the date on which this Act comes into force, that date.

“the transitional period” means the period of 6 months beginning with the relevant date.

### Textual Amendments

**F22** Words "while it was so present" substituted (1.1.1992) for "immediately before the relevant date" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 4\(a\)](#); S.I. 1991/2829, [art. 3](#)

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- F23** Words repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, **art. 3**
- F24** Words inserted (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 4(b)**; S.I. 1991/2829, **art. 3**
- F25** Word "and" and para. (b) commencing "to such other" substituted (1.1.1992) for paras. (b)(c) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 4(b)**; S.I. 1991/2829, **art. 3**

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

- C21** S. 11: power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**  
S. 11 applied (with modifications) (*temp.*) (20.4.1999) by S.I. 1999/981, **reg. 4(1)**

#### Commencement Information

- I10** S. 11 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 11 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art 2

#### Marginal Citations

- M2** S.I. 1982/1357.  
**M3** 1986 c. 63.

## <sup>F26</sup>12 Deemed hazardous substances consent: government authorisation.

### (1) Where—

- (a) the authorisation of a government department is required by virtue of an enactment in respect of development to be carried out by a local authority, or by statutory undertakers who are not a local authority; and
- (b) the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent,

the department may, on granting that authorisation, also direct that hazardous substances consent shall be deemed to be granted subject to such conditions (if any) as may be specified in the direction.

- (2) On granting a consent under section 36 of the <sup>M4</sup>Electricity Act 1989 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

[<sup>F27</sup>(2A) On making an order under section 1 or 3 of the Transport and Works Act 1992 which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]

[<sup>F28</sup>(2B) On making an order granting development consent in respect of development that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the person making the order may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.]

[<sup>F29</sup>(3) Before giving a direction under any of subsections (1) to (2B), the person having power to give the direction must consult the Health and Safety Commission.]

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- (4) For the purposes of this section development shall be taken to be authorised by a government department if—
- (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
  - (b) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development;
  - (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
  - (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
  - (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,
- and references in this section to the authorisation of a government department shall be construed accordingly.
- (5) The provisions of this Act (except section 22) shall apply in relation to any hazardous substances consent deemed to be granted by virtue of directions under this section as if it had been granted by the Secretary of State on an application referred to him under section 20.

[<sup>F30</sup>(6) A [<sup>F31</sup>person] shall, as respects any hazardous substances consent deemed to be granted by virtue of directions [<sup>F32</sup> given by the person] under this section, send to the hazardous substances authority concerned any such information as appears to be required by them for the purposes of a register under section 28.]

#### Textual Amendments

- F26** S. 12 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**
- F27** S. 12(2A) inserted (1.1.1993) by Transport and Works Act 1992 (c. 42, SIF 102), **s.18**; S.I. 1992/2784, **art. 2, Sch. 1**
- F28** S. 12(2B) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 45(2)** (with s. 226); S.I. 2010/101, **art. 2** (with art. 6)
- F29** S. 12(3) substituted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 45(3)** (with s. 226); S.I. 2010/101, **art. 2** (with art. 6)
- F30** S. 12(6) added (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 5**; S.I. 1991/2829, **art. 3**
- F31** Word in s. 12(6) substituted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 45(4)(a)** (with s. 226); S.I. 2010/101, **art. 2** (with art. 6)
- F32** Words in s. 12(6) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 45(4)(b)** (with s. 226); S.I. 2010/101, **art. 2** (with art. 6)

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

- C22** S. 12 extended (19.9.1995) by 1995 c. 25, **ss. 70, 125(2)**, **Sch. 9 para. 14(2)** (with **ss. 7(6), 115, 117, Sch. 8 para. 7**)

#### Commencement Information

- I11** S. 12 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 12 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

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#### Marginal Citations

M4 1989 c. 29.

### *Variation and revocation of consents*

#### 13 Application for hazardous substances consent without condition attached to previous consent.

- (1) This section applies to an application for hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted.
- (2) On such an application the hazardous substances authority shall consider only the question of the conditions subject to which hazardous substances consent should be granted.
- (3) If on such an application the hazardous substances authority determine—
  - (a) that hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted; or
  - (b) that it should be granted unconditionally,
 they shall grant hazardous substances consent accordingly.
- (4) If on such an application the hazardous substances authority determine that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, they shall refuse the application.
- (5) Where—
  - (a) hazardous substances consent has been granted or is deemed to have been granted for the presence on, over or under land of more than one hazardous substance; and
  - (b) an application under this section does not relate to all the substances,
 the hazardous substances authority shall only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate.
- (6) Where—
  - (a) more than one hazardous substances consent has been granted or is deemed to have been granted in respect of the same land; and
  - (b) an application under this section does not relate to all the consents,
 the hazardous substances authority shall only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate.

<sup>F33</sup>(7) .....

#### Textual Amendments

**F33** S. 13(7) repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 144, 162(2), Sch. 13 Pt. I para. 6, [Sch. 16 Pt. VII](#); S.I. 1991/2829, [art. 3](#)

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

**C23** S. 13 Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art.3](#)

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#### Commencement Information

**I12** S. 13 wholly in force at 1.6.1992 see S.I. 1992/725, art.3; s. 13 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 14 General power by order to revoke or modify hazardous substances consent.

- (1) The hazardous substances authority may by order revoke a hazardous substances consent or modify it to such extent as they consider expedient if it appears to them, having regard to any material consideration, that it is expedient to revoke or modify it.
- (2) The hazardous substances authority may also by order revoke a hazardous substances consent if it appears to them—
  - (a) that there has been a material change of use of land to which a hazardous substances consent relates; or
  - (b) that planning permission [<sup>F34</sup> or development consent] has been granted for development the carrying out of which would involve a material change of use of such land and the development to which the permission [<sup>F35</sup> or development consent] relates has been commenced; or
  - (c) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity; or
  - (d) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least five years been so present.
- (3) An order made by virtue of subsection (2)(a) or (b) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance.
- (4) An order under this section shall specify the grounds on which it is made.

#### Textual Amendments

**F34** Words in s. 14(2)(b) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), Sch. 2 para. 46(a) (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

**F35** Words in s. 14(2)(b) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), Sch. 2 para. 46(b) (with s. 226); S.I. 2010/101, art. 2 (with art. 6)

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

**C24** S. 14 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

#### Commencement Information

**I13** S. 14 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 14 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 15 Confirmation by Secretary of State of s. 14 orders.

- (1) An order under section 14 (<sup>F36</sup> . . . shall not take effect unless it is confirmed by the Secretary of State.

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- (2) The Secretary of State may confirm any such order submitted to him either without modification or subject to such modification as he considers expedient.
- (3) Where a hazardous substances authority submit an order under section 14 to the Secretary of State for his confirmation under this section, the authority shall serve notice of the order—
  - (a) on any person who is an owner of the whole or any part of the land to which the order relates;
  - (b) on any person other than an owner who appears to them to be in control of the whole or any part of that land;
  - (c) on any other person who in their opinion will be affected by the order.
- (4) A notice under subsection (3) shall specify the period (which must not be less than 28 days from the service of it) within which any person on whom the notice is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose.
- (5) If such a person so requires, the Secretary of State, before confirming the order, shall give that person and the hazardous substances authority such an opportunity.
- (6) Where an order under section 14 has been confirmed by the Secretary of State, the hazardous substances authority shall serve a copy of the order on every person who was entitled to be served with notice under subsection (3).

#### Textual Amendments

**F36** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 162(2), **Sch. 16 Pt. VII**; [S.I. 1991/2829](#), **art. 3**

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

**C25** [S. 15](#) Power to apply conferred (10.11.1993) by [1993 c. 28](#), ss. **171(4)(c)**; [S.I. 1993/2762](#), **art.3**

#### Commencement Information

**I14** [S. 15](#) wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; [s. 14](#) in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## 16 Compensation in respect of s. 14 orders.

- (1) This section applies where an order is made under section 14(1) revoking or modifying a hazardous substances consent.
- (2) If, on a claim made to the hazardous substances authority within the prescribed time and in the prescribed manner, it is shown that any person has suffered damage in consequence of the order—
  - (a) by depreciation of the value of an interest to which he is entitled in the land or in minerals in, on or under it; or
  - (b) by being disturbed in his enjoyment of the land or of minerals in, on or under it, the authority shall pay him compensation in respect of that damage.
- (3) Without prejudice to subsection (2), any person who carries out any works in compliance with the order shall be entitled, on a claim made as mentioned in that



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subsection, to recover from the hazardous substances authority compensation in respect of any expenses reasonably incurred by him in that behalf.

- (4) Any compensation payable to a person under this section by virtue of an order shall be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order.
- (5) Sections 117 and 118 of the principal Act (which contain general provisions as to the assessment of and the determination of claims for compensation) shall apply as if compensation under this section were compensation under section 115 of that Act.

#### Commencement Information

**I15** S. 16 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 16 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 17 Revocation of hazardous substances consent on change of control of land.

- (1) A hazardous substances consent is revoked if there is a change in the person in control of part of the land to which it relates, unless an application for the continuation of the consent has previously been made to the hazardous substances authority.
- (2) Regulations may make provision in relation to applications under subsection (1) corresponding to any provision that may be made by regulations under section 7 or 8 in relation to applications for hazardous substances consent.
- [<sup>F37</sup>(3) This section does not apply if the control of land changes from one emanation of the Crown to another.]

#### Textual Amendments

**F37** S. 17(3) inserted (7.6.2006) by Planning and Compulsory Purchase Act 2004 (c. 5), Sch. 3 para. 20 (with s. 111); S.I. 2006/1281, art. 2(c)

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

**C26** S. 17 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art. 3

#### Commencement Information

**I16** S. 17 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 17 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 18 Determination of applications for continuation of hazardous substances consent.

- (1) When an application is made under section 17 for the continuation of a hazardous substances consent the hazardous substances authority—
  - (a) may modify the consent in any way they consider appropriate; or
  - (b) may revoke it.
- (2) In dealing with such an application the authority shall have regard to any material consideration and, in particular, but without prejudice to the generality of the foregoing—

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- (a) to the matters to which a hazardous substances authority are required to have regard by section 9(2)(a) to (d); and
  - (b) to any advice which the Health and Safety Executive <sup>F38</sup> . . . have given following consultations in pursuance of regulations under section 17(2).
- (3) If an application relates to more than one consent, the authority may make different determinations in relation to each.
- (4) If a consent relates to more than one hazardous substance, the authority may make different determinations in relation to each.
- (5) It shall be the duty of a hazardous substances authority, when continuing hazardous substances consent, to attach to the consent either—
- (a) a statement that it is unchanged in relation to the matters included in it by virtue of sections 9(4) and 10(3); or
  - (b) a statement of any change in respect of those matters.
- (6) The modifications which a hazardous substances authority may make by virtue of subsection (1)(a) include, without prejudice to the generality of that subsection, the making of the consent subject to conditions with respect to any of the matters mentioned in subsection (1) of section 10; and subsection (2) of that section shall apply as respects those conditions as it applies to the grant of consent subject to conditions.
- (7) Where any application under section 17(1) is made to a hazardous substances authority then, unless within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority, the hazardous substances authority either—
- (a) give notice to the applicant of their decision on the application; or
  - (b) give notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 20,
- the application shall be deemed to have been granted.

#### Textual Amendments

**F38** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; [S.I. 1991/2829](#), **art. 3**

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

**C27** [S. 18](#) Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), **art. 3**

#### Commencement Information

**I17** [S. 18](#) wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; [S. 18](#) in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## 19 Compensation on revocation or modification of consent under s. 18.

Where on an application under section 17(1) the hazardous substances authority modify or revoke the hazardous substances consent, they shall pay to the person in control of the whole of the land before the change in control by virtue of which the application was made compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

**C28** S. 19 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

**Commencement Information**

**I18** S. 19 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; S. 19 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

*Secretary of State's powers*

**20 Reference of applications to Secretary of State.**

- (1) The Secretary of State may give directions requiring applications for hazardous substances consent or applications under section 17(1) to be referred to him instead of being dealt with by hazardous substances authorities.
- (2) A direction under this section—
  - (a) may be given either to a particular hazardous substances authority or to hazardous substances authorities generally; and
  - (b) may relate either to a particular application or to applications of a class specified in the direction.
- (3) Any application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.
- (4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give to each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) The decision of the Secretary of State on any application referred to him under this section shall be final.

<sup>F39</sup>(6) .....

**Textual Amendments**

**F39** S. 20(6) repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), Sch. 16 Pt. VII; S.I. 1991/2829, art. 3

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

**C29** S. 20 Power to apply conferred (10.11.1993) by 1993 c. 28, ss. 171(4)(c); S.I. 1993/2762, art.3

**Commencement Information**

**I19** S. 20 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 20 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

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## 21 Appeals against decisions or failure to take decisions relating to hazardous substances.

- (1) Where a hazardous substances authority refuse an application for hazardous substances consent or an application under section 17(1) or an application for any consent, agreement or approval of the authority required by a condition imposed on the grant of such consent, or grant it subject to conditions, the applicant may, if he is aggrieved by their decision, appeal to the Secretary of State.
- (2) A person who has made an application for hazardous substances consent may also appeal to the Secretary of State if the hazardous substances authority have neither—
  - (a) given notice to the applicant of their decision on the application; nor
  - (b) given notice to him that the application has been referred to the Secretary of State in accordance with directions given under section 20,
 within such period as may be prescribed, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority; and for the purposes of this Act in such a case the authority shall be deemed to have decided to refuse the application.
- (3) An appeal under this section must be made by notice served in the prescribed manner within such period as may be prescribed.
- [<sup>F40</sup>(3A) A notice of appeal under this section must be accompanied by such information as may be prescribed.
- (3B) The power to make regulations under subsection (3A) is exercisable by—
  - (a) the Secretary of State, in relation to England;
  - (b) the Welsh Ministers, in relation to Wales.
- (3C) Section 40(3) does not apply in relation to regulations under subsection (3A) made by the Welsh Ministers.
- (3D) Regulations under subsection (3A) made by the Welsh Ministers are subject to annulment in pursuance of a resolution of the National Assembly for Wales.]
- (4) The Secretary of State may allow or dismiss an appeal under this section or may reverse or vary any part of the decision of the hazardous substances authority (whether or not the appeal relates to that part of it) and may deal with the application as if it had been made to him in the first instance.
- (5) Before determining an appeal under this section, the Secretary of State shall, if either the applicant or the hazardous substances authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (6) The decision of the Secretary of State on any appeal under this section shall be final.
- [<sup>F41</sup>(7) .....
- (8) The Schedule to this Act applies to appeals under this section.

### Textual Amendments

**F40** S. 21(3A)-(3D) inserted (6.4.2009 for E., 30.4.2012 for W.) by [Planning Act 2008 \(c. 29\)](#), s. 241(3)(4), [Sch. 11 para. 6](#) (with s. 226); [S.I. 2009/400](#), art. 5(d); [S.I. 2012/802](#), art. 2(b)

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F41** S. 21(7) repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); [S.I. 1991/2829](#), [art. 3](#)

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

**C30** S. 21 Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), [art.3](#)

**Commencement Information**

**I20** S. 21 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 21 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

[<sup>F42</sup>**21A Determination by Secretary of State of procedure for certain proceedings**

- (1) The Secretary of State must make a determination as to the procedure by which proceedings to which this section applies are to be considered.
- (2) A determination under subsection (1) must provide for the proceedings to be considered in whichever of the following ways appears to the Secretary of State to be most appropriate—
  - (a) at a local inquiry;
  - (b) at a hearing;
  - (c) on the basis of representations in writing.
- (3) The Secretary of State must make a determination under subsection (1) in respect of proceedings to which this section applies before the end of the prescribed period.
- (4) A determination under subsection (1) may be varied by a subsequent determination under that subsection at any time before the proceedings are determined.
- (5) The Secretary of State must notify the appellant or applicant (as the case may be) and the hazardous substances authority of any determination made under subsection (1).
- (6) The Secretary of State must publish the criteria that are to be applied in making determinations under subsection (1).
- (7) This section applies to—
  - (a) an application referred to the Secretary of State under section 20 instead of being dealt with by a hazardous substances authority in England;
  - (b) an appeal under section 21 against a decision of a hazardous substances authority in England.
- (8) The Secretary of State may by order amend subsection (7) to—
  - (a) add proceedings under this Act to, or remove proceedings under this Act from, the list of proceedings to which this section applies, or
  - (b) otherwise modify the descriptions of proceedings under this Act to which this section applies.
- (9) An order under subsection (8) may—
  - (a) contain incidental, supplementary, consequential, transitional and transitory provision and savings;
  - (b) amend, repeal or revoke any provision made by or under this Act or by or under any other Act.

*Status: Point in time view as at 01/04/2013.*

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- (10) The power to make an order under subsection (8) is exercisable by statutory instrument.
- (11) No order may be made under subsection (8) unless a draft of the instrument containing the order has been laid before, and approved by resolution of, each House of Parliament.]

#### Textual Amendments

**F42** S. 21A inserted (6.4.2009 for E.W. for specified purposes) by [Planning Act 2008 \(c. 29\)](#), ss. **196(3)**, **241(8)** (with s. 226); [S.I. 2009/400](#), art. 3(j) (with art. 6(2))

## 22 Validity of decisions as to applications.

- (1) If any person is aggrieved by any decision of the Secretary of State under section 20 or 21 and wishes to question the validity of that decision on the grounds—
- that it is not within the powers of this Act; or
  - that any of the relevant requirements have not been complied with in relation to that decision,
- he may within six weeks from the date on which the decision is taken make an application to the High Court under this section.
- (2) Without prejudice to subsection (1), if the hazardous substances authority who made the decision on the application to which the proceedings relate or, as the case may be, referred the application wish to question the validity of any such decision as is mentioned in that subsection on any of the grounds there mentioned, the authority may within six weeks from the date on which the decision is taken make an application to the High Court under this section.
- (3) On any application under this section the High Court—
- may by interim order suspend the operation of the decision the validity of which is questioned by the application until the final determination of the proceedings;
  - if satisfied that the decision in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that decision.
- (4) In this section “the relevant requirements”, in relation to any decision, means any requirements of this Act or the [<sup>F43</sup>principal Act] or of [<sup>F44</sup>the Tribunals and Inquiries Act 1992], or of any order, regulations or rules made under this Act or under either of those Acts which are applicable to that decision.
- (5) Except as provided by this section, the validity of any such decision as is mentioned in subsection (1) shall not be questioned in any legal proceedings whatsoever.
- (6) Nothing in subsection (5) shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is there mentioned.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F43** Words "principal Act" substituted (1.1.1992) for words "1971 Act" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 7](#); S.I. 1991/2829, [art. 3](#)
- F44** Words in s. 22(4) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53, SIF 127\)](#), ss. 18(1), 19(2), [Sch. 3 para. 33](#)

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

- C31** S. 22 modified by [S.I. 1992/656](#), [reg. 26\(5\)](#)
- C32** S. 22 applied (28.9.2004) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [s. 58\(6\)](#) (with s. 111); S.I. 2004/2202, [art. 3\(a\)](#)

#### Commencement Information

- I21** S. 22 wholly in force at 1.6.1992 see S.I. 1992/725, [art. 3](#); s. 22 in force for certain purposes at 11.3.1992 see S.I. 1992/725, [art. 2](#)

### *Contraventions of hazardous substances control*

## 23 Offences.

- (1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control—
- (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
    - (i) there is no hazardous substances consent for the presence of the substance; or
    - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
  - (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In subsection (1) “the appropriate person” means—
- (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
    - (i) any person knowingly causing the substance to be present on, over or under the land;
    - (ii) any person allowing it to be so present; and
  - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the person in control of the land.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on summary conviction, to a fine not exceeding [<sup>F45</sup>£20,000]; or
  - (b) on conviction on indictment, to a fine.

[<sup>F46</sup>(4A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, 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]

*Status: Point in time view as at 01/04/2013.*

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- (5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or
  - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
    - (i) that the substance was present; or
    - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
  - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

#### Textual Amendments

- F45** Word in s. 23(4) substituted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 10\(a\)](#) (with s. 84(5)); S.I. 1991/2905, [art.3](#)
- F46** S. 23(4A) substituted (2.1.1992) for the words following s. 23(4)(b) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 10\(b\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

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

- C33** S. 23 restricted and modified by [S.I. 1992/725](#), [art. 4](#)
- C34** S. 23: power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), [art. 3](#)
- C35** S. 23 restricted (E.) (28.4.2010) by [The Planning \(Hazardous Substances\) \(Amendment\) \(England\) Regulations 2010 \(S.I. 2010/1050\)](#), regs. 1(1), [3](#)

#### Commencement Information

- I22** S. 23 wholly in force at 1.6.1992 see [S.I. 1992/725](#), [art. 3](#); s. 23 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), [art. 2](#)

## 24 Power to issue hazardous substances contravention notice.

- (1) Where it appears to the hazardous substances authority that there is or has been a contravention of hazardous substances control, they may issue a notice—
- (a) specifying an alleged contravention of hazardous substances control; and
  - (b) requiring such steps as may be specified in the notice to be taken to remedy <sup>[F47]</sup>wholly or partly] the contravention,
- if they consider it expedient to do so having regard to any material consideration.
- (2) Such a notice is referred to in this Act as a “hazardous substances contravention notice”.



*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) A hazardous substances authority shall not issue a hazardous substances contravention notice where it appears to them that a contravention of hazardous substances control can be avoided only by the taking of action amounting to a breach of a statutory duty.
- (4) A copy of a hazardous substances contravention notice shall be served—
  - (a) on the owner of the land to which it relates;
  - (b) on any person other than the owner who appears to the hazardous substances authority to be in control of the land; and
  - (c) on such other persons as may be prescribed.
- (5) A hazardous substances contravention notice shall also specify—
  - (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
  - (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken.
- (6) Where a hazardous substances authority issue a hazardous substances contravention notice the steps required by the notice may, without prejudice to the generality of subsection (1)(b), if the authority think it expedient, include a requirement that the hazardous substance be removed from the land.
- (7) Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substances which are required to be removed.
- (8) The hazardous substances authority may withdraw a hazardous substances contravention notice (without prejudice to their power to issue another) at any time before [<sup>F48</sup>or after] it takes effect.
- (9) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice [<sup>F49</sup>or would, if the notice were re-issued, be served with a copy of it].

#### Textual Amendments

- F47** Words in s. 24(1)(b) inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 11(a)** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F48** Words in s. 24(8) inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 11(b)** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F49** Words in s. 24(9) inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 11(c)** (with s. 84(5)); S.I. 1991/2905, **art. 3**

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

- C36** S. 24 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art.3**

#### Commencement Information

- I23** S. 24 wholly in force at 1.6.1992 and in force at 11.3.1992 for certain purposes see S.I. 1992/725, art. 2, 3

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## **[<sup>F50</sup>24A Variation of hazardous substances contravention notices.**

- (1) A hazardous substances authority may waive or relax any requirement of a hazardous substances contravention notice issued by them and, in particular, may extend any period specified in accordance with section 24(5)(b) in the notice.
- (2) The powers conferred by subsection (1) may be exercised before or after the notice takes effect.
- (3) The hazardous substances authority shall, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice or would, if the notice were re-issued, be served with a copy of it.]

### **Textual Amendments**

**F50** S. 24A inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para.12](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

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

**C37** S. 24A: power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art. 3](#)

### **Commencement Information**

**I24** S. 24A wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 24A in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

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

- (1) The Secretary of State may by regulations—
  - (a) specify matters which are to be included in hazardous substances contravention notices, in addition to those which are required to be included in them by section 24;
  - (b) provide—
    - (i) for appeals to him against hazardous substances contravention notices;
    - (ii) for the persons by whom, grounds upon which and time within which such an appeal may be brought;
    - (iii) for the procedure to be followed on such appeals;
    - (iv) for the directions that may be given on such an appeal;
    - (v) for the application to such appeals, subject to such modifications as the regulations may specify, of any of the provisions of sections 174, [<sup>F51</sup>175(1) to (3)] and (6), 176, 177, 285 and 289 of the principal Act;
  - (c) direct that any of the provisions of sections 178 [<sup>F52</sup>(1) to (5) and (7)], 179 to 181, 183, 184, [<sup>F53</sup>186,] 187 and 188 of that Act shall have effect in relation to hazardous substances contravention notices subject to such modifications as he may specify in the regulations;
  - (d) make such other provision as he considers necessary or expedient in relation to hazardous substances contravention notices.
- (2) If any person appeals against a hazardous substances contravention notice, the notice shall [<sup>F54</sup>subject to regulations under this section]be of no effect pending the final determination or the withdrawal of the appeal.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Regulations under section 24 or this section may make different provision for different cases or descriptions of cases.
- (4) Where any person has appealed to the Secretary of State under this section against a hazardous substances contravention notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.
- [<sup>F55</sup>(5) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250.]

#### Textual Amendments

- F51** Words in s. 25(1)(b)(v) (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. II para. 30(a)** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F52** Words in s. 25(1)(c) repealed (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. II para. 30(b)**, **Sch. 19 Pt. I** (with s. 84(5)); S.I. 1991/2905, art. 3, **Sch. 2**
- F53** Word "186," inserted (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 8**; S.I. 1991/2829, **art. 3**
- F54** Words in s. 25(2) inserted (2.1.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), s. 25, **Sch. 3 Pt. I para. 13** (with s. 84(5)); S.I. 1991/2905, **art. 3**
- F55** S. 25(5) inserted (temp.) by virtue of Planning (Consequential Provisions) Act 1990 (c. 11, SIF 123:1, 2), s. 6, **Sch. 4 paras. 1, 13** (which temp. insertion falls (2.1.1992) for specified purposes only by virtue of S.I. 1991/2698, **arts. 3, 4**)

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

- C38** S. 25 Power to apply conferred (10.11.1993) by 1993 c. 28, **ss. 171(4)(c)**; S.I. 1993/2762, **art. 3**
- C39** S. 25(2) restricted (1.6.1992) by S.I. 1992/656, **reg. 22(2)**
- C40** S. 25(5): transitory modification by 1990 c. 11, Sch. 4 para. 13 falls (6.4.2009) for further specified purposes by virtue of S.I. 2009/849, art. 2 (with art. 3)

#### Commencement Information

- I25** S. 25 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 25 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### <sup>F56</sup>26 Transitional exemptions.

#### Textual Amendments

- F56** S. 26 repealed (21.7.2008) by Statute Law (Repeals) Act 2008 (c. 12), **Sch. 1 Pt. 9**

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Miscellaneous provisions

#### [<sup>F57</sup>26A Fees for consent applications.

- (1) Provision may be made by regulations for the payment of a fee of the prescribed amount to a hazardous substances authority in respect of an application for, or for the continuation of, hazardous substances consent.
- (2) Regulations under this section may provide for the payment to the Secretary of State of a fee of the prescribed amount in respect of any application which is, by virtue of regulations under section 25, deemed to have been made for hazardous substances consent.
- (3) Regulations under this section may provide—
  - (a) for the transfer of prescribed fees received by a hazardous substances authority in respect of any application which is referred to the Secretary of State under section 20;
  - (b) for the remission or refunding of a prescribed fee (in whole or in part) in prescribed circumstances or in pursuance of a direction given by the Secretary of State;

and the regulations may make different provision for different areas or for different cases or descriptions of cases.]

#### Textual Amendments

**F57** S. 26A inserted (1.1.1992) before s. 27 by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, [Sch. 13 Pt. I para. 9](#); [S.I. 1991/2829](#), art. 3

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

**C41** S. 26A: power to apply conferred (10.11.1993) by [1993 c. 28](#), [ss. 171\(4\)\(c\)](#); [S.I. 1993/2762](#), art. 3

#### Commencement Information

**I26** S. 26A wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 26A in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

#### [<sup>F58</sup>26A Injunctions.

- (1) Where a hazardous substances authority consider it necessary or expedient for any actual or apprehended contravention of hazardous substances control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise any of their other powers under this Act.
- (2) On an application under subsection (1) the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention.
- (3) Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown.
- (4) In this section “the court” means the High Court or the county court.]

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F58** S. 26AA inserted (25.11.1991) for certain purposes by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 15](#) (with s. 84(5)); S.I. 1991/2728, [art. 2](#)

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

**C42** S. 26AA: power to apply conferred (10.11.1993) by [1993 c. 28](#), [ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art. 3](#)

**Commencement Information**

**I27** S. 26AA wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 26AA in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

**27 Temporary exemption directions.**

(1) If it appears to the Secretary of State—

(a) either—

- (i) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or
- (ii) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and

(b) that the presence of a hazardous substance on, over or under land specified in the direction in circumstances such that hazardous substances consent would be required, is necessary for the effective provision of that service or commodity,

he may direct that, subject to such conditions or exceptions as he thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control so long as the direction remains in force.

(2) A direction under this section—

(a) may be withdrawn at any time;

(b) shall in any case cease to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Secretary of State's power to give a further direction.

(3) The Secretary of State shall send a copy of any such direction to the authority who are the hazardous substances authority for the land.

<sup>F59</sup>(4) .....

**Textual Amendments**

**F59** S. 27(4) repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); S.I. 1991/2829, [art. 3](#)

**Commencement Information**

**I28** S. 27 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 27 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 28 Registers etc.

- (1) Every <sup>F60</sup> . . . hazardous substances authority <sup>F60</sup> . . . shall keep, in such manner as may be prescribed, a register containing such information as may be prescribed with respect—
- (a) to applications for hazardous substances consent [<sup>F61</sup>made to that authority;
  - (aa) to applications under section 17(1) made to that authority;]
  - (b) to hazardous substances consent having effect by virtue of section 11 or 12 with respect to land for which that authority is, <sup>F62</sup> . . . , the hazardous substances authority;
  - (c) to revocations or modifications of hazardous substances consent granted with respect to such land; and
  - (d) to directions under section 27 sent to the authority by the Secretary of State [<sup>F63</sup>;

and every such register shall also contain such information as may be prescribed as to the manner in which applications for hazardous substances consent have been dealt with.]

<sup>F64</sup>(2) . . . . .

- (3) Every register kept under this section shall be available for inspection by the public at all reasonable hours.

### Textual Amendments

- F60** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; [S.I. 1991/2829](#), **art. 3**
- F61** Words "made to that authority" and para. (aa) substituted (1.1.1992) for the words following the word "consent" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, **Sch. 13 Pt. I para. 2(4)(a)**; [S.I. 1991/2829](#), **art. 3**
- F62** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; [S.I. 1991/2829](#), **art. 3**
- F63** Words inserted (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, **Sch. 13 Pt. I para. 2(4)(b)**; [S.I. 1991/2829](#), **art. 3**
- F64** [S. 28\(2\)](#) repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; [S.I. 1991/2829](#), **art. 3**

### Commencement Information

- I29** [S. 28](#) wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; [s. 28](#) in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

## 29 Health and safety requirements.

- (1) Nothing in—
- (a) any hazardous substances consent granted or deemed to be granted or having effect by virtue of this Act; or
  - (b) any hazardous substances contravention notice issued under section 24,
- shall require or allow anything to be done in contravention of any of the relevant statutory provisions or any prohibition notice or improvement notice served under or by virtue of any of those provisions.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) To the extent that such a consent or notice purports to require or allow any such thing to be done, it shall be void.
- (3) Where it appears to a hazardous substances authority who have granted, or are deemed to have granted, a hazardous substances consent or who have issued a hazardous substances contravention notice that the consent or notice or part of it is rendered void by subsection (2), the authority shall, as soon as is reasonably practicable, consult the [F65Health and Safety Executive] with regard to the matter.
- (4) If the [F65Health and Safety Executive] advise the authority that the consent or notice is rendered wholly void, the authority shall revoke it.
- (5) If they advise that part of the consent or notice is rendered void, the authority shall so modify it as to render it wholly operative.
- (6) In this section—  
F66  
.....  
“relevant statutory provisions”, “improvement notice” and “prohibition notice” have the same meanings as in Part I of the M5Health and Safety at Work etc. Act 1974.

#### Textual Amendments

- F65** Words "Health and Safety Executive" substituted (1.1.1992) for words "appropriate body" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, **Sch. 13 Pt. I para. 2(5)**; S.I. 1991/2829, **art. 3**
- F66** Definition and word "and" repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, **art. 3**

#### Commencement Information

- I30** S. 29 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 29 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### Marginal Citations

- M5** 1974 c. 37.

### General

## 30 Application of this Act to certain authorities and persons.

- (1) The provisions of this Act shall have effect, subject to such exceptions and modifications as may be prescribed, in relation to granting hazardous substances consent for authorities who are hazardous substances authorities F67. . .
- (2) Subject to the provisions of section 12, any such regulations may in particular provide for securing—
  - (a) that any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance on, over or under land shall be made to the Secretary of State and not to the hazardous substances authority;

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- (b) that any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State and not by the hazardous substances authority.

#### Textual Amendments

**F67** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); [S.I. 1991/2829](#), [art. 3](#)

#### Commencement Information

**I31** S. 30 wholly in force at 1.6.1992 see [S.I. 1992/725](#), [art. 3](#); s. 30 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), [art. 2](#)

### [<sup>F68</sup>30A Application to the Crown

- (1) This Act (except the provisions specified in subsection (2)) binds the Crown.
- (2) The provisions are—
- (a) section 8(6);
  - (b) section 23;
  - (c) section 26AA;
  - (d) section 36A;
  - (e) section 36B(2)."

#### Textual Amendments

**F68** Ss. 30A, 30B inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [s. 79\(3\)](#) (with [s. 111](#)); [S.I. 2004/2097](#), [art. 2](#); [S.I. 2006/1281](#), [art. 2\(a\)](#)

### 30B Crown application: transitional

- (1) This section applies if at any time during the establishment period a hazardous substance was present on, over or under Crown land.
- (2) The appropriate authority must make a claim in the prescribed form before the end of the transitional period.
- (3) The claim must contain the prescribed information as to—
- (a) the presence of the substance during the establishment period;
  - (b) how and where the substance was kept and used.
- (4) Unless subsection (5) or (7) applies, the hazardous substances authority is deemed to have granted the hazardous substances consent claimed in pursuance of subsection (2).
- (5) This subsection applies if the hazardous substances authority think that a claim does not comply with subsection (3).
- (6) If subsection (5) applies, the hazardous substances authority must, before the end of the period of two weeks starting with the date they received the claim—
- (a) notify the claimant that they think the claim is invalid;



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- (b) give their reasons.
- (7) This subsection applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity.
- (8) Hazardous substances consent which is deemed to be granted under this section is subject—
- (a) to the condition that the maximum aggregate quantity of the substance that may be present for the purposes of this subsection at any one time must not exceed the established quantity;
  - (b) to such other conditions (if any) as are prescribed for the purposes of this section and are applicable in the case of the consent.
- (9) A substance is present for the purposes of subsection (8)(a) if—
- (a) it is on, over or under land to which the claim for consent relates,
  - (b) it is on, over or under other land which is within 500 metres of it and is controlled by the Crown, or
  - (c) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it,
- and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of paragraphs (a) to (c) must be counted only once.
- (10) The establishment period is the period of 12 months ending on the day before the date of commencement of section 79(3) of the Planning and Compulsory Purchase Act 2004.
- (11) The transitional period is the period of six months starting on the date of commencement of that section.
- (12) The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period.]

#### Textual Amendments

**F68** Ss. 30A, 30B inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\), s. 79\(3\)](#) (with [s. 111](#)); [S.I. 2004/2097, art. 2](#); [S.I. 2006/1281, art. 2\(a\)](#)

#### [<sup>F69</sup>30C Enforcement in relation to the Crown

- (1) No act or omission done or suffered by or on behalf of the Crown constitutes an offence under this Act.
- (2) A local planning authority must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority.
- (3) The appropriate authority may give consent under subsection (2) subject to such conditions as it thinks appropriate.
- (4) A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done or prohibited by or under this Act.
- (5) A step taken for the purposes of enforcement includes—

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- (a) entering land;
  - (b) bringing proceedings;
  - (c) the making of an application.
- (6) A step taken for the purposes of enforcement does not include—
- (a) service of a notice;
  - (b) the making of an order (other than by a court).

#### Textual Amendments

**F69** Ss. 30C, 30D inserted (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 84(4) (with s. 111); S.I. 2006/1281, art. 2(a)

### 30D References to an interest in land

- (1) Subsection (2) applies to the extent that an interest in land is a Crown interest or a Duchy interest.
- (2) Anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority.
- (3) An interest in land includes an interest only as occupier of the land.]

#### Textual Amendments

**F69** Ss. 30C, 30D inserted (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 84(4) (with s. 111); S.I. 2006/1281, art. 2(a)

### 31 Exercise of powers in relation to Crown land.

<sup>F70</sup>(1) .....

<sup>F70</sup>(2) .....

- (3) In this section—

“Crown land” means land in which there is a Crown interest or a Duchy interest;

[<sup>F71</sup>“Crown interest” means any of the following—

- (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates;
- (b) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department;
- (c) such other interest as the Secretary of State specifies by order;]

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

- (4) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of subsection (1) as having an interest in land.
- (5) For the purposes of this section “the appropriate authority”, in relation to any land—

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- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;
  - [<sup>F72</sup>(aa) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State;]
  - (b) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints;
  - (d) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.
  - [<sup>F73</sup>(e) in relation to Westminster Hall and the Chapel of St Mary Undercroft, means the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly;
  - (f) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, means the Lord Great Chamberlain.]
- (6) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.
- [<sup>F74</sup>(7) References to Her Majesty's private estates must be construed in accordance with section 1 of the Crown Private Estates Act 1862.
- (8) An order made for the purposes of paragraph (c) of the definition of Crown interest in subsection (3) must be made by statutory instrument.
- (9) But no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

#### Textual Amendments

- F70** S. 31(1)(2) repealed (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), Sch. 3 para. 8(2), [Sch. 9](#) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2006/1281, [art. 2\(c\)\(f\)](#)
- F71** Words in s. 31(3) substituted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), Sch. 3 para. 8(3) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2006/1281, [art. 2\(c\)](#)
- F72** S. 31(5)(aa) inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), Sch. 3 para. 8(4) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2006/1281, [art. 2\(c\)](#)
- F73** S. 31(5)(e) inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), Sch. 3 para. 8(5) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2006/1281, [art. 2\(c\)](#)
- F74** S. 31(7)-(9) inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), Sch. 3 para. 8(6) (with s. 111); S.I. 2004/2097, [art. 2](#); S.I. 2006/1281, [art. 2\(c\)](#)

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

**C43** S. 31 amended (25.9.1991) by [Atomic Weapons Establishment Act 1991 \(c. 46, SIF 8\)](#), ss. 3, 6(2), [Sch. para. 10](#) (with s. 1)

**Commencement Information**

**I32** S. 31 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 31 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

[<sup>F75</sup>**31A Applications for hazardous substances consent by Crown**

- (1) This section applies to an application for hazardous substances consent made by or on behalf of the Crown.
- (2) The Secretary of State may by regulations modify or exclude any statutory provision relating to the making and determination of such applications.
- (3) A statutory provision is a provision contained in or having effect under any enactment.]

**Textual Amendments**

**F75** S. 31A inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Sch. 3 para. 12\(1\)](#) (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 2(c)

[<sup>F76</sup>**32 Application for hazardous substances consent in anticipation of disposal of Crown land.**

.....

**Textual Amendments**

**F76** S. 32 repealed (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Sch. 3 para. 12\(2\)](#), [Sch. 9](#) (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 2(c)(f)

[<sup>F77</sup>**33** .....

**Textual Amendments**

**F77** S. 33 repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), [Sch. 16 Pt. VII](#); S.I. 1991/2829, art. 3

**34 Ecclesiastical property.**

- (1) Where under any of the provisions of this Act a notice or copy of a notice is required to be served on an owner of land and the land is ecclesiastical property, a similar notice or copy of a notice shall be served on the [<sup>F78</sup>Diocesan Board of Finance for the diocese in which the land is situated].

*Status: Point in time view as at 01/04/2013.*

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- (2) [<sup>F79</sup>Where any ecclesiastical property is vested in the incumbent of a benefice which is vacant] and the property is situated elsewhere than in Wales, then for the purposes of this section, sections 8 and 22 and section 31(1), so far as it applies to section 8, and any other provisions of the planning Acts so far as they apply, or have effect for the purpose of, any of those provisions, [<sup>F80</sup>it] shall be treated as being vested in the [<sup>F81</sup>Diocesan Board of Finance for the diocese in which the land is situated].
- (3) Any compensation payable under section 16 in respect of land which is ecclesiastical property [<sup>F82</sup>shall be paid to the Diocesan Board of Finance for the diocese in which the land is situated] and shall <sup>F83</sup>... be applied by [<sup>F84</sup>it] for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising or disposing of the proceeds of such a sale.
- (4) In this section “ecclesiastical property” means land belonging to an ecclesiastical benefice [<sup>F85</sup>of the Church of England], or being or forming part of a church subject to the jurisdiction of a bishop of any diocese [<sup>F85</sup>of the Church of England] or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction <sup>F86</sup>....

#### Textual Amendments

- F78** Words in s. 34(1) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F79** Words in s. 34(2) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F80** Word in s. 34(2) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F81** Words in s. 34(2) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F82** Words in S. 34(3) substituted for s. 34(3)(a)-(b) (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(c\)](#); 2006 No. 2, Instrument made by Archbishops
- F83** Words in s. 34(3) omitted (E.) (1.10.2006) by virtue of [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(c\)](#); 2006 No. 2, Instrument made by Archbishops
- F84** Word in s. 34(3) substituted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(c\)](#); 2006 No. 2, Instrument made by Archbishops
- F85** Words in s. 34(4) inserted (E.) (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(d\)](#); 2006 No. 2, Instrument made by Archbishops
- F86** Words in s. 34(4) omitted (E.) (1.10.2006) by virtue of [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 28\(d\)](#); 2006 No. 2, Instrument made by Archbishops

#### Commencement Information

- I33** S. 34 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 34 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 35 Application of Act to Isles of Scilly.

In relation to land in the Isles of Scilly the provisions of this Act, and any other provisions of the planning Acts in so far as they apply or have effect for the purposes of those provisions, shall have effect as if those Isles were a district and the Council of the Isles were the council of that district.

*Status: Point in time view as at 01/04/2013.*

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#### Commencement Information

**I34** S. 35 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3, s. 35 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

### 36 Rights of entry.

- (1) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it in connection with—
  - (a) any application for hazardous substances consent;
  - (b) any proposal to issue a hazardous substances contravention notice.
- (2) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land for the purpose of ascertaining whether an offence appears to have been committed under section 23.
- (3) Any person who is an officer of the Valuation Office or a person duly authorised in writing by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of that land or any other land made by virtue of section 16 or 19.
- (4) Any person duly authorised in writing by the Secretary of State or by a hazardous substances authority may at any reasonable time enter any land in respect of which a hazardous substances contravention notice [<sup>F87</sup>or a notice under section 183 of the principal Act (as applied by regulations made by virtue of section 25)] has been issued for the purpose of ascertaining whether the notice has been complied with.
- (5) <sup>F88</sup> . . . , any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.

<sup>F89</sup>(6) . . . . .

#### Textual Amendments

- F87** Words in s. 36(4) inserted (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 16\(2\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)
- F88** Words in s. 36(5) repealed (2.1.1992) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 25, 84(6), [Sch. 3 Pt. II para. 32](#), [Sch. 19 Pt. I](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)
- F89** Ss. 36A, 36B substituted (2.1.1992) for s. 36(6) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), ss. 25, 84(2), [Sch. 3 Pt. I para. 16\(3\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

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

**C44** S. 36 Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art.3](#)

#### Commencement Information

**I35** S. 36 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 36 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

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## [<sup>F90</sup>36A Warrants to enter land.

- (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
  - (a) that there are reasonable grounds for entering any land for any of the purposes mentioned in section 36; and
  - (b) that—
    - (i) admission to the land has been refused, or a refusal is reasonably apprehended; or
    - (ii) the case is one of urgency,the justice may issue a warrant authorising any person duly authorised in writing by a hazardous substances authority to enter the land.
- (2) For the purposes of subsection (1)(b)(i) admission to land shall be regarded as having been refused if no reply is received to a request for admission within a reasonable period.
- (3) A warrant authorises entry on one occasion only and that entry must be—
  - (a) within one month from the date of the issue of the warrant; and
  - (b) at a reasonable hour, unless the case is one of urgency.]

### Textual Amendments

**F90** Ss. 36A, 36B substituted (2.1.1992) for s. 36(6) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, 84(2), [Sch. 3 Pt. I para. 16\(3\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

### Modifications etc. (not altering text)

**C45** S. 36A Power to apply conferred (10.11.1993) by [1993 c. 28, ss. 171\(4\)\(c\)](#); S.I. 1993/2762, [art. 3](#)

### Commencement Information

**I36** S. 36A wholly in force at 1.6.1992 see S.I. 1992/725, art. 3, s. 36A in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

## [<sup>F91</sup>36B Rights of entry: supplementary provisions.

- (1) A person authorised to enter land in pursuance of a right of entry conferred under or by virtue of section 36 or 36A (referred to in this section as “a right of entry”)—
  - (a) shall, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
  - (b) may take with him such other persons as may be necessary; and
  - (c) on leaving the land shall, if the owner or occupier is not then present, leave it as effectively secured against trespassers as he found it.
- (2) Any person who wilfully obstructs a person acting in the exercise of a right of entry shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he shall be guilty of an offence.

*Status: Point in time view as at 01/04/2013.*

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- (4) Subsection (3) does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land.
- (5) A person who is guilty of an offence under subsection (3) shall be liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.
- (6) If any damage is caused to land or chattels in the exercise of—
- (a) a right of entry; or
  - (b) a power conferred by virtue of section 36(5) in connection with such a right,
- compensation may be recovered by any person suffering the damage from the authority who gave the written authority for the entry or, as the case may be, the Secretary of State; and section 118 of the principal Act shall apply in relation to compensation under this section as it applies in relation to compensation under Part IV of that Act.
- (7) The authority of the appropriate Minister shall be required for the carrying out of works in the exercise of a power under section 36 if—
- (a) the land in question is held by statutory undertakers, and
  - (b) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking.
- (8) Section 265(1) and (3) of the principal Act (meaning of “appropriate Minister”) applies for the purposes of subsection (7) as it applies for the purposes of section 325(9) of the principal Act.]

#### Textual Amendments

**F91** Ss. 36A, 36B substituted (2.1.1992) for s. 36(6) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, [Sch. 3 Pt. I para. 16\(3\)](#) (with s. 84(5)); S.I. 1991/2905, [art. 3](#)

#### Commencement Information

**I37** S. 36B wholly in force at 1.6.1992 see S.I. 1992/725, [art. 3](#); s. 36B in force for certain purposes at 11.3.1992 see S.I. 1992/725, [art. 2](#)

### [<sup>F92</sup>36C Rights of entry: Crown land

- (1) Section 36 applies to Crown land subject to the following modifications.
- (2) A person must not enter Crown land unless he has the relevant permission.
- (3) Relevant permission is the permission of—
  - (a) a person appearing to the person seeking entry to the land to be entitled to give it, or
  - (b) the appropriate authority.
- (4) Section 36B does not apply to anything done by virtue of this section.
- (5) “Appropriate authority” must be construed in accordance with section 31(5).]



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### Textual Amendments

- F92** S. 36C inserted (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Sch. 3 para. 15](#) (with s. 111); [S.I. 2006/1281](#), [art. 2\(c\)](#)

## 37 Application of certain general provisions of principal Act.

- (1) The provisions of the principal Act specified in subsection (2) shall apply for the purposes of this Act as they apply for the purposes of that Act.
- (2) Those provisions are—
- section 320 (local inquiries)
  - section [<sup>F93</sup>322 (orders as to costs of parties where no inquiry held)]
  - section [<sup>F94</sup>322A (orders as to costs: supplementary)] 323 (procedure on certain appeals and applications)
  - section 329 (service of notices)
  - [<sup>F95</sup>section 329A(1) and (2) (service of notices on the Crown)]
  - section 330 (power to require information as to interests in land)
  - [<sup>F96</sup>section 330A(1) to (4) (information as to interests in Crown land)]
  - section 331 (offences by corporations).

### Textual Amendments

- F93** Words omitted (temp.) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, [Sch. 4 paras. 1, 14](#) (which temp. omission falls (2.1.1992) for specified purposes only by virtue of [S.I. 1991/2698](#), [arts. 3, 4](#))
- F94** Words in s. 37(2) inserted (2.1.1992 except for specified purposes) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), [ss. 30\(2\), 84\(2\)](#) (with s. 84(5)); [S.I. 1991/2728](#), [arts. 3, 4](#)
- F95** Words in s. 37(2) inserted (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Sch. 3 para. 21\(2\)](#) (with s. 111); [S.I. 2006/1281](#), [art. 2\(c\)](#)
- F96** Words in s. 37(2) inserted (7.6.2006) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), [Sch. 3 para. 21\(3\)](#) (with s. 111); [S.I. 2006/1281](#), [art. 2\(c\)](#)

### Modifications etc. (not altering text)

- C46** S. 37: transitory modification by 1990 c. 11, Sch. 4 para. 14 falls (6.4.2009) for further specified purposes by virtue of [S.I. 2009/849](#), [art. 2](#) (with [art. 3](#))

### Commencement Information

- I38** S. 37 wholly in force at 1.6.1992 see [S.I. 1992/725](#), [art. 3](#); s. 37 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), [art. 2](#)

## 38 Financial provisions.

- (1) Where—
- (a) compensation is payable by a local authority under this Act in consequence of any decision or order given or made under sections 4 to 21 or the Schedule,
  - (b) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,

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- the Minister responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine.
- (2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a hazardous substances authority<sup>F97</sup> . . . in or in connection with the performance of any of their functions under sections 4 to 29.
  - (3) Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under sections 4 to 21, the Secretary of State may, if it appears to him to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation.
  - (4) For the purposes of subsections (2) and (3), contributions made by an authority towards the expenditure of a joint advisory committee shall be deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee.
  - (5) The council of a county may direct that any expenses incurred by them under sections [F98 1, 3], 16, 20, 21 [F99 25(5)], 31, 34 and 36, the previous provisions of this section or the Schedule shall be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions.
  - (6) There shall be paid out of money provided by Parliament any expenses of the Secretary of State or any government department under this Act.
  - (7) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

#### Textual Amendments

- F97** Words repealed (1.1.1992) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, **art. 3**
- F98** Words "1, 3" substituted (1.1.1992) for words "1 to 3" by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), s. 144, **Sch. 13 Pt. I para. 2(6)**; S.I. 1991/2829, **art. 3**
- F99** In s. 38(5) word "25(5)" inserted (temp.) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, **Sch. 4 paras. 1, 15** (which temp. insertion falls (2.1.1992) for specified purposes only by virtue of S.I. 1991/2698, **arts. 3, 4**)

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

- C47** S. 38(1)(2) extended (19.9.1995) by [1995 c. 25, ss. 70, 125\(2\)](#), **Sch. 9 para. 14(2)** (with ss. 7(6), 115, 117, **Sch. 8 para. 7**)
- C48** S. 38(5): transitory modification by [1990 c. 11, Sch. 4 para. 15](#) falls (6.4.2009) for further specified purposes by virtue of S.I. 2009/849, **art. 2** (with **art. 3**)

#### Commencement Information

- I39** S. 38 wholly in force at 1.6.1992 see S.I. 1992/725, **art. 3**; s. 38 in force for certain purposes at 11.3.1992 see S.I. 1992/725, **art. 2**

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## Supplemental

### 39 Interpretation.

(1) In this Act —

“contravention of hazardous substances control” has the meaning given in section 23(2);

[<sup>F100</sup>“development consent” means development consent under the Planning Act 2008;]

“hazardous substances authority” is to be construed in accordance with sections 1 [<sup>F101</sup>and] 3;

“hazardous substances consent” means consent required by section 4;

“hazardous substances contravention notice” means such a notice as is mentioned in section 24(1);

“the principal Act” means the <sup>M6</sup>Town and Country Planning Act 1990.

(2) In this Act, except in so far as the context otherwise requires and subject to the following provisions of this section, the following expressions have the same meaning as in the principal Act—

<sup>F102</sup>  
. . . ;

<sup>F102</sup>  
. . . ;

“the Broads”;

“development”;

“development plan”;

“enactment”;

“functions”;

“government department”;

“joint planning board”;

“land”;

“local authority”;

“local planning authority”;

“London borough”;

“mineral working deposit”;

“minerals”;

“Minister”;

<sup>F102</sup>  
. . . ;

“owner”;

“the planning Acts”;

“prescribed”;

“public gas supplier”;

“statutory undertakers”;

“tenancy”;

“urban development area” and “urban development corporation”;

“use”;

“Valuation Office”;

but this subsection does not affect the meaning of “owner” in section 8.

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- (3) For the purposes of sections 4 to 21 and 23 to 26 any two bodies corporate are to be treated as being one person if—
- (a) one of them is a body corporate of which the other is a subsidiary (within the meaning of <sup>F103</sup>section 1159 of the Companies Act 2006 ] ); or
  - (b) both of them are subsidiaries (within the meaning of that Act) of one and the same body corporate.
- (4) For the purposes of sections <sup>F104</sup> . . . 12 and 38(2) a public gas supplier shall be deemed to be a statutory undertaker <sup>F104</sup> . . .
- (5) For the purposes of sections <sup>F105</sup> . . . 12 and <sup>F106</sup>38(2) the Environment Agency, the Natural Resources Body for Wales and every] water or sewerage undertaker shall be deemed to be a statutory undertaker <sup>F105</sup> . . .
- (6) For the purposes of section 38(2) <sup>F107</sup>a universal service provider (within the meaning of <sup>F108</sup>Part 3 of the Postal Services Act 2011] ) in connection with the provision of a universal postal service (within the meaning of <sup>F109</sup>that Part] ), the Civil Aviation Authority <sup>F110</sup>, a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (to the extent that the person is carrying out activities authorised by the licence)] and any holder of a licence under section 6(1) of the <sup>M7</sup>Electricity Act 1989 shall be deemed to be statutory undertakers <sup>F104</sup> . . .
- <sup>F111</sup>(7) . . . . .
- <sup>F111</sup>(8) . . . . .

#### Textual Amendments

- F100** Words in s. 39(1) inserted (1.3.2010) by Planning Act 2008 (c. 29), s. 241(8), **Sch. 2 para. 47** (with s. 226); S.I. 2010/101, art. 2 (with art. 6)
- F101** Word "and" substituted (1.1.1992) for "to" by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 144, **Sch. 13 Pt. I para. 2(7)**; S.I. 1991/2829, art. 3
- F102** Entries repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3
- F103** Words in s. 39(3)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 116** (with art. 10)
- F104** Words repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3
- F105** Words repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3
- F106** Words in s. 39(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 206** (with Sch. 7)
- F107** Words in s. 39(6) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 85** (with art. 4)
- F108** Words in s. 39(6) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 132(a)**; S.I. 2011/2329, art. 3
- F109** Words in s. 39(6) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 132(b)**; S.I. 2011/2329, art. 3
- F110** Words in s. 39(6) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 9**; S.I. 2001/869, art. 2
- F111** S. 39(7)(8) repealed (1.1.1992) by Environmental Protection Act 1990 (c. 43, SIF 46:4), s. 162(2), **Sch. 16 Pt. VII**; S.I. 1991/2829, art. 3

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

**C49** S. 39 extended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(k)**; S.I. 1996/218, **art. 2**

**Commencement Information**

**I40** S. 39 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 39 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

**Marginal Citations**

**M6** 1990 c. 8.

**M7** 1989 c. 29.

**40 Regulations.**

- (1) The Secretary of State may make regulations under this Act for any purpose for which regulations are authorised or required to be made under this Act, not being a purpose for which regulations are authorised or required to be made by another Minister.
- (2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.
- (3) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F112</sup>(4) Regulations may make different provision for different purposes.]

**Textual Amendments**

**F112** S. 40(4) inserted (6.8.2004 for specified purposes) by **Planning and Compulsory Purchase Act 2004 (c. 5), Sch. 6 para. 27** (with s. 111); S.I. 2004/2097, art. 2

**Commencement Information**

**I41** S. 40 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; s. 40 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

**41 Short title, commencement and extent.**

(1) This Act may be cited as the Planning (Hazardous Substances) Act 1990.

<sup>F113</sup>(2) .....

(3) <sup>F114</sup>... The provisions of this Act (other than this section) shall come into force on such day as may be appointed by the Secretary of State by order made by statutory instrument and—

- (a) different days may be appointed for different provisions or for different purposes; and
- (b) an order may make such transitional provision as the Secretary of State thinks appropriate.

(4) This Act extends to England and Wales only.

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#### **Subordinate Legislation Made**

**P1** S. 41(3) power exercised: 11.3.1992 and 1.6.1992 appointed, see S.I. 1992/725

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#### **Textual Amendments**

**F113** S. 41(2) repealed (21.7.2008) by [Statute Law \(Repeals\) Act 2008 \(c. 12\)](#), [Sch. 1 Pt. 9](#)

**F114** Words in s. 41(3) repealed (21.7.2008) by [Statute Law \(Repeals\) Act 2008 \(c. 12\)](#), [Sch. 1 Pt. 9](#)

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## SCHEDULE

Section 21.

### DETERMINATION OF APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

#### *Determination of appeals by appointed person*

- 1 (1) The Secretary of State may by regulations prescribe the classes of appeals under section 21 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.
- (2) Appeals of a prescribed class shall be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State.
- (3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.
- (4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.
- (5) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

#### **Commencement Information**

**I42** Sch. para. 1 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; Sch. para. 1 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### *Powers and duties of appointed person*

- 2 (1) An appointed person shall have the same powers and duties as the Secretary of State has under subsection (4) of section 21.
- (2) Subsection (5) of that section shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the hazardous substances authority whether they wish to appear before and be heard by the appointed person.
- (3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.
- (4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.
- (5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.
- (6) Except as provided by section 22, the validity of that decision shall not be questioned in any proceedings whatsoever.
- (7) It shall not be a ground of application to the High Court under that section, that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the hazardous substances authority

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challenge the appointed person's power to determine the appeal before his decision on the appeal is given.

- (8) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating—
- (a) to an appeal under section 21, or
  - (b) to anything done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal,
- then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.

#### **Commencement Information**

**I43** Sch. para. 2 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; Sch. para. 2 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### *Determination of appeals by Secretary of State*

- 3 (1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.
- (2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the hazardous substances authority, any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 8(4) or, as the case may be, regulations made under section 17(2) making provision corresponding to section 8(4) and, if any person has been appointed under paragraph 1, on him.
- (3) Where in consequence of such a direction an appeal under section 21 falls to be determined by the Secretary of State, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.
- (4) The Secretary of State shall give the appellant, the hazardous substances authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—
- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
  - (b) in the case of the appellant or the hazardous substances authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so.
- (5) Except as provided by sub-paragraph (4), the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.
- (6) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.



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#### Commencement Information

**I44** Sch. para. 3 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; Sch. para. 3 in force for certain purposes at 11.3.1992, see S.I. 1992/725, art. 2

- 4
- (1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.
  - (2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the hazardous substances authority and any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 8(4) or, as the case may be, regulations made under section 17(2) making provision corresponding to section 8(4).
  - (3) Where such a further direction has been given the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.
  - (4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall, unless that person directs otherwise, be treated as having been done by him.

#### Commencement Information

**I45** Sch. para. 4 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; Sch. para. 4 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### *Appointment of another person to determine appeal*

- 5
- (1) At any time before the appointed person has determined the appeal the Secretary of State may—
    - (a) revoke his appointment; and
    - (b) appoint another person under paragraph 1 to determine the appeal instead.
  - (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
  - (3) Nothing in sub-paragraph (2) shall require—
    - (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
    - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

#### Commencement Information

**I46** Sch. para. 5 wholly in force at 1.6.1992 see S.I. 1992/762, art. 3; Sch. para. 5 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

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*Local inquiries and hearings*

- 6 (1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—
- (a) may hold a local inquiry in connection with the appeal; and
  - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
- (a) holds a hearing by virtue of paragraph 2(4); or
  - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.
- (3) Subject to sub-paragraph (4), the costs—
- (a) of any hearing held by virtue of paragraph 2(4); and
  - (b) of any inquiry held under this paragraph,
- shall be defrayed by the Secretary of State.
- (4) Section 250(2) to (5) of the <sup>M8</sup>Local Government Act 1972 (local inquiries: evidence and costs) applies to an inquiry held by virtue of this paragraph with the following adaptations—
- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held there shall be substituted references to the Secretary of State; and
  - (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held there shall be substituted a reference to the appointed person or the Secretary of State.
- (5) Subject to sub-paragraph (6), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (6) If the Secretary of State is satisfied in the case of any such inquiry—
- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in sub-paragraph (7); and
  - (b) that the public disclosure of that information would be contrary to the national interest,
- he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in that direction.
- (7) The matters referred to in sub-paragraph (6)(a) are—
- (a) national security; and
  - (b) the measures taken or to be taken to ensure the security of any premises or property.
- [<sup>F115</sup>(8) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of the <sup>M9</sup>Local Government Act 1972 (orders with respect to costs of the parties) in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.]

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### Textual Amendments

**F115** Sch. para. 6(8) omitted (temp.) by virtue of [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 6, [Sch. 4 paras. 1, 16](#) (which temp. omission falls (2.1.1992) for specified purposes only by virtue of [S.I. 1991/2698](#), [arts. 3, 4](#))

### Modifications etc. (not altering text)

**C50** Sch. para. 6(8): transitory modification by [1990 c. 11](#), Sch. 4 para. 16 falls (6.4.2009) for further specified purposes by virtue of [S.I. 2009/849](#), art. 2 (with art. 3)

### Commencement Information

**I47** Sch. para. 6 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; Sch. para. 6 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

### Marginal Citations

**M8** [1972 c. 70](#).

**M9** [1972 c. 70](#).

- [<sup>F116</sup>6A(1) If the Secretary of State is considering giving a direction under paragraph 6(6) the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given.
- (2) If before the Secretary of State gives a direction under paragraph 6(6) no person is appointed under sub-paragraph (1), the Attorney General may at any time appoint a person as mentioned in sub-paragraph (1) for the purposes of the inquiry.
  - (3) The Lord Chancellor may by rules make provision—
    - (a) as to the procedure to be followed by the Secretary of State before he gives a direction under paragraph 6(6) in a case where a person has been appointed under sub-paragraph (1);
    - (b) as to the functions of a person appointed under sub-paragraph (1) or (2).
  - (4) If a person is appointed under sub-paragraph (1) or (2) (the appointed representative) the Secretary of State may direct any person who he thinks is interested in the inquiry in relation to a matter mentioned in paragraph 6(7) (the responsible person) to pay the fees and expenses of the appointed representative.
  - (5) If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State.
  - (6) The Secretary of State must cause the amount agreed between the appointed representative and the responsible person or determined by him to be certified.
  - (7) An amount so certified is recoverable from the responsible person as a civil debt.
  - (8) Rules made under sub-paragraph (3) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
  - (9) Sub-paragraph (10) applies if—
    - (a) a person is appointed under sub-paragraph (1) or (2), but
    - (b) no inquiry is held as mentioned in paragraph 6(1).

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- (10) Sub-paragraphs (4) to (7) above apply in respect of the fees and expenses of the person appointed as if the inquiry had been held.
- (11) For the purposes of sub-paragraph (10) the responsible person is the person to whom the Secretary of State thinks he would have given a direction under sub-paragraph (4) if an inquiry had been held.
- (12) Sub-paragraphs (9) to (11) do not affect paragraph 6(8).]

#### Textual Amendments

**F116** Sch. para. 6A inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. 80(4) (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 2(a)

#### *Supplementary provisions*

- 7 (1) The <sup>M10</sup>Tribunals and Inquiries Act [<sup>F117</sup>1992] shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in [<sup>F118</sup>section 10(1)] of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.
- (2) Where an appointed person is an officer of [<sup>F119</sup>the Department for Communities and Local Government] or the Welsh Office the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the <sup>M11</sup>Parliamentary Commissioner Act 1967—
- (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; and
  - (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.

#### Textual Amendments

**F117** Words in Sch. 3 para. 7(1) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53, SIF 127\)](#), ss. 18(1), 19(2), [Sch. 3 para. 34\(a\)](#)

**F118** Words in Sch. para. 7(1) substituted (1.10.1992) by [Tribunals and Inquiries Act 1992 \(c. 53, SIF 127\)](#), ss. 18(1), 19(2), [Sch. 3 para. 34\(b\)](#)

**F119** Words in Sch. para. 7(2) substituted (21.8.2006) by [The Secretary of State for Communities and Local Government Order 2006 \(S.I. 2006/1926\)](#), art. 1(2), [Sch. para. 5](#)

#### Commencement Information

**I48** Sch. para. 7 wholly in force at 1.6.1992 see S.I. 1992/725, art. 3; Sch. para. 7 in force for certain purposes at 11.3.1992 see S.I. 1992/725, art. 2

#### Marginal Citations

**M10** 1971 c. 62.

**M11** 1967 c. 13.

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### <sup>F120</sup>Local inquiries: Wales

#### Textual Amendments

**F120** Sch. para. 8 and cross-heading inserted (6.8.2004 for specified purposes, 7.6.2006 in so far as not already in force) by [Planning and Compulsory Purchase Act 2004 \(c. 5\)](#), s. **81(3)** (with s. 111); S.I. 2004/2097, art. 2; S.I. 2006/1281, art. 2(a)

- 8 (1) This paragraph applies in relation to a local inquiry held in pursuance of this Schedule if the matter in respect of which the inquiry is to be held relates to Wales.
- (2) The references in paragraph 6A(1) and (2) to the Attorney General must be read as references to the Counsel General to the [<sup>F121</sup>Welsh Assembly Government].
- (3) The Assembly may by regulations make provision as mentioned in paragraph 6A(3) in connection with a local inquiry to which this section applies.
- (4) If the Assembly acts under sub-paragraph (3) rules made by the Lord Chancellor under paragraph 6A(3) do not have effect in relation to the inquiry.
- <sup>F122</sup>(5) . . . . .
- (6) Section 40(3) does not apply to regulations made under this paragraph.]

#### Textual Amendments

**F121** Words in Sch. para. 8(2) substituted by [Government of Wales Act 2006 \(c. 32\)](#), ss. 160, 163, [Sch. 10 para. 37\(a\)](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(1)(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(4)(5) of the amending Act

**F122** Sch. para. 8(5) repealed by [Government of Wales Act 2006 \(c. 32\)](#), ss. 160, 163, [Sch. 10 para. 37\(b\)](#), [Sch. 12](#) (with [Sch. 11 para. 22](#)), the amending provision coming into force immediately after "the 2007 election" (held on 3.5.2007) subject to s. 161(1)(4)(5) of the amending Act, which provides for certain provisions to come into force for specified purposes immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) - see ss. 46, 161(4)(5) of the amending Act

### Table of Derivations

#### Notes:

1 The following abbreviations are used in this Table:—

1969 c.48 =	The Post Office Act 1969
1971 c.78 =	The Town and Country Planning Act 1971
1973 c.41 =	The Fair Trading Act 1973

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1981 c.41 =	The Local Government and Planning (Amendment) Act 1981
1982 c.16 =	The Civil Aviation Act 1982
1982 c.21 =	The Planning Inquiries (Public) Act 1982
1984 c.10 =	The Town and Country Planning Act 1984
1985 c.9 =	The Companies (Consequential Provisions) Act 1985
1986 c.44=	The Gas Act 1986
1986 c.63 =	The Housing and Planning Act 1986
1988 c.4 =	The Norfolk and Suffolk Broads Act 1988
1988 c.50 =	The Housing Act 1988
1989 c.15 =	The Water Act 1989
1989 c.29 =	The Electricity Act 1989

2 The letter R followed by a number indicates that the provision gives effect to the Recommendation bearing that number in the Law Commission’s Report on the Consolidation of Certain Enactments relating to Town and Country Planning (Cmnd.958).

3 The entry “drafting” indicates a provision of a mechanical or editorial nature only affecting the arrangement of the consolidation.

<b>Provision</b>	<b>Derivation</b>
1	1971 c.78 s.1A(1); 1986 c.63 s.30.
2(1)	1971 c.78 s.1B(1), (2); 1986 c.63 s.30.
(2)	1971 c.78 s.1B(3)(4); 1986 c.63 s.30.
(3)	1971 c.78 s.1B(5); 1986 c.63 s.30.
(4)	1971 c.78 s.1B(4); 1986 c.63 s.30.
3(1)	1971 c.78 s.1A(2); 1986 c.63 s.30.
(2)	1971 c.78 s.1A(3); 1986 c.63 s.30.
(3)	1971 c.78 s.1A(3A); 1988 c.4 Sch. 3 para.9; R 54.
(4)	1971 c.78 s.1A(4); 1986 c.63 s.30; R 54.
(5)	1988 c.50 s.67(6); R 54.
(6)	1971 c.78 s.1A(1)(part); 1986 c.63 s.30.
4(1),(2)	1971 c.78 s.58B(1); 1986 c.63 s.31.
(3)	1971 c.78 s.58B(2); 1986 c.63 s.31.

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(4)	1971 c.78 s.58B(3)(b); 1986 c.63 s.31.
(5)	1971 c.78 s.58B(6); 1986 c.63 s.31.
5(1)	1971 c.78 s.58B(3)(a), (3)(c); 1986 c.63 s.31.
(2)	1971 c.78 s.58B(4); 1986 c.63 s.31.
(3)	1971 c.78 s.58B(5); 1986 c.63 s.31.
(4)	1971 c.78 s.58B(6); 1986 c.63 s.31.
6(1)	1971 c.78 ss.58C, 58F; 1986 c.63 s.34.
(2)	1971 c.78 s.58J(1); 1986 c.63 s.31.
7(1)	1971 c.78 s.58C(1); 1986 c.63 s.31.
(2)	1971 c.78 s.58C(4); 1986 c.63 s.31.
(3)	1971 c.78 s.58C(5); 1986 c.63 s.31.
(4)	1971 c.78 s.58C(6); 1986 c.63 s.31.
8(1)to(5)	1971 c.78 s.58C(2); 1986 c.63 s.31.
(6)	1971 c.78 s.58C(3); 1986 c.63 s.31.
(7)	1971 c.78 s.58C(6); 1986 c.63 s.31.
(8)	1971 c.78 s.27(7).
9(1)	1971 c.78 s.58D(1)(part); 1986 c.63 s.31.
(2)	1971 c.78 s.58D(1)(2); 1986 c.63 s.31.
(3)	1971 c.78 s.58D(3); 1986 c.63 s.31.
(4)	1971 c.78 s.58D(4)(part); 1986 c.63 s.31.
10(1)	1971 c.78 s.58D(5); 1986 c.63 s.31.
(2)	1971 c.78 s.58D(5); 1986 c.63 s.31; R 55.
(3)	1971 c.78 s.58D(4)(c); 1986 c.63 s.31.
11(1)	1986 c.63 s.34(3).
(2)	1986 c.63 s.34(4).
(3)	1986 c.63 s.34(5).
(4)	1986 c.63 s.34(6).
(5)	1986 c.63 s.34(7).
(6)	1986 c.63 s.34(8).
(7)	1986 c.63 s.34(9).
(8)	1986 c.63 s.34(10).
12(1)	1971 c.78 s.58F(1); 1986 c.63 s.31.

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(2)	1989 c. 29 Sch. 8 para. 7(2).
(3)	1971 c.78 s.58F(2); 1986 c.63 s.31; 1989 c. 29 Sch. 8 para. 7(2).
(4)	1971 c.78 s.58F(4); 1986 c.63 s.31.
(5)	1971 c.78 s.58F(3); 1986 c.63 s.31.
13(1)	1971 c.78 s.58G(1); 1986 c.63 s.31.
(2)to(4)	1971 c.78 s.58G(2); 1986 c.63 s.31.
(5)to(7)	1971 c.78 s.58G(3) to (5); 1986 c.63 s.31.
14(1)	1971 c.78 s.58H(3); 1986 c.63 s.31.
(2), (3)	1971 c.78 s.58H(1)(part), (2); 1986 c.63 s.31.
(4)	1971 c.78 s.58H(4); 1986 c.63 s.31.
15(1), (2)	1971 c.78 s.58H(5); 1986 c.63 s.31.
(3) to (5)	1971 c.78 s.58H(6); 1986 c.63 s.31.
(6)	1971 c.78 c.58H(7); 1986 c.63 s.31.
16(1)	1971 c.78 s.58H(8); 1986 c.63 s.31.
(2) to (4)	1971 c.78 s.170(2) to (4).
(5)	Drafting.
17(1)	1971 c.78 s.58J(2); 1986 c.63 s.31.
(2)	1971 c.78 s.58J(3); 1986 c.63 s.31.
18(1)	1971 c.78 s.58J(4)(part); 1986 c.63 s.31.
(2)	1971 c.78 s.58J(4)(part),(5); 1986 c.63 s.31.
(3)	1971 c.78 s.58J(6); 1986 c.63 s.31.
(4)	1971 c.78 s.58J(7); 1986 c.63 s.31.
(5)	1971 c.78 s.58J(8); 1986 c.63 s.31.
(6)	1971 c.78 s.58J(9); 1986 c.63 s.31; R 56.
(7)	1971 c.78 s.58J(10),(11),(a),(d), s.37; 1986 c.63 s.31.
19	1971 c.78 s.58J(12); 1986 c.63 s.31.
20(1)	1971 c.78 ss.35(1), 58E, 58J(10),(11); 1986 c.63 s.31.
(2)	1971 c.78 ss.35(2), 58E, 58J(10),(11); 1986 c.63 s.31.



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(3)	1971 c.78 ss.35(3), 58E, 58J(10),(11); 1986 c.63 s.31.
(4)	1971 c.78 ss.35(5), 58E, 58J(10),(11); 1986 c.63 s.31.
(5)	1971 c.78 ss.35(6), 58E, 58J(10),(11); 1986 c.63 s.31.
(6)	1971 c.78 s.58E(3); 1986 c.63 s.31.
21(1)	1971 c.78 ss.58E, 58J(10),(11), 36(1); 1986 c.63 s.31; R 57.
(2)	1971 c.78 ss.58E, 58J(10),(11), 37; 1986 c.63 s.31; R 8(a).
(3)	1971 c.78 ss.58E, 58J(10),(11), 36(2); 1986 c.63 s.31.
(4)	1971 c.78 ss.58E, 58J(10),(11), 36(3); 1986 c.63 s.31.
(5)	1971 c.78 ss.58E, 58J(10),(11), 36(4); 1986 c.63 s.31.
(6)	1971 c.78 ss.58E, 58J(10),(11) 36(6); 1986 c.63 s.31.
(7)	1971 c.78 s.58E(3); 1986 c.63 s.31.
(8)	1971 c.78 ss.36(8), 58E, 58J(10),(11); 1986 c.63 s.31.
22(1)	1971 c.78 s.245(1); R 57 and R 58.
(2)	1971 c.78 s.245(2) (7); R 57 and R 58.
(3)	1971 c.78 s.245(4).
(4)	1971 c.78 s.245(7)(part); 1972 c.70 Sch.16 para.46.
(5)	1971 c.78 s.242(1)(e), (3)(dd); 1986 c.63 Sch.7 para.2; R 57.
(6)	1971 c.78 s.242(4).
23	1971 c.78 s.58K; 1986 c.63 s.31.
24(1)	1971 c.78 s.101B(1),(3); 1986 c.63 s.32.
(2)	1971 c.78 s.101B(3)(part); 1986 c.63 s.32.
(3)	1971 c.78 s.101B(2); 1986 c.63 s.32.
(4) to (9)	1971 c.78 s.101B(4) to (9); 1986 c.63 s.32.
25(1) to (3)	1971 c.78 s.101B (10) to (12); 1986 c.63 s.32.

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(4)	1971 c.78 s.110(2).
26	1986 c.63 s.34(1),(2),(10).
27	1971 c.78 s.58L; 1986 c.63 s.31.
28	1971 c.78 s.58M; 1986 c.63 s.31; R 55, R 59.
29(1),(2)	1971 c.78 s.58N(1); 1986 c.63 s.31.
(3)	1971 c.78 s.58N(2); 1986 c.63 s.31.
(4)	1971 c.78 s.58N(3); 1986 c.63 s.31.
(5)	1971 c.78 s.58N(4); 1986 c.63 s.31.
(6)	1971 c.78 s.58N(5); 1986 c.63 s.31.
30(1)	1971 c.78 s.271A(1); 1986 c.63 Sch.7 Part I para.5.
(2)	1971 c.78 s.271A(2); 1986 c.63 Sch.7 Part I para.5.
31(1)	1971 c.78 s.266(1)(b).
(2)	1971 c.78 s.266(2)(a); 1981 c.41 Sch. para.20; 1986 c.63 Sch.7 Part I para. 3.
(3)	1971 c.78 s.266(7).
(4)	1984 c.10 s.4(1).
(5)	1971 c.78 s.266(7); 1984 c.10 s.6(1).
(6)	1971 c.78 s.266(7)(part).
32(1)	1984 c.10 s.1(1); 1986 c.10 Sch.7 Part I para. 8.
(2)	1984 c.10 s.1(2).
(3)	1984 c.10 s.1(3A); 1986 c.10 Sch.7 para. 8.
(4)	1984 c.10 s.1(5); R 60.
(5)	1984 c.10 s.1(7).
(6)	1984 c.10 ss.1(6), 6(1),(2).
(7)	1984 c.10 s.6(1),(2).
(8)	1984 c.10 s.4(1).
33	1971 c.78 s.273.
34(1)to(3)	1971 c.78 s.274(1)to(3).
(4)	1971 c.78 s.274(5).
35	1971 c.78 s.269(2); 1986 c.63 Sch.7 Part I para.4.
36(1)	1971 c.78 s.280(1A); 1986 c.63 Sch.7 Part I para.6.

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(2)	1971 c.78 s.280(4)(part); 1986 c.63 Sch.7 Part I para.6.
(3)	1971 c.78 s.280(6),(6A); 1986 c.63 Sch.7 Part I para.6.
(4)	1971 c.78 s.280(8); 1986 c.63 Sch.7 Part I para.6; R 61.
(5)	1971 c.78 s.280(9).
(6)	1971 c.78 s.281, drafting.
37	1971 c.28 ss. 282, 282A, 282B, 283, 284, 285; 1986 c.63 Sch. 11 paras. 9, 10.
38(1)	1971 c.78 s.254.
(2)	1971 c.78 s.255(2)(b); R 62.
(3)	1971 c.78 s.255(3).
(4)	1971 c.78 s.255(5).
(5)	1971 c.78 s.263(1); 1972 c.70 Sch. 29 Pt. I para. 3(b).
(6),(7)	1971 c.78 ss. 260(1)(part), 262; 1986 c.63 s.56.
39(1),(2)	1971 c.78 s.290(1); 1986 c. 44 Sch. 7 para. 2(9)(e); 1986 c.63 Sch.7 Part I para.7(a),(b).
(3)	1971 c.78 s.58B(7); 1973 c.41 s.137(5); 1985 c.9 Sch.2; 1986 c.63 s.31.
(4)	1986 c.44 Sch.7 para.2(1),(9).
(5)	1989 c.15 Sch.25 para. 1(1),(2),(10).
(6)	1969 c.49 Sch. 4 para. 93;1982 c.16 Sch. 2 para. 4; 1989 c.29 Sch. 16 para. 1(1)(xxii).
(7),(8)	1971 c.78 s.290(2).
40(1)	1971 c.78 s.287(1)(b).
(2),(3)	1971 c.78 s.287(2).
41(1)	Drafting.
(2)	Drafting.
(3)	1986 c.63 s.57(2).
(4)	Drafting.
Sch. para.1(1)	1971 c.78 Sch.9 para.1(1).
(2)	1971 c.78 Sch.9 para.1(1).
(3)	1971 c.78 Sch.9 para.1(2).

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(4)	1971 c.78 Sch.9 para.1(3).
(5)	Drafting.
para.2(1)	1971 c.78 Sch.9 para.2(1).
(2)	1971 c.78 Sch.9 para.2(2).
(3)	1971 c.78 Sch.9 para.2(2)(a).
(4)	1971 c.78 Sch.9 para.2(2)(b).
(5)	1971 c.78 Sch.9 para.3.
(6)	1971 c.78 Sch.9 para.2(3)(a).
(7)	1971 c.78 Sch.9 para.2(3)(b).
(8)	1971 c.78 Sch.9 para.2(4).
para.3(1)	1971 c.78 Sch.9 para.3(1).
(2)	1971 c.78 Sch.9 para.3(2); R 52.
(3)	1971 c.78 Sch.9 para.3(3).
(4)	1971 c.78 Sch.9 para.3(4); R 52.
(5)	1971 c.78 Sch.9 para.3(5).
(6)	1971 c.78 Sch.9 para.3(5).
para.4(1)	1971 c.78 Sch.9 para.3A(1); 1986 c.63 Sch.11 para.11.
(2)	1971 c.78 Sch.9 para.3A(2); 1986 c.63 Sch.11 para.11; R 52.
(3)	1971 c.78 Sch.9 para.3A(3); 1986 c.63 Sch.11 para.11.
(4)	1971 c.78 Sch.9 para.3A(4); 1986 c.63 Sch.11 para.11.
para.5(1)	1971 c.78 Sch.9 para.4(1).
(2)	1971 c.78 Sch.9 para.4(2)(a).
(3)	1971 c.78 Sch.9 para.4(2).
para.6(1)	1971 c.78 Sch.9 para.5(1).
(2)	1971 c.78 Sch.9 para.5(1A); 1986 c.63 Sch.11 para.12.
(3)	1971 c.78 Sch.9 para.5(2).
(4)	1971 c.78 Sch.9 para.5(3); 1986 c.63 Sch.11 para.8(2).
(5)	1982 c.21 s.1(1).
(6)	1982 c.21 s.1(2),(3).
(7)	1982 c.21 s.1(4).

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*Status:* Point in time view as at 01/04/2013.

**Changes to legislation:** Planning (Hazardous Substances) Act 1990 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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(8)	1971 c.78 Sch.9 para.5(4); 1986 Sch.11 para.9(2).
para.7	1971 c.78 Sch.9 para.7.

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**Status:**

Point in time view as at 01/04/2013.

**Changes to legislation:**

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