

SCHEDULE 4

ENFORCEMENT—MODIFICATIONS OF THE ACT

PART 5

ANNOTATED TEXT OF SECTIONS 85, 86, 87A, 88, 89 AND 89A OF THE ACT AS MODIFIED BY SCHEDULE 4 (PARTS 1-3) TO THESE REGULATIONS

Appeal against enforcement notice

85.—(1) A person on whom a hazardous substances contravention notice is served, or any other person having an interest in the land may, at any time before the date specified in the notice as the date on which it is to take effect, appeal to the Secretary of State against the notice on any of the following grounds:

- (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
- (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- (c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (d) that copies of the hazardous substances contravention notice were not served as required by or under section 97B(4) of this Act;
- (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
- (f) that any period specified in the notice in accordance with section 97B(5)(b) of this Act falls short of what should reasonably be allowed.

(2) An appeal under this section shall be made either—

- (a) by giving written notice of appeal to the Secretary of State before the date specified in the hazardous substances contravention notice as the date on which it is to take effect; or
- (b) by sending such notice to him in a properly addressed and pre-paid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before that date.

(2A) A notice under subsection (2) of this section shall be accompanied by a copy of the hazardous substances contravention notice, together with a statement in writing—

- (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
- (b) setting out the appellant's submissions in relation to each ground of appeal.

(2B) This subsection is omitted]

(2C) The Secretary of State—

- (a) may dismiss an appeal if the appellant fails to comply with subsection (2A) above; and
- (b) may allow an appeal and quash the hazardous substances contravention notice if the planning authority fail to comply with regulation 20(2) of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2D) Subject to subsection (2C) above, the Secretary of State shall, if either the planning authority or the appellant so desire, afford to each of them an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.

(3) This subsection is omitted]

(4) On an appeal under this section—

(a) the Secretary of State may—

(i) correct any defect, error or misdescription in the hazardous substances contravention notice; or

(ii) vary the terms of the hazardous substances contravention notice, if he is satisfied that the correction or variation will not cause injustice to the appellant or the planning authority; and

(b) in a case where it would otherwise be a ground for determining the appeal in favour of the appellant that a person required by section 84(2) of this Act to be served with the notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

(5) On the determination of an appeal under this section, the Secretary of State shall give directions for giving effect to his determination, including, where appropriate, directions for quashing the hazardous substances contravention notice and the Secretary of State may—

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

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

[(5A) & (5B) These subsections are omitted]

(6) In considering whether to grant hazardous substances consent under subsection (5) of this section, the Secretary of State shall have regard to the considerations specified in section 56E(2) of this Act.

(6A) Any hazardous substances consent that may be granted under subsection (5) of this section is any hazardous substances consent that might be granted on an application under Part IV of this Act.

(6B) Where under subsection (5) of this section the Secretary of State discharges a condition he may substitute for it any other condition or limitation.

(7) Where an appeal against a hazardous substances contravention notice is brought under this section, the appellant shall be deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control and, in relation to any exercise by the Secretary of State of his powers under subsection (5) of this section, the following provisions shall have effect

(a) any hazardous substances consent granted thereunder shall be treated as granted on the said application;

(b) in relation to a grant of hazardous substances consent or a determination under that subsection, the Secretary of State's decision shall be final; and

(c) for the purposes of section 56N of this Act, the decision shall be treated as having been given by the Secretary of State in dealing with an application for hazardous substances consent made to the planning authority.

(7A) Where—

(a) the statement under subsection (2A) of section 85 of this Act specifies the ground mentioned in subsection (1)(a) of that section;

(b) any fee is payable under regulations made by virtue of section 56DA of this Act in respect of the application deemed to be made by virtue of the appeal; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(c) the Secretary of State gives notice in writing to the appellant specifying the period within which the fee must be paid,
then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application shall lapse at the end of that period.

(9) Subject to section 279 of this Act, Schedule 7 to this Act applies to appeals under this section, including appeals under this section as applied by regulations under any other provision of this Act.

(10) The validity of a hazardous substances contravention notice shall not, except by way of an appeal under this section, be questioned in any proceedings whatsoever on any of the grounds specified in paragraphs (b) to (e) of subsection (1) of this section.

Offence where enforcement notice not complied with

86.—(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any step required by the notice to be taken has not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land are in breach of the notice.

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

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

[(4) and (5) These subsections are omitted.]

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

(7) Where—

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

(b) the notice is not contained in the appropriate register kept under section 87A of this Act,
it shall be a defence for him to show that he was not aware of the existence of the notice.

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

(a) on summary conviction, to a fine not exceeding £20,000; and

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

(9) In determining the amount of any fine to be imposed on a person convicted of an offence under this 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.

Register of waste land, enforcement and stop notices

87A.—(1) Every planning authority shall, in respect of each hazardous substances contravention notice issued by them, keep an enforcement register containing the following information—

(a) the address of the land to which the notice relates;

(b) the date of service of copies of the notice;

(c) a statement of the alleged contravention of hazardous substances control, the steps required by the notice to remedy the contravention and the period within which such steps are to be taken;

(d) the date specified in the notice as the date on which it is to take effect;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (e) the date and effect of any variation of the notice;
- (f) the date of any appeal to the Secretary of State against the notice and the date of the final determination of the appeal.

(1A) The entry relating to the hazardous substances contravention notice and everything relating to any such notice shall be removed from the register if the notice is quashed by the Secretary of State or withdrawn.

(1B) The register shall include an index to enable any person to trace an entry in the register.

(1C) Every entry in the register shall be made within 14 days of the relevant information being available to the planning authority.

(1D) The register shall be kept at the principal office of the planning authority.

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

Execution and cost of works required by enforcement notice

88.—(1) If, within the period specified in a hazardous substances contravention notice for compliance therewith, or within such extended period as the planning authority may allow, any steps required by the notice to be taken have not been taken, the planning authority may enter on the land and take those steps, and may recover from the person who is then the owner or lessee of the land any expenses reasonably incurred by them in doing so; and if that person, having been entitled to appeal to the Secretary of State failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken in accordance with the notice by the planning authority.

(1A) In computing the amount of the expenses which may be recovered by them under subsection (1) above, a planning authority may include in that amount such proportion of their administrative expenses as seems to them to be appropriate.

(2) Any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with a hazardous substances contravention notice served in respect of any contravention of hazardous substances control and any sums paid by the owner or lessee of any land under subsection (1) of this section in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken, shall be recoverable from the person by whom the contravention of hazardous substances control was committed.

(3) If on a complaint by the owner of any land it appears to the sheriff that the occupier of the land is preventing the owner from carrying out work required to be carried out by a hazardous substances contravention notice, the sheriff may by warrant authorise the owner to go on to the land and carry out that work.

(4) A planning authority taking steps under subsection (1) above may sell any materials removed by them from the land unless those materials are claimed by the owner within 3 days of their removal by the planning authority; and where such materials have been sold the planning authority shall, after deducting therefrom any expenses recoverable by them from the owner, pay him the proceeds of such sale.

(5) Where a planning authority seek, under subsection (1) above, to recover any expenses from a person on the basis that he is the owner of any land, and such person proves that—

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

his liability shall be limited to the total amount of the money which he has or has had in his hands as aforesaid; but a planning authority who by reason of the foregoing provisions of this subsection have not recovered the whole of any such expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

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

Enforcement notice to have effect against subsequent development

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

(2) Without prejudice to subsection (1) of this section, where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice shall be in contravention of that notice.

(3) Without prejudice to subsection (1) of this section, where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, shall be in contravention of that notice.

(4) A person who, without the grant of hazardous substances consent in that behalf, is responsible for the presence of a hazardous substance on land in contravention of the requirements of a hazardous substances contravention notice as described in subsection (2) or (3) of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Effect of planning permission, etc. on enforcement or breach of condition notice

89A.—(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent.

(2) This subsection is omitted].

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