

SCHEDULE 4

ENFORCEMENT—MODIFICATIONS OF THE ACT

PART I

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

1. In section 85 of the Act (appeals against enforcement notice)—
 - (a) for subsection (1) there shall be substituted:—

“(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.”;
 - (b) in subsection (2)(a), for “enforcement notice” there shall be substituted “hazardous substances contravention notice”;
 - (c) for subsection (2A) there shall be substituted—

“(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.”;
 - (d) subsection (2B) shall be omitted;
 - (e) in subsection (2C)—
 - (i) in paragraph (a) the words “within the time prescribed under subsection (2B)(a) above” shall be omitted;
 - (ii) for paragraph (b) there shall be substituted—

“(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.

- (f) subsection (3) shall be omitted;
- (g) in subsection (4)(a)(i) and ii), for the words “enforcement notice” there shall be substituted the words “hazardous substances contravention notice”;
- (h) for subsection (5)(a)—(d) there shall be substituted—
 - “(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.”;
- (i) subsections (5A) and (5B) shall be omitted;
- (j) for subsections (6), (6A), (6B) and (7) there shall be substituted
 - “(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 application for hazardous substances consent made to the planning authority.”;
- (k) in subsection (7A)(b) for the words from “section 87” to “Act 1980” there shall be substituted the words “section 56DA of this Act”; and
- (l) in subsection (10) for the words “an enforcement notice” there shall be substituted the words “a hazardous substances contravention notice”.