STATUTORY RULES OF NORTHERN IRELAND

2005 No. 320

PLANNING

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

Made - - - -	*29th June 2005*
Coming into operation	*31st July 2005*

The Department of the Environment, in exercise of the powers conferred on it by Article 81(10) and (12) of the Planning (Northern Ireland) Order 1991(**1**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

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

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

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

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

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

Marianne Fleming
A senior officer of the
Department of the Environment

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

SCHEDULE Regulation 2(2)

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

"SCHEDULE 4 Regulations 18 and 19

ENFORCEMENT – MODIFICATIONS OF THE 1991 ORDER

PART 1

APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

Provisions of the 1991 Order Applied	*Modifications*
Article 69 (appeal against enforcement notice)	
Paragraph (1)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice".
Paragraph (2)	In sub-paragraph (a) for the words "enforcement notice" substitute "hazardous substances contravention notice".
Paragraph (3)	For paragraph (3) substitute – "(3) An appeal may be brought on any of the following grounds – (a) that in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged; (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred; (c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control; (d) that copies of the hazardous substances contravention notice were not served as required by Article 81(4); (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;

Provisions of the 1991 Order Applied	*Modifications*
	(f) that any period specified in the notice in accordance with Article 81(5)(b) falls short of what should reasonably be allowed."
Paragraph (4)	For the words "enforcement notice" substitute "hazardous substances contravention notice".
Paragraph (5)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice".
Paragraph (6)	None
Paragraph (7)	None
Paragraph (8)	Omit
Paragraph (9)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice".
Paragraph (10)	For the words "enforcement notice" in each place where they occur substitute "hazardous substances contravention notice".
Article 70 (supplementary provisions)	For the words "enforcement notice" in each place where they occur substitute "hazardous substances contravention notice".
Article 71 (supplementary provisions)	
Paragraph (1)	For sub-paragraphs (a) and (b) substitute – "(a) grant hazardous substances consent for the presence of hazardous substances on, over or under the land to which the hazardous substances contravention notice relates or on, over or under part of that land; (b) discharge any condition subject to which hazardous substances consent was granted."
Paragraph (1)(c)	Omit
Paragraph (2)	Omit
Paragraph (3)	Omit
Paragraph (4)	For paragraph (4) substitute – "(4) In considering whether to grant hazardous substances consent under paragraph (1), the planning appeals commission shall have regard to the considerations specified in Article 55(2) and to any other material considerations; and the hazardous substances consent granted under paragraph (1) is any

Provisions of the 1991 Order Applied	*Modifications*
	hazardous substances consent that might be granted under Part V; and where under that paragraph the planning appeals commission discharges a condition, it may substitute another for it whether more or less onerous."
Paragraph (5)	For paragraph (5) substitute – "(5) Where an appeal against a hazardous substances contravention notice is brought under Article 69, the appellant shall be deemed to have made an application for hazardous substances consent for the presence of the hazardous substance on, over or under the land to which the notice relates and, in relation to any exercise by the planning appeals commission of its powers under paragraph (1) – (a) any hazardous substances consent granted under that paragraph shall be treated as granted on that application; (b) in relation to a grant of hazardous substances consent or a determination under that paragraph, the decision of the planning appeals commission will be final; and (c) subject to sub-paragraph (b), any hazardous substances consent granted under that paragraph shall have the like effect as a consent granted under Part V."
Paragraph (6)	None

PART 2

EFFECT OF HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES ETC.

Provisions of the 1991 Order Applied	*Modifications*
Article 72 (Offence where enforcement notice not complied with)	
Paragraph (1)	For paragraph (1) substitute – "(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken have not been taken, the person who is then the owner of the land and any person other than the owner who is in control of the land is in breach of the notice."

Provisions of the 1991 Order Applied	*Modifications*
Paragraph (2)	For the words "the owner of the land" substitute "a person" and for the words "an enforcement notice" substitute "a hazardous substances contravention notice".
Paragraph (3)	None
Paragraph (4)	Omit
Paragraph (5)	Omit
Paragraph (6)	Omit the words "or (5)".
Paragraph (7)	For the words "enforcement notice" substitute "hazardous substances contravention notice".
Paragraph (8)	None
Paragraph (9)	None
Article 74 (execution and costs of works required by enforcement notice)	
Paragraph (1)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice".
Paragraph (2)	For the words "an enforcement notice" substitute "a hazardous substances contravention notice" and for the words "breach of planning control" in both places where they occur substitute "contravention of hazardous substances control".
Paragraph (3) to (9)	None
Article 75 (effect of planning permission, etc., on enforcement or breach of condition notice)	
Paragraph (1)	For paragraph (1) substitute – "(1) Where after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under land to which the notice relates, the notice shall cease to have effect so far as inconsistent with that consent."
Paragraph (2)	Omit
Paragraph (3)	For the words "an enforcement notice or breach of condition notice" substitute "a hazardous substances contravention notice".
Article 76 (enforcement notice to have effect against subsequent development)	For Article 76 substitute – "(1) Compliance with a hazardous substances contravention notice shall not discharge that notice.