
SCOTTISH STATUTORY INSTRUMENTS

2015 No.

TOWN AND COUNTRY PLANNING

**The Town and Country Planning (Hazardous Substances)
(Scotland) Regulations 2015**

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The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a), section[s] 267(1) [and 271] of the Town and Country Planning (Scotland) Act 1997(b) and sections [2(4) and (5), 3(1) and (3), 5(1) and (4), [6(1)], 15(2), 23(1) and (3), 30(1) and 39(1)] of the Planning (Hazardous Substances) (Scotland) Act 1997(c) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Scottish Ministers that it is expedient for references in these Regulations to the CLP Regulation to be a reference to that instrument as amended from time to time.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 and come into force on [] 2015.

Interpretation

2.—(1) In these Regulations, unless the context requires otherwise—

“the 1972 Act” means the Town and Country Planning (Scotland) Act 1972(d);

“the 1993 Regulations” means the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993(e);

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997(f);

“appellant” in Part 5 means a person who gives notice of appeal under regulation [28(1)] and in Part 7 a person who gives notice of appeal under regulation [44(2)];

“appointed person” means a person appointed under paragraph 1 of the Schedule to the principal Act [or Schedule 4 to the 1997 Act as applied by virtue of Regulation [], as the case may be, to determine an appeal instead of the Scottish Ministers;

“the CLP Regulation” means Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures(g);

“commencement date” means the date these Regulations come into force;

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- (a) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28 and was amended by the 2008 Act, Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (b) 1997 c.8 (“the 1997 Act”). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Section 81(1) defines “prescribed”. Section 36(1) of the Town and Country Planning (Hazardous Substances) (Scotland) Act 1997 (c.10) (“the principal Act”) applies section 267 [and 271] of the 1997 Act for the purposes of the principal Act. Section 36 of the principal Act was inserted by paragraph 22(2) of Schedule 5 to the Planning and Compulsory Purchase Act 2004 (c.5). [add other relevant amendments]
- (c) 1997 c.10. [add relevant amendments].
- (d) 1972 c.52.
- (e) S.S.I. 1993/323 as amended by S.I. 1994/2567, S.I. 1996/252, S.S.I. 2000/179, S.S.I. 2003/1, S.S.I. 2006/270, S.S.I. 2009/378, S.S.I. 2010/171, S.S.I. 2013/119 and S.S.I. 2014/51.
- (f)
- (g) OJ No L 353, 31.12.2008, p.1.

“community council” means a community council established in accordance with the provisions of Part IV of the Local Government (Scotland) Act 1973(a);

“decision notice” means a notice issued under regulation [21 or 22];

“Hazardous Substances Inquiry Session Rules” means [the Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules [2015]];

“hearing session” means a hearing held or to be held into matters specified in a procedure notice given under rule 1(1) of the Hearing Session Rules;

“Hearing Session Rules” means the rules set out in Schedule [7];

“inquiry session” means a local inquiry held or to be held under—

(a) section 265 of the 1997 Act as applied by section 36(1) of the principal Act; or

(b) paragraph 6 of the Schedule to the principal Act;

“interested party” means in relation to an appeal under section 19 of the principal Act—

(a) any person consulted by the planning authority in accordance with regulation [18] and from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application to which the appeal relates; and

(b) any other person from whom the planning authority received representations (which were not subsequently withdrawn) in connection with the application to which the appeal relates before the end of the period mentioned in regulation [19];

“the principal Act” means the Planning (Hazardous Substances) (Scotland) Act 1997;

“procedure notice” means a notice given (whether separately or in combination) under regulation [30(1)], rule [1(1)] of the Hearing Session Rules or rule [3(1)] of the Hazardous Substances Inquiry Session Rules;

“relevant consent” means—

(a) the consent, in the case of a hazardous substances consent granted on an application under the 1972 Act(b) or the principal Act;

(b) the relevant claim, in the case of a consent deemed to be granted under section 9 or 10A of the principal Act(c) (deemed hazardous substances consent: established presence);

(c) the relevant direction, in the case of a consent deemed to be granted by virtue of section 56G of the 1972 Act (deemed hazardous substances consent by virtue of authorisation of government department) or section 10 of the principal Act (deemed hazardous substances consent: government authorisation),

and includes any continuation of a consent granted or deemed to be granted under section 16 of the principal Act;

“safety regulator” has the same meaning as in section 38(1) of the principal Act(d);

“validation date” is the date on which an application under regulation 8, 9 or 10, as the case may be, is taken to have been made in terms of regulation [11].

(2) References in these Regulations to the CLP Regulation are references to that Regulation as amended from time to time.

(3) Schedule 1 (hazardous substances and controlled quantities) is to be construed in accordance with the notes to that Schedule.

(4) Any requirement that a form is to be as set out in a specified Schedule is to be construed as meaning a form as so specified or a form substantially to the like effect.

(a) 1973 c.65.

(b) [].

(c) Section 9 provides that hazardous substances consent deemed to be granted by a planning authority under section 38 of the Housing and Planning Act 1986 shall continue to have effect notwithstanding the repeal of that section and shall be deemed to be granted by the authority under said section 9, and the relevant claim is the claim submitted under said section 38. Section 10A was inserted by S.S.I. 2000/179.

(d) Section 38(1) was relevantly amended by S.I. 2014/469.

PART 2

Hazardous substances, controlled quantities and exemptions

Hazardous substances and controlled quantities

3.—(1) For the purposes of the principal Act^(a) a hazardous substance, present as raw material, product, by-products residue or intermediate, is any substance or mixture—

- (a) falling within a category in column 1 of Part 1 of Schedule 1;
- (b) specified in column 1 of Part 2 of that Schedule; or
- (c) meeting the description in column 1 of Part 3 of that Schedule.

(2) For the purposes of the principal Act, the quantity specified in column 2 of Schedule 1 is the controlled quantity of the corresponding hazardous substance or category of hazardous substance, as the case may be, in column 1 of that Schedule.

Exemptions

4.—(1) Subject to paragraphs (2) and (3), hazardous substances consent is not required for—

- (a) the presence of a hazardous substance on, over or under land in military establishments, installations or storage facilities;
- (b) the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965;
- (c) the intermediate temporary presence of a hazardous substance on, under or over land where that presence is directly related to the transport of hazardous substances by road, rail, internal waterways, sea or air, outside establishments covered by these Regulations, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;
- (d) the presence of a hazardous substance in pipe-lines, including pumping stations, outside establishments covered by these Regulations;
- (e) the presence of a hazardous substance on, over or under land for use in the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes;
- (f) the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage;
- (g) the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency until the expiry of the period of 14 days beginning with the day it was unloaded, and a substance is to be treated as having been unloaded from a craft in an emergency if—
 - (i) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985^(b) (directions by Scottish Ministers to harbour master) applied; or
 - (ii) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2 of the Dangerous Substances in Harbour Areas Regulations 1987^(c) without requiring notification under regulation 6(1) of those regulations by virtue of an exemption under regulation 6(5).

(2) The exemption in paragraph (1)(f) does not apply to a hazardous substance present in—

(a) Section 2(1) of the Hazardous Substances (Scotland) Act 1977 provides that the presence of a hazardous substance on, over or under land requires the consent of the planning authority.
(b) 1985 c.22.
(c) S.I. 1987/37[, to which there are amendments not relevant to this instrument].

- (a) a site used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury^(a);
 - (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
 - (c) chemical and thermal processing operations and storage related to the those operations; and
 - (d) operational tailings disposal facilities, including tailing ponds or dams.
- (3) The exemption in paragraph (1)(e) does not apply to a hazardous substance present in connection with the matters referred to in paragraph (2)(b) to (d).
- (4) Where the conditions in paragraph (5) are met, hazardous substances consent is not required for a relevant minor change.
- (5) The conditions are that—
- (a) the relevant minor change does not result in—
 - (i) a safety hazard change;
 - (ii) a lower-tier establishment becoming an upper-tier establishment; or
 - (iii) non-compliance with any condition imposed on a hazardous substances consent; and
 - (b) before the relevant minor change occurs the planning authority receives from the Office for Nuclear Regulation and the Scottish Environment Protection Agency ~~(acting jointly)~~ in relation to a nuclear site, and the Health and Safety Executive and the Scottish Environment Protection Agency ~~(acting jointly)~~ in any other case, notice in writing with—
 - (i) details of the proposed relevant minor change; and
 - (ii) confirmation that the condition in sub-paragraph (a) is capable of being met.
- (6) The presence of a quantity of a hazardous substance is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the principal Act or these Regulations if it is present—
- (a) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site; and
 - (b) in a quantity which is equal to or less than 2% of the relevant controlled quantity for that substance.
- (7) The presence of a substance to which paragraph (1) applies is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the principal Act or these Regulations.
- (8) In this regulation—
- “relevant minor change” means a change to the quantity or type of hazardous substances present in, on or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for this regulation;
- “safety hazard change” means a change to an area notified to a planning authority by the Health and Safety Executive for the purposes of paragraph 3 of Schedule 5 to the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2013^(b) where that change results in—
- (a) that area encompassing land which it did not previously encompass; or
 - (b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

^(a) OJ No L304, 14.11.2008, p.75.
^(b) S.S.I. 2013/155.

(9) Expressions appearing in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

PART 3

Applications for hazardous substances consent

Publication of notice of application

5.—(1) Before submitting an application under regulation 8, 9 or 10 an applicant must in the 21 day period immediately before submitting the application publish a notice in the form set out in Schedule 2 in a newspaper circulating in the locality in which the land to which the application relates is situated.

(2) The applicant must complete a certificate certifying that notice was published in accordance with this regulation and specifying the name of the newspaper and the date of publication.

(3) The applicant must make a copy of the application available for inspection at a place within the locality of the land to which the application relates during the period or periods allowed for making representations in the notices given under paragraph (1) and regulations 6(1) and 7(1).

Owner notification

6.—(1) Before submitting an application under regulation 8, 9 or 10 an applicant must give notice in the form set out in Schedule 3 to any person (other than the applicant) who at the beginning of the period of 21 days ending with the date of submission of the application (the relevant period) is the owner of any land to which the application relates.

(2) The applicant must complete a certificate certifying, as the case may be, that—

- (a) at the beginning of the relevant period no person (other than the applicant) was the owner of any of the land to which the application relates;
- (b) the applicant has given notice to every person (other than the applicant) who at the beginning of the relevant period was the owner of any land to which the application relates; or
- (c) the applicant is unable to give notice to every such person.

(3) A certificate completed under—

- (a) paragraph (2)(b) or (c) must set out the name of every person to whom notice was given and the address at and date on which notice was given; and
- (b) paragraph (2)(c) must certify that the applicant has taken reasonable steps (specifying them) to ascertain the names and addresses of those persons to whom the applicant has been unable to give notice.

Neighbour notification

7.—(1) Before submitting an application under regulation 8, 9 or 10, as the case may be, the applicant must, no earlier than the date of publication of the notice required to be given in accordance with regulation [5], give notice in accordance with this regulation that such an application is to be made.

(2) Subject to paragraph (4), notice under paragraph (1) is to be given, where there are premises situated on neighbouring land to which the notice can be sent, to the owner, lessee or occupier of the premises, by sending a notice addressed to “the Owner, Lessee or Occupier” to the premises.

(3) The notice to be given in accordance with paragraph (2) must—

- (a) state the date on which the notice is sent;
- (b) state the name of the applicant and, where an agent is acting on behalf of the applicant, the name and address of the agent;

- (c) include information about the proposals to which the application relates, including a description of each hazardous substance to be present in, on or over the land to which the application relates and the maximum quantity of each hazardous substance which is to be present on, over or under the land to which the application relates;
 - (d) include the postal address of the land to which the application relates, or if the land in question has no postal address, a description of the location of the land;
 - (e) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
 - (f) state that the application and any map, plan or other document submitted in connection with it may be inspected at the premises of the planning authority and state the address of the planning authority;
 - (g) state that representations (including comments or questions) may be submitted to the planning authority within a period of not less than 21 days beginning on the date on which the notice is sent;
 - (h) state that the application may be granted (either unconditionally or subject to conditions) or refused; and
 - (i) be accompanied by a plan showing the situation of the land to which the application relates in relation to neighbouring land.
- (4) Paragraph (2) does not apply in respect of premises where no person other than the applicant owns, leases or occupies the premises.
- (5) The applicant must complete a certificate certifying that, as the case may be—
- (a) notice was not given because there are no premises on neighbouring land;
 - (b) notice was not given because no person other than the applicant owns, leases or occupies premises on neighbouring land;
 - (c) notice was given in accordance with paragraph (2).
- (6) The certificate completed in accordance with paragraph (5) must also contain the postal address of all premises to which notice was sent and a description of the location of the neighbouring land on which the premises are situated.
- (7) In this regulation “neighbouring land” means—
- (a) land (other than land forming part of a road) which, or part of which, is conterminous with or within 20 metres of the boundary of the land to which an application for hazardous substances consent relates;
 - (b) where storage or use of hazardous substances is to take place within a building every other separately owned or occupied unit within that building,
- and “land” includes any building on the land;

Applications for hazardous substances consent

8.—(1) An application to a planning authority for hazardous substances consent is to be made in accordance with this regulation.

- (2) The application must contain—
- (a) the name and address of the applicant;
 - (b) the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;
 - (c) the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
 - (d) details of the person in control of the land to which the application relates;

- (e) details of each hazardous substance for which consent is sought (“relevant substance”), including the maximum quantity of each substance proposed to be present;
 - (f) details of the main activities carried out or proposed to be carried out on the land to which the application relates;
 - (g) details of how and where each relevant substance is to be kept and used;
 - (h) details of how each relevant substance is proposed to be transported to and from the land to which the application relates;
 - (i) details of the vicinity of the relevant land, where such details are relevant to the risks or consequences of a major accident;
 - (j) details of the measures taken or proposed to be taken to limit the consequences of a major accident; and
 - (k) where applicable, the fact that the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive.
- (3) The application must be accompanied by—
- (a) a site map;
 - (b) a substance location plan;
 - (c) a copy of the notice given in accordance with regulation [5(1)] (newspaper notification) together with the certificate completed in accordance with regulation 6(2);
 - (d) the certificate completed in accordance with regulation [6(2)] (owner notification);
 - (e) the certificate completed in accordance with regulation [7(5)] (neighbour notification);
 - (f) the fee payable under regulation [58].
- (4) The site map required by paragraph [(3)(a)] is a map reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers.
- (5) The substance location plan required by paragraph [(3)(b)] is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies—
- (a) any area of the site intended to be used for the storage of the substance;
 - (b) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; and
 - (c) access points to and from the land.

Application for hazardous substances consent without a condition which was attached to a previous consent

9.—(1) An application to a planning authority for hazardous substance consent under section 11 of the principal Act (hazardous substances consent without a condition subject to which a previous hazardous substances consent was granted or deemed to be granted) is to be made in accordance with this regulation.

- (2) The application must—
- (a) contain the name and address of the applicant;
 - (b) contain the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;
 - (c) contain the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
 - (d) identify any condition previously imposed on the relevant consent which—
 - (i) it is proposed should no longer be imposed on the consent; or

- (ii) it is proposed should only be imposed in a modified form;
 - (e) for any condition identified under paragraph (d)(i), give the reasons why it should not be imposed;
 - (f) for any condition identified under paragraph (d)(ii)—
 - (i) indicate the proposed modification; and
 - (ii) give the reasons why it should only be imposed in a modified form;
 - (g) contain a description of any relevant changes in circumstances since the date of the relevant consent; and
 - (h) contain a description of each hazardous substance to which the application relates and the maximum quantity of the substances to be present on, over or under the land to which the application relates.
- (3) The application must be accompanied by—
- (a) a copy of the relevant consent;
 - (b) a change of location plan, if required;
 - (c) a copy of the notice published in accordance with regulation [5(1)] together with the certificate completed in accordance with regulation [5(2)] (newspaper notification);
 - (d) the certificate completed in accordance with regulation [6(2)] (owner notification);
 - (e) the certificate completed in accordance with regulation [7(5)] (neighbour notification);
 - (f) the fee payable under regulation [58].
- (4) For the purposes of paragraph [(3)(b)] a change of location plan—
- (a) is required where any condition which is the subject of the application restricts the location of a hazardous substance; and
 - (b) must be of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, and must identify the location of each hazardous substance to which the application relates at the date of the application and the proposed location.

Applications for continuation of hazardous substances consent where there has been a change in the person in control of any part of the land

10.—(1) An application to a planning authority under section 15(1) of the principal Act (continuation of a hazardous substances consent where there has been a change in the person in control of any part of the land to which the consent relates) is to be made in accordance with this regulation.

- (2) The application must contain—
- (a) the name and address of the applicant;
 - (b) the name and address of any agent acting on behalf of the applicant and whether any notice or other correspondence which is required by these Regulations to be sent to the applicant should be sent to the agent instead of the applicant;
 - (c) the postal address of the land to which the application relates or, if the land in question has no postal address, a description of the location of the land;
 - (d) a description of the use of each area of the site identified in the accompanying change of control plan;
 - (e) a description of any relevant changes in circumstances since the relevant consent was granted; and
 - (f) a statement of the date on which the change in the person in control of part of the land is to take place, where known.
- (3) Subject to paragraph [(4)], the application must be accompanied by—
- (a) a copy of the relevant consent;
 - (b) the change of control plan;

- (c) a copy of the notice given in accordance with regulation [5(1)] (newspaper notification), together with the certificate completed in accordance with regulation [5(2)];
- (d) the certificate completed in accordance with regulation [6(2)] (owner notification);
- (e) the certificate[completed in accordance with regulation [7(5)] (neighbour notification)]; and
- (f) the fee payable under regulation [58].

(4) The change of control plan referred to in paragraph [(3)(b)] is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site which is to be under separate control after the proposed change of control.

Validation date

11. An application under regulation 8, 9 or 10 is to be taken to have been made on the date on which the last of the information, plans, other documentation or fee required to be contained in or accompany the application by virtue of those regulations is received by the planning authority.

Acknowledgment of applications

12.—(1) When a planning authority receives—

- (a) an application under regulation 8, 9 or 10; or
- (b) an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent,

they must send to the applicant, or where an agent is acting on behalf of the applicant that agent, an acknowledgement of receipt of that application.

(2) The acknowledgement referred to in paragraph (1)(a) must—

- (a) include an explanation of the timescales within which the planning authority are to give notice to the applicant of their decision on the application; and
- (b) inform the applicant of any right to appeal to the Scottish Ministers under section 19 of the principal Act.

(3) Where the application does not comply with regulation 8, 9 or 10, as the case may be, the planning authority must send to the applicant, or where an agent is acting on behalf of the applicant that agent, a notice identifying any information, plan, other documentation or fee the applicant must submit in order to comply with regulation 8, 9 or 10, as the case may be.

List of applications for hazardous substances consent

13.—(1) A planning authority must keep a list of applications which includes—

- (a) in relation to applications made to the planning authority under regulations 8, 9 and 10—
 - (i) the reference number given to the application by the planning authority;
 - (ii) the name of the applicant and, where an agent is acting for the applicant, the name and address of that agent;
 - (iii) a description of the location of the land to which the application relates;
 - (iv) a description of each hazardous substance to which the application relates and the maximum quantity of each hazardous substance to be present on, under or over the land to which the application relates; and
 - (v) the date of expiry of the period within which an application may not be determined by virtue of regulation [20(2)] (determination not to be made before expiry of period for making representations).
- (b) in relation to applications made to the Scottish Ministers under regulation [59] (applications by planning authorities)—

- (i) a statement that the application has been made to the Scottish Ministers under regulation [59];
- (ii) the reference number given to the application by the Scottish Ministers, if known;
- (iii) where an agent is acting for the planning authority, the name and address of that agent;
- (iv) a description of the location of the land to which the application relates;
- (v) a description of each hazardous substance to which the application relates and the maximum quantity of each hazardous substance to be present on, under or over the land to which the application relates;
- (vi) a statement that representations (including comments or questions) may be made to the Scottish Ministers and where any such representations should be sent.

(2) The list of applications must also contain a statement as to how further information in respect of an application may be obtained from the planning authority or the Scottish Ministers, as the case may be.

Publication of list of applications for hazardous substances consent

14. A planning authority must publish the list of applications kept in accordance with regulation [13] by means of the internet on their website and are to make the list of applications available for inspection at their principal office and at public libraries in their district.

Provision of information to community councils

15. A planning authority must send to every community council in their area at weekly intervals a list of—

- (a) all applications made to the authority during the previous week under regulation 8, 9 or 10; and
- (b) all applications made to the Scottish Ministers by the planning authority during the previous week under regulation [59],

containing the information referred to in regulation [13(1)(a) or (b)], as the case may be, and a statement as to how further information in respect of an application may be obtained from the planning authority or the Scottish Ministers, as the case may be..

Further information

16. A planning authority may require from an applicant who has made an application under regulation 8, 9 or 10 further information which they consider that they require to enable them to deal with an application under regulation 8, 9 or 10, as the case may be, in addition to the information to be included in or accompany an application by virtue of those regulations.

Consultation before determination of ~~ing an~~ applications

17.—(1) Subject to paragraph (3), a planning authority must, before determining an application under regulation 8, 9 or 10, consult—

- (a) the safety regulator;
- (b) [the local and civil defence authority concerned, where that authority is not also the planning authority;]
- (c) Scottish Natural Heritage;
- (d) a community council any part of whose area is within or adjoins the land to which the application relates;
- (e) the Scottish Fire and Rescue Service;
- (f) the Scottish Environment Protection Agency;

- (g) any public gas transporter whose apparatus is situated on, under or over the land to which the application relates or on, under or over adjoining land;
- (h) any electricity company whose apparatus is situated on, under or over the land to which the application relates or on, under or over adjoining land;
- (i) where the land to which the application relates, or any part of that land, is within 2 kilometres of a royal palace, park or residence, the Scottish Ministers;
- (j) [where the land to which the application relates, or any part of it, is within 2 kilometres of the area of a local and civil defence authority, that authority;]
- (k) where it appears to the planning authority that land in the area of any other planning authority may be affected, that other authority;
- (l) where the land to which the application relates, or any part of that land, is land in an area of coal working or former or proposed coal working notified to the planning authority by the British Coal Corporation or the Coal Authority, the Coal Authority;
- (m) where the land to which the application relates, or any part of that land, is land which is used for disposal or storage of controlled waste, the waste disposal authority concerned (where that authority is not also the planning authority); and
- (n) where it appears to the planning authority that the development is likely to affect land in the area of the Cairngorms National Park Authority, that Authority.

(2) The planning authority need not consult an authority or body referred to in paragraph (1) if the authority or body or a person described in paragraph (2) if that authority, body or person has notified the planning authority in writing that it does not wish to be consulted, but this paragraph does not apply in respect of the safety regulator, Scottish Natural Heritage or the Scottish Environment Protection Agency.

(3) Where a planning authority is required to consult in accordance with this regulation they must—

- (a) serve each authority or body referred to in paragraph (1) or person described in paragraph (2) with a copy of the application; and
- (b) give not less than 28 days' notice that the application is to be taken into consideration .

(4) In this regulation—

“controlled waste” has the meaning given by section 75(4) of the Environmental Protection Act 1990; and

“waste disposal authority” means a district or islands council exercising their functions as a disposal authority under Part I of the Control of Pollution Act 1974 or as a waste disposal authority under Part II of the Environmental Protection Act 1990.

Representations

17A. When determining an application under regulation 8, 9 or 10 a planning authority must take into account any representations made in connection with the application (which were not subsequently withdrawn).

Duty to notify the Scottish Ministers of applications

18.—(1) If a planning authority proposes to grant hazardous substances consent where the Safety Regulator or the Scottish Environment Protection Agency has advised against that or has recommended that conditions be imposed on the hazardous substances consent which the authority does not propose to impose the authority must notify the Scottish Ministers of the application and provide to them a copy of the application and accompanying plans and documents.

(2) The Scottish Ministers may within the period of 28 days beginning with the date of the notification—

- (a) give a direction requiring that the application be referred to them under section 18 of the principal Act; or

- (b) give notice to the planning authority that they require further time in which to consider whether to require such a reference.
- (3) The planning authority must not grant hazardous substances consent until—
 - (a) the period mentioned in paragraph (2) has expired without the Scottish Ministers giving a direction under paragraph (2)(a) or giving the authority notice under paragraph (2)(b); or
 - (b) the Scottish Ministers have notified the authority that they do not intend to require the reference of the application.

Imposition of conditions relating to the environment

19. In section 8(2) of the principal Act, if a condition as to how a hazardous substances is to be kept or used is to be imposed for the purpose of preventing major accidents and limiting the consequences of such accidents for the environment the reference in that subsection to the safety regulator is to be read as a reference to the Scottish Environment Protection Agency.

Time period for determination

20.—(1) Subject to paragraph (2), where a planning authority has received an application under regulation 8, 9 or 10 the planning authority must give notice to the applicant of their determination or referral of the application to the Scottish Ministers within a period of 2 months after the validation date or such extended period as may be agreed upon in writing between the applicant and the planning authority.

- (2) An application under regulation 8, 9 or 10 is not to be determined until—
 - (a) the date, or the latest date, of the expiry of the periods allowed for the making of representations in respect of that application specified in notices given in accordance with regulation [5(1)] (publication of notice of application), [6(2)] (owner notification) or [7(5)] (neighbour notification);
 - (b) where the planning authority is required to consult under regulation [17], the expiry of the period of notice given by the planning authority in accordance with regulation 17(4)(b);

(3) The period of notice referred to in paragraph (2)(b) begins with the date on which all authorities and bodies who the planning authority are required to consult under regulation [17] have been served with a copy of the application.

(4) The period prescribed for the purposes of section 16(7) of the principal Act (determination of applications for continuation of hazardous substances consent) is the period of 2 months after the validation date.

Decision notices on applications under regulation 8, 9 or 10

- 21.—(1)** The planning authority must within the period referred to in regulation [20(1)]—
 - (a) give to the applicant or where an agent is acting on behalf of the applicant that agent a notice of their decision on an application under regulation 8, 9 or 10, as the case may be (“decision notice”);
 - (b) give a copy of the decision notice to—
 - (i) the safety regulator; and
 - (ii) the Scottish Environment Protection Agency;
 - (c) inform every other authority, body or person who made written representations in respect of the application (and provided an address), of their decision on the application and where a copy of the decision notice is available for inspection.
- (2) A decision notice relating to an application under regulation 8 or 9 must include—
 - (a) a description of each hazardous substance for which hazardous substances consent has been granted or, as the case may be, refused;

- (b) a statement of the maximum amount of each hazardous substance for which hazardous substances consent has been granted or, as the case may be, refused;
 - (c) a description of the location of the land in relation to which hazardous substances consent has been granted or, as the case may be, refused;
 - (d) any condition to which the decision is subject;
 - (e) the reference number given to the application by the planning authority.
- (3) A decision notice relating to an application under regulation 11 must include—
- (a) details of the relevant consent to which the application relates;
 - (b) a description of the location of the land to which the relevant consent relates;
 - (c) the planning authority's decision on the application, including a description of any modification of the relevant consent made by the authority;
 - (d) the reference number given to the application by the planning authority; and
 - (e) where the relevant consent is modified or revoked, information about the right of compensation provided for in section 17 of the principal Act.
- (4) A decision notice must also—
- (a) identify the authorities and bodies consulted by the planning authority in respect of the application;
 - (b) contain a statement of the number of representations made in respect of the application, a summary of the main issues raised by such representations and an explanation of how they were taken into account in the decision;
 - (c) explain the main reasons and considerations on which the decision is based, including the planning authority's reasons for granting the application, imposing conditions when granting the application or refusing the application, as the case may be.
- (5) Where an application is refused or is granted subject to conditions the decision notice must be accompanied by—
- (a) a notice in the form set out in Schedule [4]; and
 - (b) a statement—
 - (i) explaining how the applicant may obtain information on how to appeal to the Scottish Ministers under section 19 of the principal Act; and
 - (ii) advising that the applicant may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose.
- (6) Where representations in respect of the application are made by 3 or more persons in the same document, it is sufficient for the purposes of paragraph (1)(c) that the planning authority notify—
- (a) only the person who sent that document to the planning authority, where it is possible for the planning authority to identify that person; or
 - (b) where it is not possible to do so, only the first named person on the document for whom an address is provided.

Notices on decisions on applications for approval of matters specified in conditions

22.—(1) Where a planning authority receives an application for approval, consent or agreement required by a condition imposed on a grant of hazardous substances consent the planning authority must give to the applicant, or where an agent is acting for the applicant that agent, a notice of their decision on the application.

- (2) The notice referred to in paragraph (1) must include—
- (a) a description of the matter in respect of which approval, consent or agreement has been granted or, as the case may be, refused;
 - (b) any condition to which the decision is subject, and the reason for imposing that condition;

- (c) where the application is refused, the reasons for the refusal;
 - (d) the reference number given to the application by the planning authority;
 - (e) the reference number given to the application in respect of which the condition requiring the approval, consent or agreement of the planning authority was imposed.
- (3) Where an application referred to in paragraph (1) is refused or is granted subject to conditions the decision notice must be accompanied by—
- (a) a notice in the form set out in Schedule [5]; and
 - (b) a statement—
 - (i) explaining how the applicant may obtain information on how to appeal to the Scottish Ministers under section 19 of the principal Act; and
 - (ii) advising that the appellant may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose.

Notice of reference of applications to the Scottish Ministers

23. On referring an application under regulation 8, 9 or 10 to the Scottish Ministers in accordance with a direction given under section 18 of the principal Act a planning authority must serve on the applicant a notice—

- (a) informing the applicant that the application has been referred to the Scottish Ministers;
- (b) setting out the reasons given by the Scottish Ministers for giving the direction;
- (c) informing the applicant that they may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose.

PART 4

Policies and public participation

Policies

24.—(1) In formulating any relevant policy, the Scottish Ministers must ensure that the following matters are taken into account—

- (a) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment; and
- (b) the matters referred to in Article 13(2) of the Directive.

(2) In this regulation—

“relevant policy” means—

- (a) the National Planning Framework referred to in section 3A of the 1997 Act^(a); and
- (b) Scottish Planning Policy;.

(3) Expressions appearing in this regulation and in the Directive have the same meaning for the purposes of this regulation as they have for the purposes of the Directive.

Plans and programmes

25.—(1) Subject to paragraph (3), this regulation applies where a responsible authority proposes to prepare, modify or review a relevant plan or programme.

(2) Where this regulation applies, the responsible authority must—

^(a) Section 3A was inserted by section 1 of the Planning etc. (Scotland) Act 1996 (asp 17).

- (a) take such measures as it considers appropriate to ensure that public consultees are given early and effective opportunities to participate in the preparation, modification or review of the relevant plan or programme; and
 - (b) in doing so, take such measures as it considers appropriate to ensure that—
 - (i) public consultees are informed of any proposals to prepare, modify or review a relevant plan or programme;
 - (ii) relevant information about such proposals is made available to public consultees, including information about the right to participate in decision-making and about the authority to which comments or questions may be submitted;
 - (iii) public consultees are entitled to express comments and opinions when all options are open before decisions on the relevant plan and programme are made; and
 - (iv) any periods provided for public participation under this regulation allow public consultees sufficient time to prepare and participate in decision-making in relation to the relevant plan or programme;
 - (c) take into account the results of the public participation in making those decisions; and
 - (d) take such measures as it considers appropriate to inform the public consultees about the decisions taken and the reasons and considerations on which those decisions are based, including information about the public participation process.
- (3) This regulation does not apply to a relevant plan or programme in relation to which a public participation procedure is carried out under the Environmental Assessment (Scotland) Act 2005(a).
- (4) In this regulation—
- “public consultees” means persons of whom the responsible authority is aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the relevant plan or programme in question;
- “relevant plan or programme” means a general plan or programme relating to—
- (a) planning for new establishments pursuant to Article 13 of the Directive, or
 - (b) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident pursuant to Article 13 of the Directive; and
- “responsible authority” means—
- (a) the authority by which or on whose behalf a relevant plan or programme is prepared; and
 - (b) where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible (solely or jointly with the authority) for taking those steps.
- (5) This regulation applies to a relevant plan or programme relating solely to the whole or any part of Scotland.
- (6) Any steps taken before the date on which these Regulations come into force in relation to a relevant plan or programme may be treated as steps taken for the purposes of this regulation.

Development around establishments

26.—(1) A planning authority or the Scottish Ministers, as the case may be, must, before deciding to give any consent, permission or other authorisation for a relevant project, take such measures as they consider appropriate to ensure that the public concerned is given an early opportunity to give its opinion on the relevant project.

(2) In doing so, the planning authority or the Scottish Ministers, as the case may be, must take such measures as they consider appropriate to ensure that—

(a) 2005 (asp 15).

- (a) the public is informed by public notices or other appropriate means, including electronic media where available, of the following matters early in the procedure for the taking of a decision or, at the latest, as soon as the information can reasonably be provided—
 - (i) the subject of the relevant project;
 - (ii) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive;
 - (iii) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted;
 - (iv) an indication of the times and places where, or means by which, the relevant information will be made available;
 - (v) details of the period for transmitting comments or questions; and
 - (vi) the nature of possible decisions or, where there is one, the draft decision;
 - (b) the following is made available to the public concerned—
 - (i) the main reports and advice issued to the planning authority or the Scottish Ministers, as the case may be, at the time when the public concerned was informed pursuant to paragraph (a); and
 - (ii) information other than that referred to in paragraph (2)(a) which is relevant for the decision in question and which only becomes available after the public concerned was informed in accordance with that paragraph;
 - (c) the public concerned is entitled to express comments and opinions to the competent authority before a decision is taken; and
 - (d) the results of the consultations held pursuant to this regulation are taken into account in the taking of a decision.
- (3) After deciding whether to give any consent, permission or other authorisation for a relevant project, the planning authority or the Scottish Ministers, as the case may be, must make available to the public—
- (a) the content of the decision and the reasons on which it is based, including any subsequent updates;
 - (b) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision.
- (4) In this regulation—
- “the public concerned” means persons of whom the planning authority or the Scottish Ministers, as the case may be, are aware, including any non-governmental organisation promoting environmental protection, who are affected or likely to be affected by, or have an interest in, the taking of a decision to give the consent, permission or other authorisation referred to in paragraph (1); and
- “relevant project” means development falling within [paragraphs (3), (3A) or (4) of Schedule 5 to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013(a).
- (5) In this regulation, a reference to giving consent, permission or other authorisation includes—

(a) S.S.I. 2013/155. Paragraph 3 was amended by S.I. 2014/469 and paragraph 3A was inserted by that instrument.

- (a) granting planning permission on an application under Part 3 of the 1997 Act (control over development);
- (b) granting planning permission on an application under section 242A of the 1997 Act (urgent Crown development)(b);
- (c) granting planning permission, or upholding a decision of the planning authority to grant planning permission (whether or not subject to the same conditions and limitations as those imposed by the planning authority), or determining an appeal under section 47 of the 1997 Act (right to appeal against planning decisions) in respect of such an application;
- (d) granting planning permission under section 92(2)(a) of the 1997 Act (action in relation to purchase notice);
- (e) directing under the following provisions that planning permission is deemed to be granted—
 - (i) section 57(1) to (2B) of the 1997 Act (development with government authorisation) (a); or
 - (ii) section 5(1) of the Pipe-lines Act 1962(b) (provisions with respect to planning permission concerning pipe-lines);
- (f) making—
 - (i) a special development order under section 30(2)(b) of the 1997 Act(e);
 - (ii) a simplified planning zone scheme under section 50 of the 1997 Act;
 - (iii) an order designating an enterprise zone under section 179 of, and paragraph 5(1) of Schedule 32 to, the Local Government, Planning and Land Act 1980(d);
 - (iv) an order under section 71 of the 1997 Act (order by planning authority requiring discontinuance of use or alteration or removal of buildings or works)(e), including an order made under that section by virtue of section 73 of that Act (order by Scottish Ministers) which grants planning permission, or confirming any such order under section 72 of that Act (confirmation of section 71 order by Scottish Ministers); or
 - (v) an order under paragraph 1 of Schedule 8 to the 1997 Act (order by planning authority requiring discontinuance of mineral working), including an order made under that paragraph by virtue of paragraph 12 of that Schedule (order by Scottish Ministers) which grants planning permission; or
- (g) directing under the following provisions that if an application is made for planning permission it must be granted—
 - (i) section 92(3) of that Act (action in relation to purchase notice); or
 - (ii) section 31(5) of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (action in relation to listed building purchase notice)(f); and
- (h) in relation to an authorisation which is capable of being varied or modified, a reference to the variation or modification of such a consent, permission or authorisation.

(a) Section 57(2) was substituted by, and section 27(2ZA) was inserted by, section 21(5) of the Growth and Infrastructure Act 2013 (c.27). Section 57(2A) was inserted by section 15(1) of the Transport and Works (Scotland) Act 2007 (asp 8). Section 57(2B) was inserted by section 65 of the Flood Risk Management (Scotland) Act 2009 (asp 6).

(b) Section 5(1) was amended by S.I. 1970/1681, paragraph 2 of Schedule 24 to the Town and Country Planning Act 1971 (c.78) and S.I. 1999/742.

(c) Section 30(2)(b) was amended by section 54(3)(b) of the Planning etc. (Scotland) Act 2006 (asp 17).

(d) 1980 c.65.

(e) Section 71 was amended by S.S.I. 2006/243 and section 22(3) of the Planning etc. (Scotland) Act 2006.

(f) 1997 c.9.

PART 5

Appeals

Notice of appeal

27.—(1) An appeal to the Scottish Ministers under section 19 of the principal Act is to be made by giving notice in writing in accordance with this regulation.

(2) The period prescribed for the purposes of section 19(2) of the principal Act (appeals against failure to take decisions) is the period of 2 months after the validation date.

(3) The notice of appeal must be served on the Scottish Ministers within the period of 3 months beginning with, in the case of an appeal under—

- (a) section 19(1) of the principal Act, the date of the decision notice; and
- (b) section 19(2) of the principal Act, the date of expiry of the period allowed for determination of the application.

(4) The notice of appeal (on a form obtained from the Scottish Ministers) must include—

- (a) the name and address of the appellant;
- (b) the date and the reference number given by the planning authority to the application in respect of which the appeal is made;
- (c) the name and address of any agent acting on behalf of the appellant and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the agent instead of the appellant;
- (d) a statement setting out full particulars of the appeal, including a note of the matters which the appellant considers require to be taken into account in determining the appeal and by what, if any procedure (or combination of procedures) mentioned in regulation [33(4)] the appellant considers the appeal should be conducted and in particular—
 - (i) a statement of whether or not the appellant wishes the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the appellant so wishes, a statement of the matters on which the appellant wishes the opportunity to be heard; and
- (e) where the appeal is made under section 19(1) of the principal Act, a copy of the decision notice.

(5) Subject to paragraph (6)—

- (a) all matters which the appellant intends to raise in the appeal must be set out in the notice of appeal or in the documents which accompany the notice of appeal; and
- (b) all documents, materials and evidence which the appellant intends to rely on in the appeal must accompany the notice of appeal.

(6) In addition to matters set out in the notice of appeal and documents which accompany the notice of appeal, the appellant may raise matters and submit further documents, materials or evidence only in accordance with and to the extent permitted by regulations [28, 29 and 35], the Hearing Session Rules and as the case may be the Hazardous Substances Inquiry Session Rules.

Intimation to planning authority and planning authority's response

28.—(1) The appellant must at the same time as giving the notice of appeal to the Scottish Ministers send to the planning authority—

- (a) a copy of the notice of appeal;
- (b) a list of all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the notice of appeal in accordance with regulation [27(5)(b)]; and

- (c) a copy of all documents, materials and evidence specified on such list which the appellant has not already provided to the planning authority in connection with the application to which the appeal relates.
- (2) The planning authority must, not later than 21 days beginning with the date of receipt of notification of an appeal under paragraph (1), send to the Scottish Ministers and the appellant—
- (a) a note (“the planning authority’s response”) of the matters which the planning authority consider require to be taken into account in determining the appeal and by what, if any, procedure (or combination of procedures) mentioned in regulation [33(4)] the planning authority consider the appeal should be conducted and in particular—
 - (i) a statement of whether or not the planning authority wish the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the planning authority so wish, a statement of the matters on which the planning authority wish the opportunity to be heard;
 - (b) a copy of the documents (other than those specified on the list mentioned in paragraph (1)(b)) which were before the planning authority and which were taken into account in reaching their decision; and
 - (c) the conditions (if any) which the planning authority presently consider should be imposed in the event that consent is granted.
- (3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response, send to the Scottish Ministers and the planning authority—
- (a) comments on any matters raised in the planning authority’s response which had not been raised in the decision notice; and
 - (b) any documents, materials or evidence on which the appellant intends to rely in relation to such comments.

Notification to interested parties

29.—(1) The planning authority must not later than 14 days following notification of the appeal under regulation [28(1)] give notice of the appeal to each interested party.

- (2) Notice under paragraph (1) may be given—
- (a) by post to any interested party notified or consulted under these Regulations other than by newspaper advertisement; and
 - (b) by post or by advertisement in a newspaper circulating in the locality where the proposed development is situated, to any other interested party.
- (3) Notice under paragraph (1) is to—
- (a) state the name of the appellant;
 - (b) include a description of each hazardous substance to which the appeal relates and the maximum quantity in which the substance is to be present on, over or under the land to which the appeal relates;
 - (c) include the postal address of the land to which the appeal relates, or if the land in question has no postal address, a description of the location of the land;
 - (d) state that a copy of any representation previously made to the planning authority, other than a representation which the interested party who made it has asked to be treated as confidential, will be sent to the Scottish Ministers and the appellant and will be taken into consideration in the determination of the appeal;
 - (e) state that further representations may be made to the Scottish Ministers and include information as to how any representations may be made and by what date they must be made; and
 - (f) state how a copy of the notice of appeal and other documents related to the appeal may be inspected.

(4) An interested party may, within 14 days beginning with the date on which notice is given under paragraph (1), make representations in respect of the appeal to the Scottish Ministers.

(5) The Scottish Ministers are to send a copy of any representations received under paragraph (4) to the appellant and to the planning authority and are to inform them how and by what date (being a date not less than 14 days after the date on which such copy is sent under this paragraph) they may make comments to the Scottish Ministers on such representations.

(6) The appellant and the planning authority may, on or before that date, make comments on such representations to the Scottish Ministers.

Publication of appeal documents

30.—(1) The planning authority must, in relation to an appeal under section 19, make copies of—

- (a) the notice of appeal;
- (b) the planning authority's response and any comments sent under regulation 25(3)(a);
- (c) the documents—
 - (i) specified on the list mentioned in regulation [28(1)(b)];
 - (ii) sent in accordance with regulation [28(2)(b) and (3)(b)];
- (d) any notice given under regulation [29(1)]; and
- (e) any representations or comments made under regulation [29(4) or (6)],

available for inspection at an office of the planning authority until such time as the appeal is determined.

(2) The planning authority are until such time as the appeal is determined to afford to any person who so requests the opportunity to inspect and, where practicable, take copies of any such documents (or any part thereof).

Determination without further procedure

31.—(1) This regulation applies only where neither the appellant nor the planning authority wish to be given an opportunity to appear before and be heard by the appointed person on any matter in relation to the appeal.

(2) Where this regulation applies and the appointed person considers that no further representations are, or information is, required to enable the appeal to be determined, the appointed person may determine the appeal without further procedure.

Opt-in notice to interested parties

32.—(1) Where the appointed person does not determine the appeal without further procedure, the appointed person may (but is not required to) invite, by notice given in accordance with this regulation, any or all interested parties to confirm if they wish to participate in any further procedure.

(2) The notice given under paragraph (1) is to—

- (a) state that if the interested party wishes to participate in any further procedure conducted in relation to the appeal they must send a notice ('an opt-in notice') to the appointed person informing the appointed person of that wish;
- (b) include information as to how the opt-in notice may be given and specify the date (being not less than 14 days after the date on which the notice under paragraph (1) is given) on or before which the opt-in notice must be given to the appointed person; and
- (c) inform the interested party that if they do not give an opt-in notice to the appointed person before that date they may lose the opportunity to participate in any further procedure.

(3) Where notice is given under paragraph (1) any reference in regulations [34] and [36] and in the Hearing Session Rules and Hazardous Substances Inquiry Session Rules to an interested party is to be treated as including only those interested parties who have given an opt-in notice to the appointed person in accordance with this regulation.

(4) In this regulation “opt-in notice” has the meaning given in paragraph (2)(a).

Decision as to further procedure

33.—(1) Subject to paragraph (3) where—

- (a) regulation [32] does not apply; or
- (b) regulation [32] does apply but the appointed person does not determine the appeal without further procedure,

the appointed person may determine the manner in which the appeal is to be conducted and may determine at any stage of the appeal that further representations should be made or further information should be made available or provided to enable the appeal to be determined.

(2) Subject to paragraph (3), where the appointed person determines that further representations should be made or further information should be made available or provided to enable the appeal to be determined, the appeal or a stage of the appeal is to be conducted by one of, or by a combination of, the procedures mentioned in paragraph (4).

(3) Where either the appellant or the planning authority wish to be given an opportunity to appear before and be heard by the appointed person on any matter then that matter is, to the extent that the appellant or planning authority, as the case may be, wish to make oral submissions on that matter, to be considered by means of, or a combination of, the procedures mentioned in paragraph (4)(b) and (c).

(4) The procedures are—

- (a) by means of written submissions;
- (b) by the holding of one or more hearing sessions;
- (c) by the holding of one or more inquiry sessions;
- (d) by means of an inspection of the land to which the appeal relates.

(5) Regulation [36] applies where the appointed person considers that further representations should be made or further information should be made available or provided by means of—

- (a) written submissions, regulation [35] applies.
- (b) a hearing session, the Hearing Session Rules apply;
- (c) an inquiry session, the Hazardous Substances Inquiry Session Rules apply;
- (d) an inspection of the land.

(6) Notices given under regulation [35(1)], rule [1(1)] of the Hearing Session Rules or rule [3(1)] of the Hazardous Substances Inquiry Session Rules] may be given separately or combined into a single notice.

Pre-examination meetings

34.—(1) The appointed person may hold a meeting (“a pre-examination meeting”) to consider the manner in which the appeal or any stage of the appeal is to be conducted with a view to securing that the appeal or any stage of the appeal is conducted efficiently and expeditiously.

(2) The appointed person is to determine (and may subsequently vary) the date, time and place for the holding of a pre-examination meeting.

(3) The appointed person must give such notice of the holding of a pre-examination meeting and of the date, time and place where it is to be held (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances—

- (a) where a pre-examination meeting is to be held in connection only with the conduct of a particular hearing session or inquiry session, to those persons entitled to appear at that hearing session or inquiry session; and
 - (b) in any other case, to the appellant, the planning authority and any interested party.
- (4) The appointed person is to determine the matters to be discussed and the procedure to be followed at the pre-examination meeting.

Written submissions procedure

35.—(1) Where an appointed person has determined that further representations should be made or further information should be provided by means of written submissions, the appointed person may request such further representations or information and is to do so by giving written notice to that effect to—

- (a) the appellant;
 - (b) the planning authority; and
 - (c) any other person from whom the appointed person wishes to receive further representations or information.
- (2) The procedure notice given under paragraph (1) is to—
- (a) set out the matters on which such further representations or information is requested;
 - (b) specify the date by which such further representations or information are to be sent to the appointed person; and
 - (c) state the name and address of any person to whom the procedure notice is given.
- (3) Any further representations made or information provided in response to the procedure notice (“the procedure notice response”) must be sent to the appointed person on or before the date specified for that purpose in the procedure notice and a copy of any procedure notice response is to be sent on or before that date to any other person to whom the procedure notice was given.
- (4) Within a period of 14 days from receipt of a copy of the procedure notice response, any person to whom the procedure notice was given—
- (a) may send comments to the appointed person in reply to the procedure notice response; and
 - (b) must, when doing so, send a copy of such comments to any other person to whom the procedure notice was given.
- (5) A copy of any procedure notice response or any comments required to be sent to a person under this regulation is to be sent to the person at the address stated for that person in the procedure notice.
- (6) In this regulation “procedure notice response” has the meaning given in paragraph (3).

Site inspections

- 36.**—(1) The appointed person may at any time make—
- (a) an unaccompanied inspection of the land to which an appeal relates; or
 - (b) an inspection of the land in the company of such of the persons notified under paragraph (3) as desire to attend the inspection.
- (2) Where the appointed person intends to make an unaccompanied inspection, the appointed person is to inform the appellant and the planning authority of such intention.
- (3) Where the appointed person intends to make an accompanied inspection, the appointed person is to give such notice of the date and time of the proposed inspection as may appear to the appointed person to be reasonable in the circumstances to—
- (a) the appellant;
 - (b) the planning authority; and

(c) any interested party.

(4) The appointed person is not bound to defer an inspection if any person to whom notice was given under paragraph (3) is not present at the time appointed.

New evidence

37.—(1) If the appointed person proposes to take into consideration any new evidence which is material to the determination of the appeal, the appointed person must not reach a decision on the appeal without affording the appellant, the planning authority and any other relevant party an opportunity of making representations on such new evidence.

(2) In this regulation “relevant party” means—

- (a) where the new evidence relates to a specified matter considered at a hearing session or inquiry session, any person entitled to appear at that hearing session or inquiry session; and
- (b) where the new evidence relates to matters in respect of which further written representations or information was sought by a procedure notice under regulation [35], any person to whom such notice was sent.

Further copies of documents etc.

38.—(1) The appointed person may require any person who has submitted documents, materials or evidence under these Regulations in connection with the appeal to—

- (a) provide to the appointed person such number of additional copies of such of those documents, materials or evidence as the appointed person may specify;
- (b) provide to such other persons as the appointed person may specify such copies or additional copies of any document, materials or evidence as the appointed person may specify.

(2) The appointed person may require the planning authority to make copies of such documents, materials or evidence as the appointed person may specify available for inspection at an office of that planning authority until such time as the appeal is determined and to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any such documents, materials or evidence (or any part thereof) which, or a copy of which, has been sent to the planning authority in accordance with this regulation.

Compliance with notification and consultation procedures

39.—(1) The appointed person must in relation to an appeal under section 19, to the extent not already done so by the appellant or the planning authority, as the case may be, comply with—

- (a) regulation [5] (publication of notice of application);
- (b) regulation [7] (neighbour notification); and
- (c) regulation [17] (consultation before determining an application).

(2) Where the appointed person notifies or consults with any person in accordance with paragraph (1) references in these Regulations to an interested party (other than in regulation 29 (notice to interested parties)) includes any such person from whom the appointed person received representations (which are not subsequently withdrawn) in connection with the appeal.

Appointment of assessor

40.—(1) The Scottish Ministers may appoint a person to sit with the appointed person at a hearing session to advise the appointed person on such matters arising as the Scottish Ministers may specify (“an assessor”) and where they do so they are to notify every person entitled to appear at the hearing session of the name of the assessor and of the matters on which the assessor is to advise the appointed person.

(2) Where an assessor has been appointed, the assessor may (and if so required by the appointed person, must), after the close of the hearing session, make a report in writing to the appointed person in respect of the matters on which the assessor was appointed to advise.

Notice of decision on appeal

41.—(1) The appointed person must—

- (a) give notice of the decision on an appeal under section 19 (“notice of decision”) to—
 - (i) the appellant or where an agent is acting on behalf of the appellant that agent;
 - (ii) the planning authority;
 - (iii) the safety regulator; and
 - (iv) the Scottish Environment Protection Agency; and
- (b) notify every person who has made (and did not subsequently withdraw) representations in respect of the appeal that a decision on the appeal has been made and where a copy of the notice given under sub-paragraph (a) is available for inspection.

(2) The notice of decision given under paragraph (1)(a) must include—

- (a) the appointed person’s decision on the appeal, including a description of any variation or reversal of any part of the decision of the planning authority;
- (b) []

(3) The notice of decision must also—

- (a) identify the authorities and bodies consulted by the appointed person in respect of the application;
- (b) explain the main reasons and considerations on which the decision is based;
- (c) contain a statement of the number of representations made in respect of the appeal, a summary of the main issues raised by such representations and an explanation of how they were taken into account in the decision.

(4) Where the appeal is dismissed or any part of the decision of the planning authority is varied or reversed, the notice of decision must also contain a statement advising that the appellant may appeal to the Court of Session under section 20(1) of the principal Act within 6 weeks from the date on which the decision is taken on the grounds that—

- (i) the decision is not within the powers of the principal Act; or
- (ii) any of the requirements under of the principal Act, the 1997 Act or the Tribunals and Inquiries Act 1992 or of any order, regulations or rules made under any of those Acts which are applicable to the decision on appeal.

Called-in applications

42.—(1) This Part (other than regulation 24 to 27) and the Hearing Session Rules apply to an application referred to the Scottish Ministers following a direction under section 18(1) of the principal Act (reference of applications to Scottish Ministers) with the modifications specified in paragraph (2).

(2) The modifications are—

- (a) references to the appeal and the appellant are to be treated, respectively, as references to the application and the applicant;
- (b) references to the appointed person—
 - (i) in this Part (other than in regulation 34A) and rule 1(1) of the Hearing Session Rules are to be treated as references to the Scottish Ministers; and
 - (ii) in regulation [40] (appointment of assessor) and the Hearing Session Rules (other than in rule 1(1)) are to be treated as references to the person appointed to hold the hearing session; and

- (c) in regulation 31(2) and 33(5), “considers”; in regulation 33(1)(b), “does”; in regulation 33(2), “determines”; in regulation 34(2) and (4) and 36(2) and (3), “is”; in regulation 35(1), “has”; in regulation 33(1)(c), “wishes”; in regulation 36(2) and (3), “intends”; in regulation 37(1), “proposes” and in regulation 39(2) “notifies or consults”, are respectively to be read as “consider”, “do”, “determine”, “are”, “have”, “wish”, “intend”, “propose” and “notify or consult”;
- (d) in regulation 41(4) for “the appeal is dismissed or any part of the decision of the planning authority is varied or reversed” substitute “the application is refused or granted subject to conditions”; and
- (e) where the direction requiring the application to be referred to the Scottish Ministers is given under section 18(1) of the principal Act, regulation [\[39\] \(compliance with notification and consultation procedures\)](#) ~~34~~ applies as in the case of an appeal under section 19 of the principal Act;

Non-delegated appeals

43.—(1) This Part and the Hearing Session Rules apply to a non-delegated appeal as they apply to a delegated appeal with the modifications specified in regulation [\[42\(2\)\(b\) and \(c\)\]](#).

(2) In this regulation—

“delegated appeal” means an appeal to the Scottish Ministers which falls to be determined by a person appointed by the Scottish Ministers for that purpose by virtue of powers contained in the Schedule to the principal Act;

“non-delegated appeal” means—

- (a) a recalled appeal;
- (b) an appeal within such classes of case as may be—
 - (i) for the time being prescribed; or
 - (ii) specified in directions given, under paragraph 1(2) of the Schedule to the principal Act; and

“recalled appeal” means an appeal which is to be determined by the Scottish Ministers in accordance with a direction under paragraph 3(1) of the Schedule to the principal Act.

PART 6

Register of hazardous substances consents

Register of hazardous substances consents

44.—(1) The register which every planning authority is required to keep under section 27 of the principal Act is to be kept in accordance with this regulation.

(2) Part 1 of the register is to contain ~~a~~ in respect of every application submitted to the planning authority under regulation 8, 9 or 10 and not finally disposed of—

- (a) a copy of the application;
- (b) copies of any information, plans and other documentation submitted in respect of the application; and
- (c) particulars of any direction given under the principal Act or these Regulations in respect of the application.

(3) Part 2 of the register is to contain—

- (a) in respect of each application under regulation 8, 9 or 10 determined by the planning authority—
 - (i) a copy of the decision notice;

(ii) copies of any information, plans and other documentation considered by the planning authority in determining the application; and

~~(b)~~ a copy of the decision ~~notice of issued by~~ the Scottish Ministers in respect of an application—

~~(i)~~ -on a reference under section 18 of the principal Act; or

~~(ii)~~ by a planning authority under regulation [59];

~~(b)(c)~~ a copy of the notice of decision issued by the Scottish Ministers ~~or~~ on an appeal under section 19 of the principal Act;

(4) Part 3 of the Register is to contain a copy of every order revoking or modifying hazardous substances consent made by the planning authority under section 12 of the principal Act (general power by order to revoke or modify hazard substances consent) and the date and effect of any confirmation by the Scottish Ministers under section 13 of the principal Act (confirmation by the Scottish Ministers of section 12 orders).

(5) Part [4] of the Register is to contain a copy of any direction made under section 10 of the principal Act (deemed hazardous substances consent: government authorisation);

(6) Part [5] of the Register is to contain a copy of any direction under section 26 of the principal Act (temporary exemption directions) sent to the authority by the Scottish Ministers.

~~(7) Part [6] of the Register is to contain in respect of applications under regulation 59 (applications by planning authorities)—~~

~~(a) [];~~

~~(b) [];~~

~~(8)(7)~~ The register is to include an index to enable any person to trace an entry in the register.

~~(9)(8)~~ Every entry in the register is to be made within 14 days of the relevant information being available to the planning authority.

~~(10)(9)~~ The register is to be kept at the principle office of the planning authority [in such form as the authority thinks fit].

~~(11)(10)~~ The register is to be available for inspection by the public at all reasonable hours.

PART 7

Enforcement

Hazardous substances contravention notices

45.—(1) A hazardous substances contravention notice^(a) served under section 22 of the principal Act must identify the land to which the notice relates, whether by reference to a plan or otherwise.

(2) The persons prescribed under section 22(4)(b) of the principal Act as persons on whom a copy of a hazardous substances contravention must be served are all persons having an interest in the land to which the application relates who in the opinion of the planning authority issuing the notice are materially affected by the hazardous substances contravention notice.

(3) Every copy of a hazardous substances contravention notice served on a person described in paragraph (2) must be accompanied by a statement setting out—

(a) the planning authority's reasons for issuing the notice; and

(b) the right of appeal to the Scottish Ministers against the notice, and the persons by whom, grounds upon which and time within which such an appeal may be brought under regulation [46].

(a) "Hazardous substances contravention notice" is defined in section 22 of the Planning (Hazardous Substances) (Scotland) Act 1997.

Appeals against hazardous substances contravention notices

46.—(1) A person on whom a hazardous substances contravention notice is served, or any other person having an interest in the land to which the notice relates may appeal to the Scottish Ministers against the notice on the grounds that—

- (a) the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- (b) those matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (c) copies of the hazardous substances contravention notice were not served in accordance with section 22 of the principal Act;
- (d) the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control; or
- (e) any period specified in the notice in accordance with section 22(5) of the principal Act falls short of what should reasonably be allowed.

(2) An appeal under this regulation is to be made to the Scottish Ministers by giving notice in writing to them in accordance with this regulation.

(3) The notice of appeal given under paragraph (2) must be served before the date specified in the hazardous substances contravention notice as the date on which it is to take effect.

(4) The notice of appeal must contain—

- (a) the grounds of appeal;
- (b) all matters which the appellant intends to raise in the appeal;
- (c) a note of the matters which the appellant considers require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation [33(4)] (decision as to further procedure) the appellant considers the appeal should be conducted and in particular—
 - (i) a statement of whether or not the appellant wishes the opportunity to appear before and be heard by a person appointed for that purpose; and
 - (ii) if the appellant so wishes, a statement of the matters on which the appellant wishes the opportunity to be heard;
- (d) the name and address of the appellant; and
- (e) the name and address of any agent acting on behalf of the appellant and whether any notice or other correspondence which is required by these Regulations to be sent to the appellant should be sent to the agent instead of the appellant;

(5) The notice of appeal must be accompanied by—

- (a) a copy of the hazardous substances contravention notice to which the appeal relates;
- (b) a copy of the hazardous substances consent [or consents] to which the hazardous substances contravention notice relates; and
- (c) copies of all documents, materials and evidence which the appellant intends to rely on in the appeal.

(6) In addition to matters set out in the notice of appeal and the documents accompanying it the appellant may raise matters only in accordance with regulation [35] (written submissions) and [47] (intimation of appeal to planning authority and the planning authority's response), [the Hearing Session Rules and the Hazardous Substances Inquiry Session Rules].

(7) Part [5] (other than regulations [27 to 30] and regulations [39 and 42]) with the modification that references to the Schedule to “the principal Act” in regulation 43 are to be treated as references to Schedule 4 to the 1997 Act as applied by virtue of regulation [57] and the Hearing Session Rules apply to appeals under this regulation.

Intimation of appeal to planning authority and planning authority's response

47.—(1) The appellant must at the same time as giving the notice of appeal under regulation [46(2)] send to the planning authority a copy of—

- (a) that notice of appeal;
- (b) all documents, materials and evidence which the appellant intends to rely on in the appeal and which accompanied the statement of appeal in accordance with regulation [46(5)].

(2) The planning authority must, not later than 21 days beginning with the date of receipt of the notice of appeal send to the Scottish Ministers and the appellant—

- (a) a statement (“the planning authority’s response”) incorporating a response to each ground of appeal and stating the matters which the planning authority consider require determination and by what, if any, procedure (or combination of procedures) mentioned in regulation [33(4)] the planning authority wish the appeal to be conducted and in particular—

- (i) a statement of whether or not the planning authority wish the opportunity to appear before and be heard by a person appointed for that purpose; and
- (ii) if the planning authority so wish, a statement of the matters on which the planning authority wish the opportunity to be heard; and

- (b) copies of documents which were before the planning authority and which were taken into account in reaching its decision to issue the notice which is the subject of the appeal.

(3) The appellant may, within 14 days beginning with the date of receipt of the planning authority’s response, send to the Scottish Ministers and the planning authority comments on any matters raised in the planning authority’s response.

(4) The planning authority must until such time as the appeal is determined make copies of—

- (a) the notice of appeal;
- (b) the planning authority’s response and any comments made under paragraph (3); and
- (c) documents which accompanied the statement of appeal or which were sent with the planning authority’s response,

available for inspection at an office of the planning authority and to afford any interested party who so requests an opportunity to inspect and, where practicable, to take copies of any such documents (or any part thereof).

Notification to other parties

48.—(1) The planning authority must not later than 14 days following the giving of notice of appeal under regulation [46] give notice of the appeal to each person (other than the appellant) on whom the hazardous substances contravention notice was served.

(2) Notice under paragraph (1) is to—

- (a) state the name of the appellant and the address of the land to which the appeal relates;
- (b) describe the steps required by the notice to which the appeal relates;
- (c) state that representations may be made to the Scottish Ministers and provide information as to how and by when such representations may be made; and
- (d) state where a copy of the notice of appeal, the statement of appeal and the planning authority’s response may be inspected.

(3) The period allowed for making representations is to be no less than 14 days from the date on which notice is given under paragraph (1).

Determination of an appeal against a hazardous substances contravention notice

49.—(1) On the determination of an appeal made under regulation [46] the Scottish Ministers must give directions for giving effect to the determination, including, where appropriate, directions for quashing the hazardous substances contravention notice.

(2) On an appeal made under regulation [46]—

- (a) if they are satisfied that the correction or variation will not cause injustice to the appellant or the planning authority the Scottish Ministers 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.
- (b) the Scottish Ministers may—
 - (i) dismiss an appeal if the appellant fails to comply with regulation [46(3) to (5)]; and
 - (ii) may allow an appeal and quash the hazardous substances contravention notice if the planning authority fail to comply with regulation [47(2) to (4)].

(3) 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 22(4) of the principal Act to be served with the notice was not served, the Scottish Ministers may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve the notice.

Validity of a hazardous substances contravention notice

50. The validity of a hazardous substances contravention notice may not, except by way of an appeal under regulation [46], be questioned in any proceedings whatsoever on any of the grounds specified in regulation 46(2)(a) to (c).

Offence where contravention notice not complied with

51.—(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) A person who fails to comply with a hazardous substances contravention notice commits an offence.

(3) In proceedings under this regulation it is a defence to show that the person did everything that they could be expected to do to secure compliance with the notice.

(4) An offence under this regulation 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 this regulation by reference to any period of time following the preceding conviction for such an offence.

(5) In proceedings under this regulation it is a defence to show that the person was not aware of the existence of the notice if—

- (a) the person has not been served with a copy of the hazardous substances contravention notice; and
- (b) the notice is not contained in the register kept under regulation [44].

(6) The Scottish Ministers direct that section 136(8)(a) of the principal Act has effect in respect of a person guilty of an offence under this regulation.

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

(a) Section 136(8) provides that a person guilty of an offence under that section is liable on summary conviction to a fine not exceeding £20,000 and on conviction on indictment to a fine.

Execution and cost of works required by hazardous substances contravention notice

52.—(1) If any steps required to be taken by a hazardous substances contravention notice have not been taken within the period specified in the notice for compliance, or within such extended period as the planning authority may allow, 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.

(2) If that person did not appeal to the Scottish Ministers although entitled to do so, the person is not entitled to dispute the validity of the principal Action taken by the planning authority under paragraph (1).

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

(4) Where a copy of a hazardous substances contravention notice has been served—

- (a) any expenses incurred by the owner, lessee or occupier of any land for the purpose of complying with the notice; and
- (b) any sums paid by the owner or lessee of any land under paragraph (1) in respect of expenses incurred by the planning authority in taking steps required by such a notice to be taken,

are recoverable from the person who failed to comply with the hazardous substances contravention notice.

(5) 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.

(6) A planning authority taking steps under paragraph (1)—

- (a) 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
- (b) where such materials have been sold the planning authority, must after deducting any expenses recoverable by them from the owner, pay the owner the proceeds of the sale.

(7) Where a planning authority seek, under paragraph (1), to recover any expenses from a person on the basis that that person is the owner of any land, and—

- (a) that person proves that rent is received by them in respect of that land merely as trustee, tutor, curator, factor or agent of some other person; and
- (b) that person does not hold, and since the date of the service of the demand for payment has not held, on behalf of that other person sufficient money to discharge the whole demand of the authority,

the liability of the person from whom expenses are sought is limited to the total amount of the money which that person holds or held.

(8) A planning authority who by reason of paragraph (7) have not recovered the whole of any expenses from a trustee, tutor, curator, factor or agent may recover any unpaid balance from the person on whose behalf the rent is received.

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

Hazardous substances contravention notice to have effect against the subsequent presence of hazardous substances

53.—(1) Compliance with a hazardous substances contravention notice does not discharge that notice.

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

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

(4) A person who, without the grant of hazardous substances consent, 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 paragraph (2) or (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Effect of hazardous substances consent on hazardous substances contravention notice

54. 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 ceases to have effect so far as inconsistent with that consent.

Register of hazardous substances contravention notices

55.—(1) Every planning authority must, in respect of each hazardous substances contravention notice issued by them, keep an enforcement register containing—

- (a) the postal address of the land to which the notice relates or, if there is no postal address, a description of the land;
- (b) the date of service of copies of the notice under section 22(4) of the principal Act;
- (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;
- (e) the date and effect of any variation of the notice; and
- (f) the date of any appeal to the Scottish Ministers against the notice and the date of the final determination of the appeal.

(2) The entry relating to the hazardous substances contravention notice and everything relating to the notice is to be removed from the register if the notice is quashed by the Scottish Ministers or withdrawn.

(3) The register is to include an index to enable any person to trace an entry in the register..

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

(5) The register is to be kept at the principal office of the planning authority.

(6) The register is to be available for inspection by the public at all reasonable hours.

Validity of decisions in appeals regarding hazardous substances consent contravention notices

56.—(1) The validity of any decision of the Scottish Ministers on an appeal to them against a hazardous substances contravention notice is not to be questioned in any legal proceedings whatsoever.

(2) Paragraph (1) does not affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Scottish Ministers to make a determination in an appeal against a hazardous substances contravention notice.

Application of provisions of the Town and Country Planning (Scotland) Act 1997

57. Section 131(4) of the 1997 Act has effect in respect of an appeal under regulation [3946] in relation to a hazardous substances contravention notice as it has effect in respect of an appeal under section 130 of that Act

PART 7

Miscellaneous

Fees for applications

58.—(1) Subject to paragraph (3), the fee which is payable to a planning authority with an application for hazardous substances consent is—

- (a) if section 11(1) (applications for removal of conditions attached to hazardous substances consent) applies, £200;
- (b) if section 11(1) does not apply and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity, £400; and
- (c) in any other case, £250.

(2) Subject to paragraph (3), a fee is payable to a planning authority on an application for the continuation of hazardous substances consent under section 15(1) of the principal Act of £200.

(3) Where applications relating to the same site are made to two or more planning authorities, a fee is payable only to the authority in whose area the largest part of the site is situated and the amount payable is the amount that would have been payable if application had fallen to be made to one authority in relation to the whole site.

(4) Any fee due in respect of an application must accompany the application when it is made to the planning authority.

(5) Any fee paid pursuant to this regulation must be refunded if the application is rejected as invalidly made.

Applications by planning authorities

59.—(1) An application by a planning authority under regulation 8, 9 or 10 is to be made to the Scottish Ministers.

(2) Regulations 5 (publication of notice of application), 6 (owner notification), 7 (neighbour notification), 8 (applications for hazardous substances consent), 9 (application for hazardous substances consent without a condition which was attached to a previous consent) and 10 (applications for continuation of hazardous substances consent where there has been a change in the person in control of any part of the land) apply to the making of applications by a planning authority as they apply to applications made to a planning authority.

~~(3)~~ (3) Regulations 17 (consultation before determination of applications) and 21(1) to (4) and (6) (decision notices on applications under regulation 8, 9 or 10) apply to the making of applications by a planning authority as they apply to applications made to a planning authority, with the modification that “a planning authority” and “the planning authority” are to be read as “Scottish Ministers”.

~~(4)~~ (4) For the purpose of regulation [44] (register of hazardous substances consents) an application under regulation 8, 9 or 10 made to the Scottish Ministers by a planning authority is to

be treated as an application made to the planning authority and referred to the Scottish Ministers under section 18 of the principal Act.

~~(4)~~⁽⁵⁾ Section 7 of the principal Act (determination of applications for hazardous substances consent) applies in relation to an application made to the Scottish Ministers by a planning authority as it applies in relation to an application made to a planning authority.

~~(5)~~⁽⁶⁾ For the purpose of section 20 of the principal Act (validity of decisions as to applications) a decision of the Secretary of State on an application made to them by a planning authority is to be treated as a decision under section 18.

Access to review procedure before a court

60. For the purposes of Article 23(b) of the Directive, ~~any~~ non-governmental organisation promoting environmental protection and meeting any requirements under the law is deemed to have an interest for the purposes of Article 11(1)(a) of Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment ~~(a) (“the EIA Directive”)~~ and rights capable of being impaired for the purposes of Article 11(1)(b) of the ~~EIA last mentioned~~ Directive.

Electronic communications

61.—(1) Where the criteria in paragraph (2) are met, any document required or authorised to be sent by these Regulations may be sent by electronic communications and any requirement in these Regulations that any document is to be in writing is fulfilled.

(2) The criteria are—

- (a) the recipient consents, or is deemed to have agreed under paragraph (3), to receive it electronically; and
- (b) that document transmitted by the electronic communication is—
 - (i) capable of being accessed by the recipient;
 - (ii) legible in all material respects; and
 - (iii) sufficiently permanent to be used for subsequent reference.

(3) Any person sending a document using electronic communications is to be taken to have agreed—

- (a) to the use of such communications for all purposes relating to the application which are capable of being carried out electronically; and
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that communication.

(4) Deemed agreement under paragraph (3) subsists until that person gives notice to revoke the agreement.

(5) Notice of withdrawal of consent to the use of electronic communications or of revocation of agreement under paragraph (4) takes effect on a date specified by the person in the notice, but not less than seven days after the date on which the notice is given.

(6) In this regulation—

“address” includes any number or address used for the purpose of such communications or storage;

“document” includes any notice, consent, decision, representation, statement, list, report, form, plan, certificate or other information or communication; and

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000 ~~(b)~~ (general interpretation);

(a) OJ L 26, 28.1.2012, p.1.

(b)

“legible in all material respects” means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form; and

“sent” includes served, submitted or given and cognate expressions are to be construed accordingly.

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Service of notices

62. Section 271 of the 1997 Act (service of notices) applies to notices or other documents required or authorised to be served or given under these Regulations on the owners or occupiers of land as it applies to notices or other documents required or authorised to be served or given under the 1997 Act.

Offences by bodies corporate

~~62.~~63.—(1) Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and,
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Transitional exemptions: contravention of hazardous substances control

~~63.~~64.—(1) No offence is committed under section 21 of the Act and no hazardous substances contravention notice may be issued in relation to a hazardous substance which is on, over or under any land (“the relevant substance”) if—

- (a) the relevant substance was present on, over or under the land at any time during the establishment period;
- (b) hazardous substances consent was not required for the presence of the relevant substance at the time it was present during the establishment period; and
- (c) hazardous substances consent would have been required for the presence of the relevant substance had these Regulations been in force at that time.

(2) Paragraph (1) does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any time during the establishment period.

(3) In this regulation—

“establishment period” means the period of 12 months ending on the relevant date; and

“relevant date” means—

- (a) the commencement date; or

- (b) if later, the date on which hazardous substances consent was first required for the relevant substance.

[Transitional applications and appeals

~~64. (1) If an application or appeal relating to a hazardous substances consent made in accordance with the 1993 Regulations has not been determined by the commencement date, the application or appeal is taken to be made under these Regulations.~~

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~~Anything done under the 1993 Regulations in relation to that application or appeal before the commencement date is taken to be done under these Regulations. Applications made before the commencement date~~

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~~65.—(1) In respect of an application for hazardous substances consent made before the commencement date but in respect of which no notice of the decision of the planning authority is given to the applicant before the commencement date the provisions of—~~

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- ~~(a) Part 3 of the 1993 Regulations (other than regulations 12(3) and (4), 13 and 14) continue to apply as those provisions had effect immediately before the commencement date; and~~
- ~~(b) these Regulations (other than regulations 5, 6, 7, 8, 9, 10, 11, 12, 20(1) and (2)) apply as they apply to an application made under regulation 8, 9 or 10 on or after the commencement date.~~

~~(2) Where the proposal in respect of which such an application is made is, or is part of, a project that is subject to national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive and the notice published in accordance with regulation 7 of the 1993 Regulations did not state that fact, the planning authority/applicant must publish a notice in a newspaper circulating in the locality in which the land to which the application relates is situated.~~

~~(3) The notice to be published under paragraph (2) is to be in the same terms as set out in Schedule 2 subject to the modification that it is to include the date on which the application was made rather than the date on which it is to be made.~~

~~(2)~~

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Interpretation of existing consents

~~65.66.—(1) This regulation applies to an existing consent where the category or substance referred to in paragraph (2)—~~

- ~~(a) is not contained in Schedule 1 to these Regulations; or~~
- ~~(b) is differently named or defined under Schedule 1 to these Regulations.~~

~~(2) Where this regulation applies any reference in an existing consent to a category or substance referred to in paragraph (3) is to be interpreted as if these Regulations had not come into force.~~

~~(3) In this regulation “existing consent” means~~

- ~~(a) a consent, in the case of a hazardous substances consent granted on an application under the 1972 Act(a) or the principal Act;~~
- ~~(b) a claim, in the case of a consent deemed to be granted under section 9 or 10A of the principal Act(b) (deemed hazardous substances consent: established presence);~~
- ~~(c) a direction, in the case of a consent deemed to be granted by virtue of section 56G of the 1972 Act (deemed hazardous substances consent by virtue of authorisation of government~~

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~~(a) []~~

~~(b) Section 9 provides that hazardous substances consent deemed to be granted by a planning authority under section 38 of the Housing and Planning Act 1986 shall continue to have effect notwithstanding the repeal of that section and shall be deemed to be granted by the authority under said section 9, and the relevant claim is the claim submitted under said section 38. Section 10A was inserted by S.S.I. 2000/179.~~

department) or section 10 of the principal Act (deemed hazardous substances consent: government authorisation).

~~(3) [including any continuation of a consent granted or deemed to be granted under section 16 of the principal Act,] under which a hazardous substances consent granted under the 1993 Regulations or a deemed consent claimed before the commencement date under which the following are expressly authorised:—~~

~~(a) — the presence of a category of substance listed in column 1 of Part B of the Schedule to the 1993 Regulations; or~~

~~(b) the presence of a hazardous substance named in column 1 of Part A of the Schedule to the 1993 Regulations is expressly authorised.~~

Saving provision for deemed consent conditions

~~66.67.—~~(1) This regulation applies to any consent that was deemed to be granted under section 10A or 30D of the principal Act before the commencement date.

(2) In relation to any consent to which this regulation applies—

- (a) the conditions in Schedule 3 to the 1993 Regulations continue to apply (unless any condition was removed following an application under section 11 of the principal Act); and
- (b) those conditions continue to be interpreted in accordance with regulation 17 of the 1993 Regulations.

Saving provision for appeals

~~67.—~~(1) ~~In the case of an appeal under section 19 of the principal Act where the relevant date is before the commencement date, the notice of appeal must be served on the Scottish Ministers within a period of six months from the relevant date.~~

(2) In this regulation “relevant date” means in the case of an appeal under—

- (a) section 19(1) of the principal Act, the date of the decision notice; and
- (b) section 19(2) of the principal Act, the date on which the applicant first becomes entitled to appeal under that subsection.

(3) ~~In respect of appeals made under section 19 of the principal Act, Part [5] applies only to an appeal made on or after the commencement date and the 1993 Regulations continue to apply to any appeal made under section 19 of the principal Act before that date as those Regulations had effect immediately before that date.~~

~~(4) In respect of appeals made under regulation [46], Part [5] applies only to an appeal made on or after the commencement date and the 1993 Regulations continue to apply to any appeal in respect of a hazardous substances contravention notice made before that date as those Regulations had effect immediately before that date.~~ Appeals made after the commencement date

~~68.—~~(1) Subject to paragraph (2), these Regulations apply to an appeal under section 19 of the principal Act where notice of the appeal is given on or after the commencement date.

(2) In the case of an appeal under section 19 of the principal Act where the relevant date is before the commencement date, the notice of appeal must be served on the Scottish Ministers within a period of 6 months from the relevant date.

(3) In this regulation “relevant date” means in the case of an appeal under—

- (a) section 19(1) of the principal Act, the date of the decision notice; and
- (b) section 19(2) of the principal Act, the date on which the applicant first becomes entitled to appeal under that subsection.

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SCHEDULE 1

Regulation [3]

HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

Notes:

1 Hazardous substances covered by the hazard categories listed in Column 1 of Part 1 of this Schedule are subject to the qualifying quantities set out in Column 2 of Part 1.

2 Where a hazardous substance is covered by Part 1 of this Schedule and is also listed in Part 2, the qualifying quantities set out in Column 2 of Part 2 apply.

3 Where a substance falling within Part 1 or 2 also falls within Part 3, the classification with the lowest controlled quantity applies, subject to note 2.

PART 1

Categories of substances

This Part covers all hazardous substances falling under the hazard categories listed in Column 1:

<i>Column 1</i>	<i>Column 2</i>
Hazard categories in accordance with the CLP Regulation	Controlled quantity in tonnes of dangerous substances
Section 'H' – HEALTH HAZARDS	
H1 ACUTE TOXIC Category 1, all exposure routes	5
H2 ACUTE TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 7)	50
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE Category 1	50
Section 'P' – PHYSICAL HAZARDS	
P1a EXPLOSIVES (see note 8) — Unstable explosives or — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation (EC) No 440/2008 (see note 9) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures	10
P1b EXPLOSIVES (see note 8) Explosives, Division 1.4 (see note 10)	50
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10
P3a FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)
P3b FLAMMABLE AEROSOLS (see note	5,000 (net)

11.1) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids category 1 (see note 11.2)	
P4 OXIDISING GASES Oxidising gases, Category 1	50
P5a FLAMMABLE LIQUIDS — Flammable liquids, Category 1, or — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or — Other liquids with a flash point ≤ 60 °C, maintained at a temperature above their boiling point (see note 12)	10
P5b FLAMMABLE LIQUIDS — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or — Other liquids with a flash point ≤ 60 °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 12)	50
P5c FLAMMABLE LIQUIDS Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000
P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, Type A or B or organic peroxides, Type A or B	10
P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F	50
P7 PYROPHORIC LIQUIDS AND SOLIDS Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50
P8 OXIDISING LIQUIDS AND SOLIDS Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	50
Section 'E' – ENVIRONMENTAL HAZARDS	
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200
Section 'O' – OTHER HAZARDS	
O1 Substances or mixtures with hazard statement EUH014	100
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100
O3 Substances or mixtures with hazard statement EUH029	50

PART 2
Named hazardous substances

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
<i>Hazardous substances</i>		<i>Controlled quantity (tonnes)</i>
1. Ammonium nitrate (see note 13)	-	5,000
2. Ammonium nitrate (see note 14)	-	1,250
3. Ammonium nitrate (see note 15)	-	350
4. Ammonium nitrate (see note 16)	-	10
5. Potassium nitrate (see note 17)	-	5,000
6. Potassium nitrate (see note 18)	-	1,250
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	0.1
9. Bromine	7726-95-6	20
10. Chlorine	7782-50-5	10
11. Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide	-	1
12. Ethyleneimine	151-56-4	10
13. Fluorine	7782-41-4	10
14. Formaldehyde (concentration \geq 90%)	50-00-0	5
15. Hydrogen	1333-74-0	2
16. Hydrogen chloride (liquefied gas)	7647-01-0	25
17. Lead alkyls	-	5
18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (see note 19)	-	Liquefied Natural Gas (LNG): 25 Liquefied Petroleum Gas (LPG): 15 Any other liquefied flammable gases: 50
19. Acetylene	74-86-2	5
20. Ethylene oxide	75-21-8	5
21. Propylene oxide	75-56-9	5
22. Methanol	67-56-1	500
23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	101-14-4	0.01
24. Methylisocyanate	624-83-9	0.15
25. Oxygen	7782-44-7	200
26. 2,4 -Toluene diisocyanate	584-84-9	10
2,6 -Toluene diisocyanate	91-08-7	
27. Carbonyl dichloride (phosgene)	75-44-5	0.3
28. Arsine (arsenic trihydride)	7784-42-1	0.2
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2
30. Sulphur dichloride	10545-99-0	1
31. Sulphur trioxide	7446-11-9	15
32. Polychlorodibenzofurans and	-	0.001

polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 20)		
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone	-	0.5
34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)	-	2,500
35. Anhydrous Ammonia	7664-41-7	50
36. Boron trifluoride	7637-07-2	5
37. Hydrogen sulphide	7783-06-4	5
38. Piperidine	110-89-4	50
39. Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50
40. 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50
41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing less than 5 % active chlorine and not classified under any of the other hazard categories in Part 1 of Schedule 1.	200	
(*) Provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute Category 1 [H400].		
42. Propylamine (see note 21)	107-10-8	500
43. Tert-butyl acrylate (see note 21)	1663-39-4	200
44. 2-Methyl-3-butenenitrile (see note 21)	16529-56-9	500
45. Tetrahydro-3,5-dimethyl-1,3,5,-	533-74-4	100

thiadiazine-2-thione (Dazomet) (see note 21)		
46. Methyl acrylate (see note 21)	96-33-3	500
47. 3-Methylpyridine (see note 21)	108-99-6	500
48. 1-Bromo-3-chloropropane (see note 21)	109-70-6	

⁽¹⁾ Substances and mixtures are classified in accordance with the CLP Regulation.

⁽²⁾ Mixtures shall be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.

⁽³⁾ The controlled quantities set out above relate to each establishment.

The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

(4) The following rule governing the addition of hazardous substances, or categories of dangerous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements of these Regulations.

These Regulations apply to establishments if the sum $q1/QL1 + q2/QL2 + q3/QL3 + q4/QL4 + q5/QL5 + \dots$ is greater than or equal to 1,

where qx = the quantity of dangerous substance x (or category of dangerous substances) falling within Part 1 or Part 2 of this Schedule; and

QLX = the relevant controlled quantity for hazardous substance or category x from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule.

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

- (a) for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;
- (b) for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;
- (c) for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

⁽⁵⁾ In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

⁽⁶⁾ In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in Note 4, the lowest controlled quantity for each group of categories in Notes 4(a), 4(b) and 4(c) corresponding to the classification concerned must be used.

⁽⁷⁾ Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

⁽⁸⁾ The hazard class Explosives includes explosive articles (see Section 2.1 of Annex I to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is

known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

(9) Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)(a) identifies the substance or mixture as potentially having explosive properties.

(10) If Explosives of Division 1.4 are unpacked or repacked, they shall be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

(11.1) Flammable aerosols are classified in accordance with the Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers(b) (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive 75/324/EEC correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

(11.2) In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

(12) According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35 °C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

(13) Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

- (a) between 15.75% (c) and 24.5% (d) by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers(e);
- (b) 15.75% by weight or less and unrestricted combustible materials.

(14) Ammonium nitrate (1,250/5,000): fertiliser grade

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;
- (c) more than 28% (a) by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

(15) Ammonium nitrate (350/2,500): technical grade

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible

(a) More guidance on waiving of the test can be found in the A.14 method description, see Commission Regulation (EC) No 440/2008 of 30 May 2008 laying down test methods pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008, p. 1)

(b) O.J. L 147, 9.6.1975, p. 40.

(c) 15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

(d) 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.

(e) O.J. L 304, 21.11.2003, p. 1.

substances;

- (b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

(16) Ammonium nitrate (10/50): ‘off-specs’ material and fertilisers not fulfilling the detonation test.

This applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 14 and 15, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 14 and 15;
- (b) fertilisers referred to in Note 13(a), and Note 14(a) to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

(17) Potassium nitrate (5,000/10,000)

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

(18) Potassium nitrate (1,250/5,000)

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

(19) Upgraded biogas

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of Schedule 1 where it has been processed in accordance with applicable standards for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

(20) Polychlorodibenzofurans and polychlorodibenzodioxins

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the factors in Table 1—

Table 1

WHO 2005 TEF			
2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

Reference — Van den Berg et al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.

(21) In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

PART 3

Substances used in an industrial chemical process

<i>Column 1 Hazardous Substances</i>	<i>Column 2 Controlled quantity</i>
Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 may be generated during loss of control of an industrial chemical process (“HS”), any substance which is used in that process (“S”).	The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant industrial chemical process) an amount equal to or exceeding the controlled quantity of the HS in question.

NOTES TO PART 3

1. The expression “reasonable to foresee may be generated during loss of control of an industrial chemical process” has the same meaning as in the Directive.

SCHEDULE [2]

Regulation [6(1)]

Notice for publication in newspaper

“ Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

Notice of application to be published in local newspaper under regulation [9]

An application for hazardous substances consent/hazardous substances consent without a condition which was attached to a relevant consent/continuation of hazardous substances consent where there has been a change in the person in control of part of the land*

is to be made to [note 1]

to permit the presence of [note 2]

at [note 3]

[note 4]

A copy of the application[, together with the plans and other documents to be submitted with it,] may be inspected at [note 5]

during all reasonable hours until [note 6]

Written representations (including comments or questions) may be submitted to [note 7] by [note 6]

The application may be granted (either unconditionally or subject to conditions) or refused.

Note 1: insert the name of the planning authority to whom the application is to be made.

Note 2: insert brief details of the consent being sought, including a description of each hazardous substance which will be present on the land to which the application relates and the maximum quantity in which it will be present on that land.

Note 3: insert the postal address or, if there is no postal address, a description of the location of the land to which the application relates.

Note 4: if the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive, state that fact.

Note 5: insert the address at which the application may be inspected. (The applicant is required to make the application available for inspection at a place within the locality of the site to which the application relates.)

Note 6: insert the date by which representations are to be made, being a date not less than 21 days after the date of publication of the notice.

Note 7: insert Director of planning or officer responsible for planning functions and the Director of Planning or that officer's address (including an email address).

* Delete as appropriate

”

SCHEDULE [3] Regulation [7(1)]

Notice to owner by applicant

“ **The Town and Country Planning (Hazardous Substances)
(Scotland) Regulations 2015**

Notice under regulation [10] to owner of land to which an application under regulation 8, 9 or 10 relates

Application for hazardous substances consent/hazardous substances consent without a condition which was attached to a previous consent/continuation of hazardous substances consent where there has been a change in the person in control of part of the land*

TAKE NOTICE

1. That an application for hazardous substances consent/hazardous substances consent without a condition which was attached to a previous consent/continuation of hazardous substances consent where there has been a change in the person in control of part of the land*

to permit the presence of [note 1]

at [note 2]

[note 3]

The application is being made to [note 4]

The application may be granted (either unconditionally or subject to conditions) or refused.

2. If you wish to obtain further information on the application or to submit representations (including comments or questions) about the application you should contact the planning authority at [note 5]

Signed

On behalf of*

Date

Note 1: insert brief details of the consent being sought, including a description of the hazardous substances which will be present on the land to which the application relates and the maximum quantity in which they will be present on that land.

Note 2: insert the postal address or, if there is no postal address, a description of the location of the land to which the application relates.

Note 3: if the proposal is, or is part of, a project that is subject to a national or transboundary environmental impact assessment or to consultations between Member States in accordance with Article 14(3) of the Directive, state that fact.

Note 4: insert name of the planning authority to whom the application is to be made.

Note 5: insert the address of the planning authority to whom the application is to be made.

* Delete as appropriate

”

SCHEDULE [4]

Regulation [21(4)(a)]

Notice to be attached to decision notice

“ Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

Notification to be sent to applicant on refusal of an application for hazardous substances consent /hazardous substances consent without a condition which was attached to a previous consent/continuation of hazardous substances consent where there has been a change in the person in control of part of the land* or the grant of such an application subject to a condition or conditions

If the applicant is aggrieved by the decision of the planning authority—

- (a) to refuse hazardous substances consent for any substance for which consent is sought;
- (b) to refuse to continue hazardous substances consent for any substance for which a continuation is sought,
- (c) to grant hazardous substances consent subject to a condition or conditions,

the applicant may appeal to the Scottish Ministers under section 19 of the Town and Country Planning (Hazardous Substances) (Scotland) Act 1997 within 3 months beginning with the date of this notice (and may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose).

The notice of appeal should be addressed to [note 1].

Note 1: Insert the address to which the notice of appeal should be sent.

”

SCHEDULE [65]

Regulation [22(3)(a)]

Notice to be attached to notice of decision on an application for approval, consent or agreement required by a condition imposed on a grant of hazardous substances consent

“ Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

Notification to be sent to applicant on refusal of an application for approval, consent or agreement required by a condition imposed on a grant of hazardous substances consent

If the applicant is aggrieved by the decision of the planning authority—

(a) to refuse an application for approval, consent or agreement required by a condition imposed on a grant of hazardous substances consent; or

(b) to grant approval, consent or agreement subject to conditions,

the applicant may appeal to the Scottish Ministers under section 19(1) of the Town and Country Planning (Hazardous Substances) (Scotland) Act 1997 within 3 months beginning with the date of this notice (and may, if they wish, have an opportunity of appearing before and being heard by a person appointed for that purpose).

The notice of appeal should be addressed to [note 1].

Note 1: Insert the address to which the notice of appeal should be sent.

”

SCHEDULE [75]

Regulation [2(1)]

Hearing Session Rules

Notice of hearing session and specified matters

1.—(1) Where the appointed person has determined that a hearing session should be held the appointed person is to give written notice to that effect to—

- (a) the appellant;
- (b) the planning authority;
- (c) any interested party who made representations in relation to specified matters; and
- (d) any person who the appointed person wishes to make further representations or to provide further information on specified matters at the hearing session.

(2) The notice given under paragraph (1) is to specify the matters to be considered at the hearing session.

(3) Only specified matters are to be considered at the hearing session.

(4) A person given notice under paragraph (1) and who intends to appear at the hearing session must within 14 days of the date of such notice inform the appointed person in writing of that intention.

Appearances at hearing session

2. The persons entitled to appear at a hearing session are—

- (a) the appellant;
- (b) the planning authority; and

any other person who, in response to a procedure notice, has informed the appointed person of their intention to appear at the hearing session in accordance with rule 1(4).

Date and notification of hearing session

3.—(1) The date, time and place at which the hearing session is to be held is to be determined (and may subsequently be varied) by the appointed person.

(2) The appointed person is to give to those persons entitled to appear at the hearing session such notice of the date, time and place fixed for the holding of a hearing session (and any subsequent variation thereof) as may appear to the appointed person to be reasonable in the circumstances.

Service of hearing statements and documents

4.—(1) Where required to do so by notice given by the appointed person, a person entitled to appear at the hearing session must, by such date as is specified in the notice, send to—

- (a) the appointed person—
 - (i) a hearing statement; and
 - (ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list of such documents comprised in that hearing statement; and
- (b) the appellant and the planning authority and to such other persons entitled to appear at the hearing session as the appointed person may specify in such notice—
 - (i) a hearing statement; and

- (ii) where that person intends to refer to or rely on any documents when presenting their case a copy of every document (or the relevant part of a document) on the list comprised in that hearing statement which is not already available for inspection under regulation 6, 15(4) or 28(2) or paragraph (2) of this rule.

(2) The planning authority are, until such time as the appeal is determined, to afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any hearing statement or other document (or any part thereof) which, or a copy of which, has been sent to them in accordance with this rule.

(3) Any person who has served a hearing statement in accordance with this rule must—

- (a) when required by notice in writing from the appointed person provide such further information about the matters contained in the statement as the appointed person may specify; and
- (b) at the same time send a copy of such further information to any other person on whom the hearing statement has been served.

(4) Different dates and different persons may be specified for the purposes of paragraph (1).

(5) In this rule, “hearing statement” means, and is comprised of—

- (a) a written statement which fully sets out the case relating to the specified matters which a person proposes to put forward to a hearing session;
- (b) a list of documents (if any) which the person putting forward such case intends to refer to or rely on; and
- (c) a list of any other persons who are to speak at the hearing session in respect of such case, any matters which such persons are particularly to address and any relevant qualifications of such persons to do so.

Procedure at hearing

5.—(1) Except as otherwise provided in these Hearing Session Rules, the procedure at a hearing session shall be as the appointed person determines.

(2) The appointed person is, having considered any submission by the persons entitled to appear at the hearing session, to state at the commencement of the hearing session the procedure the appointed person proposes to adopt.

(3) Any person entitled to appear may do so on that person’s own behalf or be represented by another person.

(4) Where there are two or more persons having a similar interest in the issues being considered at the hearing session, the appointed person may allow one or more persons to appear on behalf of some or all of any persons so interested.

(5) A hearing is to take the form of a discussion led by the appointed person and cross-examination is not permitted.

(6) The appointed person may proceed with a hearing session in the absence of any person entitled to appear at the hearing session.

(7) The appointed person may from time to time adjourn the hearing session and, if the date, time and place of the adjourned hearing session are announced before the adjournment, no further notice is required otherwise rule 3 applies as it applies to the variation of the date, time or place at which a hearing session is to be held.

SCHEDULE [77]
REVOCATIONS

Regulation [57]

EXPLANATORY NOTE

(This note is not part of the Order)