

**Development Control**

**Advice Note**

**12**

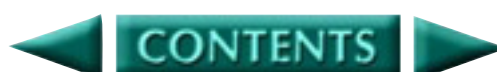
**(2nd Edition)**

# **Planning Controls for Hazardous Substances**

The purpose of this Advice Note is to give general guidance on hazardous substances controls contained in the Planning (Northern Ireland) Order 1991 and the requirements to obtain hazardous substances consent. This revision takes into account changes introduced by Article 12 of Directive 96/82/EC on the control of major accident hazards involving dangerous substances (the COMAH Directive).

Any legal views expressed in this Advice Note have no statutory force and should not be relied on as an authoritative interpretation of the law.

A list of other current Advice Notes in this series can be obtained from Divisional Planning Offices or the Planning Service Headquarters.



<b>Contents</b>	<b>Page</b>
<b>Background</b>	3
<i>Planning hazardous substances</i>	3
<i>The COMAH Directive</i>	3
<i>Land use planning requirements of the COMAH Directive</i>	4
<b>Guide to the procedures</b>	6
<i>Purpose of the new controls</i>	6
<i>Planning permission for hazardous development</i>	6
<i>Hazardous substances consent (hsc)</i>	7
<i>Hazardous substances and controlled quantities</i>	8
<i>Aggregate quantities</i>	10
<i>Applying for hazardous substances consent</i>	12
<i>Determination of applications by the Department</i>	12
<i>Development Plans</i>	13
<i>Appeals</i>	13
<i>Major Applications (Article 56)</i>	14
<b>Transitional Provisions</b>	14
<i>Deemed hazardous substances consent</i>	14
<i>Time limit to claim a deemed consent</i>	15
<i>Action by the Department upon receipt of a claim for deemed consent</i>	15
<i>Standard conditions applying to deemed consents: established quantity</i>	16
<i>Standard conditions applying to deemed consents: area where a substance may be present</i>	16
<i>Standard conditions applying to deemed consents: manner in which substance may be present</i>	17
<i>Hazardous development authorised before the operative date of the Regulations</i>	19
<b>Variation and Revocation of consents</b>	20
<i>Applications to remove conditions (Article 58); or to continue a consent after change in control of part of the land (Article 60)</i>	20
<i>Revocation or modification of hazardous substances consent</i>	21
<b>Fees for Hazardous Substances Consent Applications</b>	22
<b>Registers of Applications and Consents</b>	23
<b>Health and Safety Requirements</b>	23
<b>Exemptions from Hazardous Substances Consent Requirements</b>	23
<i>Temporary presence during transportation</i>	23
<i>Gas Pipelines</i>	24
<i>Maritime emergencies</i>	25
<i>Waste land-fill sites</i>	25
<i>Hazards created by ionising radiation</i>	25
<i>Explosives</i>	25
<i>Exemption for small quantities of hazardous substances ("2% rule")</i>	26
<i>Emergencies</i>	26
<i>Crown land</i>	27
<b>Enforcement</b>	27
<i>Transitional immunity</i>	27

## Background

### *Planning hazardous substances*

1. Article 53 of the Planning (Northern Ireland) Order 1991 (“the 1991 Order”) requires a hazardous substances consent (hsc) to be obtained for the presence on over or under land of a hazardous substance in an amount at or above a specified controlled quantity. The controls give the Department of the Environment’s Planning Service the opportunity to consider whether the proposed storage or use of a significant quantity of a hazardous substance is appropriate in a particular location, having regard to the risks arising to persons in the surrounding area and to the environment.  
The Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 as amended by The Planning (Control of Major- Accident Hazards) Regulations (Northern Ireland) 2000 [referred to in this document as “the Regulations”] specify the hazardous substances and controlled quantities for which a consent is required; set out the procedures for obtaining consent; provide for certain exceptions; and make procedures for enforcement. The procedures provide for statutory consultation with specified bodies, including Health and Safety Executive Northern Ireland (HSENI) and the Environment and Heritage Service prior to the Planning Service making a decision on any application for consent. If consent is agreed, a consultation zone may be established within which proposals for future development will also be referred to consultees to consider the possible effects on public safety.
2. When first introduced, the list of hazardous substances and controlled quantities subject to consent comprised all of the substances which had to be notified to HSENI under their Notification of Installations Handling Hazardous Substances Regulations (Northern Ireland) 1984<sup>2</sup> (the “NIHHS Regulations”) together with a number of others taken from the Control of Industrial Major-Accident Hazards Regulations (Northern Ireland) 1985<sup>3</sup> (CIMAHA) considered to possess significant off-site risk. The CIMAHA Regulations gave effect to Directive 82/501/EEC<sup>4</sup> , the Directive on the (control of) major-accident hazards of certain industrial activities (the so-called Seveso Directive).

### *The COMAHA Directive*

3. Directive 96/82/EC<sup>5</sup> on the control of major-accident hazards (the COMAHA Directive) came into force on 3 February 1999 and supersedes the Seveso Directive. The aim of the Directive is to prevent major accidents which involve dangerous substances and to limit their consequences for man and the environment.

---

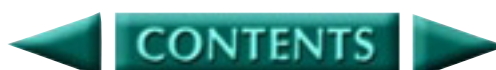
<sup>1</sup> S.R. 2000 No.101

<sup>2</sup> S.R. 1984 No.177

<sup>3</sup> S.R. 1985 No.175

<sup>4</sup> OJ L230, 5.8.82,p1

<sup>5</sup> OJ L 10/13, 14.1.97



4. The Directive requires Member States to introduce controls on establishments where dangerous substances are present above certain quantities. The controls vary according to the quantity of dangerous substances kept or used on the site. The dangerous substances and qualifying quantities are set out in Annex I to the Directive. The list comprises 32 named substances but, in addition, it also includes 10 generic categories of substances which has the effect of extending the scope of the Directive to a very wide range of substances.
5. The COMAH Directive will be implemented in Northern Ireland by the Control of Major Accident Hazards Regulations (Northern Ireland) 2000<sup>1</sup>. These Regulations place a duty on operators subject to the Regulations to notify the Competent Authority, that is the body responsible for enforcing the Regulations, of their activities. For all hazardous substances including explosives, the Competent Authority will be the Health and Safety Executive for Northern Ireland (HSENI) and the Environment and Heritage Service of the Department of the Environment, acting jointly.
6. For establishments with larger amounts of dangerous substances (known as “top-tier” sites) the requirements include the notification of their activities to the Competent Authority, preparation of safety reports, public access to safety reports, preparation and testing of on-site emergency plans, providing HSENI with sufficient information to enable them to arrange for the preparation of off-site emergency plans and providing information to the public likely to be affected by a major accident. Lower tier sites are also required to notify the Competent Authority of the presence of dangerous substances and to have in place major-accident prevention policies.

### *Land use planning requirements of the COMAH Directive*

7. The Directive also requires land-use planning controls to apply to all establishments - whether top-tier or lower-tier - within the scope of the Directive. Article 12 of the Directive refers specifically to land-use planning -

*“1. Member States shall ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land-use planning and/or other relevant policies. They shall pursue these objectives through controls on:*

- (a) the siting of new establishments;*
- (b) modifications to existing establishments covered by Article 10;*
- (c) new developments such as transport links, locations frequented by the public and residential areas in*

*the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequences of a major accident.*

*Member States shall ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term to maintain appropriate distances between establishments covered by this Directive and residential areas, areas of public use and areas of particular natural sensitivity or interest, and, in the case of existing establishments, of the need for additional technical measures in accordance with Article 5 so as not to increase the risks to people.*

*2. Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies established under paragraph 1. The procedures shall be designed to ensure that technical advice is on the risks arising from the establishment available, either on a case-by-case or on a generic basis, when decisions are taken."*

8. There were similarities between the extant procedures required by the hazardous consent procedures and the land-use planning requirements of the Directive. Therefore amendments to the hazardous substances provisions of the Planning (Northern Ireland) Order 1991 and the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 have been made to give effect to the land-use planning requirements of the COMAH Directive. Minor amendments have also been made to the Planning (General Development) Order (Northern Ireland) 1993<sup>1</sup> and the Planning (Development Plans) Regulations (Northern Ireland) 1991<sup>2</sup>. These amendments are promulgated in The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000.
9. This Development Control Advice Note replaces DCAN 12 issued in 1993 and gives guidance on how the consent procedure operates following changes introduced to implement the planning requirements of the COMAH Directive. The advice given is intended to be a guide. It is not definitive; an authoritative statement of the law can only be made by the Courts.

---

<sup>1</sup> S.R. 1993 No. 278

<sup>2</sup> S.R. 1991 No. 119 as amended by S.R. 1994 No. 394

## Guide to the Procedures

### *Purpose of the new controls*

10. The controls are designed to regulate the presence of hazardous substances so that they cannot be kept or used above specified quantities until the Competent Authorities have had the opportunity to assess the risk of an accident and its consequences for people in the surrounding area and for the environment. They complement, but do not override or duplicate, the requirements of the Health and Safety at Work (Northern Ireland) Order 1978<sup>1</sup> and its relevant statutory provisions (defined at section 63 of the 1991 Order) which are enforced by the HSENI. Even after all reasonably practicable measures have been taken to ensure compliance with the requirements of the 1978 Order, there will remain a residual risk of an accident which cannot entirely be eliminated. These controls will ensure that this residual risk to persons in the surrounding area and to the environment is properly addressed by the land-use planning system.
  
11. The Department is able to exercise a degree of control over the presence of hazardous substances through the development control system, where such presence is directly associated with a proposed development. But there are situations in which hazardous substances may be introduced onto a site, or used differently within it, without there being any associated development requiring planning permission. These provisions enable specific controls to be exercised over the presence of hazardous substances whether or not associated development is involved. The Department will be able to decide whether, in the light of the residual risk, and having regard to existing and prospective uses of a site and its surrounding environment, the proposed presence of a hazardous substance is an appropriate land use of that site.

### *Planning permission for hazardous development*

12. The requirement for hazardous substances consent in respect of the presence of a hazardous substance in a controlled amount does not override the need for planning permission if development of land is also involved. This may arise, for instance, where it is proposed to erect buildings for the storage or processing of hazardous substances. Where both planning permission and hsc are required, two separate applications will be necessary and the respective statutory requirements will need to be followed. However, it may not be possible, or practicable, to act upon one authorisation without having the other. As far as possible related applications for hazardous substances consent and for planning permission are dealt with together.

---

<sup>1</sup> S.I. 1978/1039 (N.I.9)

13. This does not necessarily mean that similar decisions need be given on both applications, as there are likely to be considerations which are material to one application but not to the other. For example, the Department may decide, having considered the potential risks to the local community arising from the proposed presence of a hazardous substance, that there is no good reason for withholding consent. But in its role as planning authority it may consider that planning permission should be refused for associated development because of a wider planning consideration, e.g., the adverse effect of a proposed building on the local scene, or inadequate access arrangements. In such circumstances, it would be perfectly proper for contrasting decisions to be made on the different applications.
14. HSENI will be consulted on every application for hazardous substances consent. HSENI have the expertise to assess the risks to persons in the vicinity. Environment and Heritage Service will be consulted in respect of COMAH sites as they have the expertise to assess risks to the environment.

### *Hazardous substances consent (hsc)*

15. Hazardous substances consent is required for the presence of a hazardous substance on, over or under land unless the aggregate quantity of the substance(s) present is less than the controlled quantity for that substance (Article 53 of the 1991 Order).
16. In determining the aggregate quantity of the substance present on land, account is also to be taken of the amount of any hazardous substance(s) held on, over or under other land (or in or on any part of a structure) which is controlled by the same person and which, taken together, are considered by the site operator to comprise a single "establishment". Article 53 (1)(b) and (c) refer specifically to other land or structures which are within 500 metres of the land which is the subject of the application for consent, and which must always be included in any calculation to establish the aggregate quantity present. However, there is in fact no theoretical limit to the distance which may exist between areas of land which may be considered to constitute a single "establishment". In most cases it should be clear what constitutes the "establishment".
17. The person in control of the land may not necessarily be the same person as the legal owner. For example, two adjoining sites may be under the ownership of two different companies but both may be controlled by the same parent company which is in effective control of operations on both sides; or a site may effectively be under the control of a tenant rather than the proprietor of the dominium utile.

## *Hazardous substances and controlled quantities*

18. The list of substances and controlled quantities for which hazardous substances consent is required is given in Schedule 3 to the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 [as amended by The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000]. Hazardous substances are listed in Column 1 of the Schedule and the relevant controlled quantity is listed in Column 2.
19. The Schedule is in three parts. Part A comprises named hazardous substances, Part B applies to substances which fall within generic categories of substances, and Part C is designed to deal with a situation where a hazardous substance within either Part A or B of the Schedule is, or may be, present in a quantity at or equal to the controlled quantity for that substance only as a result of a loss of control of an industrial chemical process.
20. The substances included in Part A comprise all of the named substances from Part 1 of Annex I to the COMAH Directive. For these substances (numbered 1-32 in the Schedule) the controlled quantity is the lower threshold quantity specified in the COMAH Directive except where the same substance was previously subject to hazardous substances consent at a *lower* controlled quantity. In these cases the lower controlled quantity has been retained. Part A also includes a number of hazardous substances (those numbered 33-63 in the Schedule) not included as named substances in the COMAH Directive. These are substances which would generally fall within one of the categories of substances specified in Part 2 of Annex I to the COMAH Directive (Categories of Substances). However, these substances have previously required a hazardous substances consent at controlled quantities *lower* than those which will apply to the categories of substances to which they would belong. Therefore, to ensure there is no diminution of existing health and safety standards, these substances are being included as named substances and at the controlled quantities which have previously applied. As an example, hydrogen selenide (substance no. 35) is included as a named substance with a controlled quantity of 1 tonne, the level at which consent was formerly required. If it is considered within its category of substances (toxic) a consent would be required only for the presence of 50 tonnes or more.
21. Part B includes all of the categories of hazardous substances specified in Annex I, Part 2 of the COMAH Directive. The controlled quantities which apply are the lower qualifying quantities specified in the COMAH Directive for these categories of substances. Hazardous substances which were formerly subject to consent at controlled



quantities equal to or greater than the relevant qualifying threshold from the COMAH Directive are included here.

22. Substances appearing as named substances in Part A of the Schedule may also fall into one or more of the categories of hazardous substances in Part B of the Schedule. For example, chlorine is a named substance in Part A with a controlled quantity of 10 tonnes. It also falls within the "toxic" and "dangerous to the environment" categories of substances within Part B of the Schedule which have controlled quantities of 50 and 200 tonnes respectively. In such cases, the controlled quantity for that substance will always be the controlled quantity listed in Part A of the Schedule, for example, in the case of chlorine, 10 tonnes. (See Note 3 to Notes to Parts A and B of Schedule 3).
23. Where a substance which is not a named substance, but is one which falls within one or more of the categories of substances in Part B of the Schedule, the *lowest* controlled quantity will apply for that substance. (See Note 2 to Notes to Parts A and B of Schedule 3).
24. Part C of the Schedule is designed to deal with a situation where hazardous substances may be present in a quantity at or above controlled quantities only as a result of a loss of control of an industrial chemical process. It provides for the kind of incident which gave rise to the Seveso Directive and the introduction of land-use planning controls in the COMAH Directive. An example of when Part C might apply is given in Paragraph 25.
25. Substances W, X and Y may be used in a chemical process to produce, under normal controlled operating processes, substance Z. Under such circumstances, it is possible there may be no requirement for the operator to obtain a hazardous substances consent. This may be because the substances do not fall within either Parts A or B of the Schedule or, if they do, they are not present at or above their controlled quantity. However, in the event of a loss of control of the industrial chemical process, substances W, X and Y might react differently to produce another substance, S, which is within Parts A or B of the Schedule and at a quantity at or above the controlled quantity for that substance. In this case a consent would be required.
26. It is not intended the Department should grant consent for substances generated during a loss of control of the industrial chemical process. However, there will be a requirement for the operator to obtain a consent for the presence of the substance(s) which, in the event of a loss of control, would result in such substances and quantities being generated. To use the example above, a consent would be required for substances W, X and Y. The controlled quantity for these substances will

be the quantity of those substances whose presence might lead to substance S being generated at a quantity equal to or greater than its controlled quantity. It is accepted that it may be difficult for operators accurately to predict the type and quantity of substance which may be generated in the event of a loss of control of an industrial chemical process. But nonetheless it is important that they attempt to do so and, as necessary, obtain a consent.

### Aggregate quantities

27. Consent is always required when the aggregate quantity of a hazardous substance is present in an amount equal to or greater than its controlled quantity. However, a consent may also be required even though the amount present is *below* the controlled quantity for that substance or category of substance. To ensure compliance with the COMAH Directive, the aggregation of *all* specified hazardous substances present at an establishment in amounts less than the controlled quantity for the individual substances or categories of substances, must be taken into account in determining whether a consent is required for some or all of them. (See Notes 4 and 5 of the Notes to Parts A and B of Schedule 3).
28. To establish whether a consent is required in these circumstances hazardous substances present in amounts less than their controlled quantities will be added together according to an addition rule (see Notes 4 and 5 of the Notes to Parts A and B of Schedule 3). Where a number of substances which represent a similar type of hazard, e.g., very toxic and toxic substances or explosive and flammable ones, are together present at amounts below the relevant controlled quantity for that substance or category of substance, the quantities present are expressed as partial fractions of their controlled quantities and added together. If these add to a sum of 1 or greater, then a consent is required for **each** of the substances which have been included in the addition. Substances with unrelated hazards are not added together, so toxic substances are not added to flammable ones. Two examples of how the addition rule applies are -

**Example 1: The following substances are present together at an establishment**

Substance	Amount Present	Controlled Quantity
Bromine	21.00 tonnes	20.00 tonnes
Chlorine	3.00 tonnes	10.00 tonnes
Hydrogen selenide	0.5 tonnes	1.00 tonne *
very toxic	1.00 tonne	5.00 tonnes
<i>toxic</i>	<i>5.00 tonnes</i>	<i>50.00 tonnes</i>

Bromine is present in an amount greater than its controlled quantity and requires a hazardous substances consent. None of the other substances or categories of substance are present in amounts greater than their controlled quantities. But, they all have similar hazard characteristics. They are either very toxic or toxic substances and fall within categories 1, 2 and 10 of Part B of Schedule 3. They must therefore be considered together. Expressed as partial fractions the sum is as follows:

$$3/10 + 0.5/50^* + 1/5 + 5/50 = 0.30 + 0.01 + 0.20 + 0.10 = 0.61$$

*The sum of the addition is less than 1, so there is no need for a consent for any of these substances, other than Bromine.*

*\* (See paragraph 29 for an explanation of the controlled quantity used for this substance in this calculation).*

**Example 2 :**

Substance	Amount Present	Controlled Quantity
Bromine	15.00 tonnes	20.00 tonnes
Chlorine	3.00 tonnes	10.00 tonnes
Hydrogen selenide	0.5 tonnes	1.00 tonne *
Ethylene oxide	2.00 tonnes	5.00 tonnes
Propylene oxide	1.00 tonne	5.00 tonnes
very toxic	1.00 tonne	5.00 tonnes
toxic	5.00 tonnes	50.00 tonnes
oxidising	3.00 tonnes	50.00 tonnes

*None of the substances present are at amounts greater than their individual controlled quantities. But substances which fall within common hazards groups have to be considered under the addition rule. Bromine, Chlorine, Hydrogen selenide and the very toxic and toxic substances have common hazards and fall within categories 1, 2 and 10 of Part B of Schedule 3. They are added together. Expressed as partial fractions the addition is :*

$$15/20 + 3/10 + 0.5/50^* + 1/5 + 5/50 = 0.75 + 0.30 + 0.01 + 0.20 + 0.10 = 1.36$$

*The addition sums to greater than 1, so for each of the five substances the controlled quantity is deemed to be present and a hazardous substances consent would be required for each of them. Any consent granted by the Department will be in respect of the amount of the hazardous substance present and not for the controlled quantity deemed to be present.*

*Ethylene oxide, Propylene oxide and the oxidising substance also have common hazards. They fall within categories 3, 4, 5, 6, 7, 8 and 9 of Part B of Schedule 1 and they, too, are added together. Expressed as partial fractions the addition is :*

$$2/5 + 1/5 + 3/50 = 0.40 + 0.20 + 0.06 = 0.66$$

*Since the sum is less than 1, there is no need for a consent for any of these three substances.*

*\* (See paragraph 29 for explanation of the controlled quantity used for this substance in this calculation).*

29. For the purpose of the addition rule, the controlled quantity is that listed in Column 2 of either Part A or Part B of Schedule 3 to the Regulations subject to the following exceptions. Where, for substances in Part A of Schedule 3, a separate, greater quantity is shown in Column 3 that quantity will be the controlled quantity only for the purposes of the addition rule. To maintain existing health and safety standards, the controlled quantities for some hazardous substances have been retained at quantities lower than those specified by the COMAH Directive for the same named substance or category of substance. An example is Hydrogen selenide (substance no. 35) where for consent purposes a controlled quantity of 1 tonne has been retained; the equivalent quantity in the Directive is 50 tonnes. To ensure the addition rule is applied uniformly and without unnecessary penalty to operators, the higher quantity specified in the Directive will apply to those substances where, for the purpose of consent, a lower controlled quantity has been retained.

### *Applying for hazardous substances consent*

30. Applications will be made to the Planning Service Headquarters, Special Studies Section, Bedford House, 2nd Floor, 16-22 Bedford Street, Belfast BT2 7FD.
31. An application for consent has to be made on either Form 1 or Form 2, prescribed at Schedule 1 to the Regulations. Form 1 is for general applications for hazardous substances consent. Form 2 applies to applications to remove conditions or to continue a consent upon partial change in control of a site.

### *Determination of applications by the Department*

32. Under regulation 12 of the Regulations, the Department (Planning Service) has 8 weeks from receipt of a valid application to determine it, unless the applicant agrees to an extended period or the Department notifies the applicant that the application is one to which Article 56 of the 1991 Order applies. If no decision has been given by the end of the 8 week period, or any agreed extended period, the applicant will have a right to appeal to the Planning Appeals Commission against the Department's failure to determine the application.
33. Before determining an application, the Department (Planning Service) is required by regulation 10 to consult the District Council and HSENI. It

will also consult the Environment and Heritage Service in respect of COMAH sites, and any other bodies it thinks relevant. The Department must give consultees not less than 28 days to comment (regulation 11).

34. The role of HSENI and the Environment and Heritage Service is to advise the Planning Service on the risks arising from the presence of hazardous substances. HSENI has the expertise to assess the risks arising to persons in the vicinity from the presence of a hazardous substance; the Environment and Heritage Service has the expertise to assess and advise upon the likely risks arising to the environment.
35. Where an application relates to more than one substance, the Department (Planning Service) may make different determinations in relation to each substance (Article 55(3) of the 1991 Order).
36. When granting consent the Department is required to describe the land to which the consent relates and the substance(s) to which it relates; and to state, in relation to each substance, the maximum quantity of each that may be present at any one time (Article 55(4) of the 1991 Order). Without prejudice to the Department's general power to impose conditions (Article 55(1)), particular provision is made about the conditions that may be imposed (Article 55(5)). It should be noted that any condition relating to how a hazardous substance is to be kept or used may be imposed only if HSENI have advised that any consent should be subject to such condition(s).

### *Development Plans*

37. To take account of the COMAH Directive, regulation 9 of the Planning (Development Plans) Regulations (Northern Ireland) 1991 has been amended to require that in formulating plans, the Department shall have regard to the objectives of the Directive of preventing major accidents and of limiting the consequences of such accidents for man and the environment. In doing so, the Department will need to take into account the siting of establishments where hazardous substances are used or stored, and the development of land within the vicinity of establishments where hazardous substances are, or may be, present.

### *Appeals*

38. Where an application for hazardous substances consent is refused by the Department or granted subject to conditions the applicant may appeal to the Planning Appeals Commission under Article 57 of the 1991 Order. The address of the Planning Appeals Commission is Park House, 87 – 91 Great Victoria Street, Belfast BT2 7AG.

## *Major Applications (Article 56)*

39. If the Department considers that the presence of any hazardous substance on, over or under land for which the consent is sought, would –
- a. involve a substantial departure from the development plan for the area;
  - b. be of significance to the whole or a substantial part of Northern Ireland; or
  - c. affect the whole of a neighbourhood,

it may, within 8 weeks of receipt of the application serve notice on the applicant in the prescribed form (Form 4 of Schedule 1 to the Regulations)

For such an application, the Department may cause a public inquiry to be held to consider representations.

## **Transitional Provisions Consequent Upon Changes Made by The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000**

### *Deemed hazardous substances consent*

40. Paragraph 4 of Schedule 4 to the 1991 Order contains provisions which are designed to provide a transition to the consent system for sites where hazardous substances were present on, over or under the land but whose presence did not require the operator to obtain a hazardous substances consent. The provisions enable operators to claim a *deemed consent* in respect of hazardous substances which have been present on, over or under a site during the period of 12 months immediately preceding the date on which The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000 came into operation (24 April 2000). This period of 12 months is referred to as the “establishment period” (paragraph 4(10) of Schedule 4 to the 1991 Order). The purpose of the provisions is to avoid undue disruption by enabling operators to continue with previous lawful operations involving hazardous substances, in a similar way to before, without a specific grant of consent being required from the Department.
41. It is estimated that a maximum of 30 new sites may fall within the scope of the consent procedures though not all will need to claim a deemed consent. Following introduction of the consent procedure in 1993, many of the sites where hazardous substances are present will already have obtained a consent. However, because of changes to the list of hazardous substances and the controlled quantities, some may

now wish to apply for a deemed consent in respect of substances or quantities not previously subject to consent. Others will be received from those operating sites which are being brought into the scope of the consent procedure for the first time.

### *Time limit to claim a deemed consent*

42. Claims for deemed consent must be made to the Department of the Environment within 6 months of the date when The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000 came into operation i.e., **by no later than 23 October 2000**. They must be made on the form prescribed for this purpose at Schedule 1 to the Regulations (Form 5) and include the other information required by regulation 14. This information will show how and where each substance subject to the claim was present during the establishment period.

### *Action by the Department upon receipt of a claim for deemed consent*

43. Provided a valid claim is made - ie, the information submitted is complete and accurate and the statutory requirements of Schedule 4, paragraph 4 of the 1991 Order and regulation 14 of the Regulations are met - hazardous substances consent is **automatically deemed to be granted**. In other words, it is not for the Department to determine whether or not consent should be granted. The jurisdiction of the Department is limited to considering the validity of the claim. This should be limited to establishing that a consent was not previously required in respect of the hazardous substances for which deemed consent is now being claimed and that the information specified in Form 5 is completed in accordance with the Regulations.
44. If it is considered that a claim is invalid, the Department must give this opinion, and the reasons for it, to the claimant within 2 weeks of receipt of the claim. If they have no reason to doubt the validity of the claim, they are not required to take any further action, other than to ensure that a copy of the claim form goes into the Consents Register kept in Divisional Planning Offices.
45. At the time a deemed consent is claimed it may not be possible for the Department to validate the information provided by the claimant about the maximum quantity of hazardous substances present at the site during the establishment period. HSENI will subsequently, if necessary, be able to validate claims for established quantity following site visits or through information submitted in connection with site safety reports. It is important therefore that the Department sends copies of all claims for deemed consents, including associated plans, to HSENI as soon as possible.

46. Deemed consent will be subject to the conditions set out in Schedule 2 to the Regulations. Condition 1 controls the maximum aggregate quantity of a hazardous substance(s) which may be present under the terms of the deemed consent. The remaining conditions regulate where, and the manner in which, a substance may be present under the terms of a deemed consent, in accordance with where and how the substance was present during the establishment period. They are designed to avoid the possibility of a substance being used in a significantly different manner or different part of the site - with the potential for increasing off-site risks - without the Department having the opportunity to exercise detailed control.

*Standard conditions applying to deemed consents:  
established quantity*

47. Under the first standard condition in Schedule 2 to the Regulations the maximum aggregate quantity of a substance that may be present on, over or under the land must not at any one time exceed the established quantity. The established quantity means the maximum quantity which was present on, over or under the land at any one time during the "establishment period" (see paragraph 4(10) of Schedule 4 to the 1991 Order). In other words, the maximum amount which was present during the 12 months prior to **24 April 2000**. The land referred to here includes other land or structures controlled by the same person and within 500 metres of the land, or any other land controlled by the same person which, with the land in question, forms a single establishment (see paragraph 15).

*Standard conditions applying to deemed consents:  
area where a substance may be present*

48. For each substance included in the claim for deemed consent, the applicant will provide, as appropriate, a "moveable container storage area plan" and a "vessel location plan". The former plan must identify any area of the site where more than 10 % of the controlled quantity of the substance has been stored in moveable containers during the establishment period; and the latter must identify any areas of the site (known as "vessel areas") where the substance has been present in a vessel (as defined in regulation 2 of the Regulations), during that period (ignoring vessels in which no more than 10 % of the controlled quantity of the substance has been present) (see regulation 14 and Form 5 in Schedule 1 to the Regulations).
49. Regulation 14(4) of the Regulations establishes how the boundaries of a vessel area should be drawn. There may be a number of different vessel areas within a site in respect of the same substance. Under regulation 14(6), the boundaries of any two areas identified for the



same substance must not overlap (as otherwise there could be conflicting conditions regulating the presence of the substance applying to that area of overlap). However, it would be in order for different vessel areas relating to different substances to overlap, since these will not give rise to any such conflict. In respect of hazardous substance entry number 32, regulation 16(2) enables a vessel identified in a petroleum-spirit licence (where applicable) to be taken into account for the purposes of defining the vessel area, regardless of whether the substance has actually been present in that vessel during the establishment period.

50. Having regard to the areas so identified for each substance, the standard location conditions at paragraphs 7 and 8 of Schedule 2 to the Regulations provide that a hazardous substance shall not be present in a vessel outside a vessel area (identified for that substance); and, similarly, that a substance shall not be present in a moveable container outside an area identified for that substance on a moveable container storage area plan. For the purpose of the condition at paragraph 7 of Schedule 2, no account is to be taken of the presence in a vessel of no more than 10 % of the substance's controlled quantity. Similarly, for the purpose of the condition at paragraph 8(1) of Schedule 2, no account is to be taken of the storage of a substance in moveable containers in an area where the quantity of the substance so stored does not exceed 10 % of its controlled quantity. Regulation 16(1) and (3) refers. This is to avoid unduly restrictive control over relatively small amounts.

### *Standard conditions applying to deemed consents: manner in which a substance may be present*

51. The information required in Part 4 Table B of the deemed consent claim form (Form 5) will establish the manner in which a substance was present during the establishment period. The standard conditions at paragraphs 2 to 6 of Schedule 2 to the Regulations, which regulate how a substance may be present in a vessel within a vessel area under the terms of a deemed consent, relate directly to the information given by the claimant in Table B. These conditions ensure that a substance can only be kept or used in a particular manner within a vessel area if it has been similarly kept or used within that *same vessel area* during the establishment period (as indicated by the information given in Table B).
52. For every substance covered by the claim, separate information must be given by the claimant in respect of how the substance was present in *each* vessel area. The explanatory notes to Table B explain how the various columns are to be completed. The Table does not need to be completed for substances in moveable containers as these are not subject to the standard conditions at paragraphs 2 to 6 of Schedule 2.

Furthermore, for the purposes of completing Table B and of the above-mentioned conditions, no account is to be taken of the presence in a vessel of a quantity of a substance not exceeding 10 % of the controlled quantity.

53. The conditions in paragraphs 2 to 6 of Schedule 2 will operate in the following way. Either it will be wished to keep or use a substance -

- i) at *below* ambient temperature; or,
- ii) *at* ambient temperature; or,
- iii) at *above* ambient temperature.

Whichever of these is appropriate will determine which set of conditions applies. If, for example, it is intended to store a substance in a vessel at below ambient temperature, it will be necessary to satisfy three requirements -

- i) the substance must have been present at below ambient temperature in a vessel in the same vessel area during the establishment period;
- ii) the vessel in which it is to be stored must not have a greater capacity than the largest capacity vessel in the same vessel area in which the substance was present at below ambient temperature during the establishment period; and,
- iii) the pressure at which it is to be stored must not exceed either -
  - a) atmospheric pressure, if the substance was not present at above atmospheric pressure at below ambient temperature in a vessel in the same vessel area during the establishment period; or,
  - b) in any other case, the highest vessel design pressure of any vessel in which the substance was present in that vessel area at above atmospheric pressure at below ambient temperature during the establishment period.

54. If it is intended to store a substance at ambient temperature, it will be necessary for the conditions at either paragraphs 3 or 4 of Schedule 2 to the Regulations to be fulfilled, depending upon whether or not the substance is to be present in buried or mounded vessels. This additional distinction may be particularly significant in hazard terms where a substance is stored at ambient temperature. If it is intended to store a substance at *above* ambient temperature, the conditions at paragraphs 5 or 6 of Schedule 2 will need to be fulfilled, depending upon whether or not the substance is to be present at or below, or above, its boiling point at 1 bar absolute. For the purposes of establishing whether a substance is to be treated as being at ambient temperature, attention

is drawn to regulation 16(4). This clarifies that a substance shall not be regarded as being present at other than ambient temperature by virtue only of, for example, heating to maintain its fluidity during seasonal variations in temperature.

55. For moveable containers, no conditions regulating temperature or pressure are considered necessary. However, the quantity of a substance stored in such containers within a moveable container storage area must not exceed the maximum amount of that substance previously stored in moveable containers within that area during the establishment period. Furthermore, the capacity of any individual moveable container in which the substance is present within that area must not exceed 10 % of the controlled quantity, if it was not stored in that area in a moveable container area, or if it were to be kept in a different area of the site where it has not previously been present.

*Hazardous development authorised before The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000 came into operation*

56. The situation may arise where planning permission has been granted for a development implicitly involving the storage or use of hazardous substances and which at the time of approval did not require a hazardous substances consent. Contracts may have been let or development commenced, on that basis. But a deemed hazardous substances consent is not available as the substances concerned have not been present at the site during the establishment period. In this situation, which may have led to considerable investment in a site, the Department will give sympathetic consideration to any application for hazardous substances consent subsequently made which is in line with the terms of the planning application and permission. Consent should not normally be withheld unless there are compelling reasons for such a decision, involving a significant change in the material circumstances.

## Variation and Revocation of Consents

### *Applications to remove conditions (Article 58); or to continue a consent after change in control of part of the land (Article 60)*

57. Article 58 of the 1991 Order relates to applications for the removal of a condition (or conditions) attached to a previous grant of hsc. Such applications may be made either before or after the original consent is implemented. For example, consent may have been given subject to a condition restricting the storage of a substance to a particular location and it may be desired later on to relocate; or a condition may require the removal of a substance by a certain date and the applicant may subsequently have good reason for continuing to use that substance after that date. In considering such an application, the Department can only consider the conditions - it cannot overturn the original decision. Thus, an operator can apply for a condition to be varied or removed without calling the principle of the consent into question. If the Department decides that the condition(s) to which the consent is subject should be varied or removed altogether, it must grant a new consent accordingly. Where it decides that the condition(s) attaching to the consent should not be changed, the application will be refused, but the original consent remains.
58. These provisions apply to the standard conditions attaching to a deemed consent as well as to conditions attached to a consent specifically granted by the Department. Thus, if a site operator wishes to secure the deletion of a deemed consent condition, for instance to enable variation or removal of a restriction on the manner in which or the location where a substance may be present, the application should appropriately be made on Form 2 and dealt with under Article 58.
59. By virtue of Article 58(3) of the 1991 Order, where there is consent for more than one substance, the Department may only have regard to a condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate. An example may be where a condition relates to the location of another substance on a site and it is desirable to ensure that the two substances are kept apart. A similar situation arises under Article 58(4) where there is more than one consent available in respect of the same land.
60. Article 60 of the 1991 Order is designed to ensure that, when the control of land to which a consent relates is divided into two or more parts, a sensible arrangement is made as to the right to keep hazardous substances on one or other of those parts. Normally, a hazardous substances consent will run with the land (as would a planning

permission) but, where there is a change in control of part of the land to which it relates, the consent will be revoked unless an application for its continuation has previously been made. If no such provision were made there could be an inappropriate result: for example, if there were a consent to keep a substance on a site part of which contains a factory in which the substance is processed, and the person controlling the land proposes to sell a part of the site which has been used as a staff playing field, but which also benefits from the consent, it may be inappropriate for any proportional benefit of the consent to transfer to the purchaser. In many cases the consent will impose conditions controlling the particular location within a site where the substances are to be kept or used, but that may not always be the case.

61. Article 60(4) of the 1991 Order empowers the Department to modify or revoke a consent which is subject to an Article 60(2) application. Where it does so, the person in control of the whole of the land before the change is entitled under Article 66A of the Planning (Northern Ireland) Order 1972<sup>1</sup> to be compensated for any loss or damage sustained as a direct consequence. It is likely that the Department will at least need to modify the description of the land to which the consent relates; and modifications of conditions may be necessary. But it should rarely be appropriate to use these powers to impose significantly more onerous conditions on a consent or to revoke it. In the typical case where the consent needs to be modified to refer only to one part of a divided property it seems unlikely that a sensible modification will normally give rise to any claim to compensation.
62. Applications to be determined under Articles 58 or 60 of the 1991 Order will be made on Form 2 at Schedule 1 to the Regulations. Although a consent or deemed consent will already have been granted in these cases they could give rise to issues of no less significance than new applications for consent. Therefore the same publicity (advertisement by the Department) and consultation procedures as for applications for a new consent will apply.

### *Revocation or modification of hazardous substances consent*

63. Article 59 of the 1991 gives the Department the power to make an order revoking or modifying a hazardous substances consent. Whereas paragraph (3) gives a general power to the Department to revoke or modify a consent where it considers it expedient to do so, paragraphs (1) and (2) set out particular circumstances in which a consent may be revoked. An important distinction is that with orders made under paragraph (3) (but not orders made under paragraphs (1) and (2)) a person suffering damage as a result is entitled to compensation in the circumstances described at Article 65A of the Planning (Northern Ireland) Order 1972.

---

<sup>1</sup> S.I. 1972/1634 (N.I. 17)

64. As with planning permission, hsc provides an entitlement that runs with the land. As a general principle, it is considered that compensation should normally be payable when loss or damage results from a revocation or modification. However, it may be undesirable for a hsc to continue to have effect when it has fallen into disuse, as it could restrict unnecessarily the uses to which neighbouring land can be put. Moreover, a hsc given for the presence of a substance in connection with a particular use of land may not necessarily be apt in respect of some other use. It may therefore be undesirable for a hsc to continue to have effect when there is a material change in the use of the land. Therefore, the general effect of Article 59(1) and (2) is that where a consent has not been relied on for 5 years, or the use of the land has changed materially since the consent was granted, the consent may be revoked without compensation being payable. The requirement in paragraph (4) for an order to specify the grounds on which it is made will enable a potential claimant to know whether the revocation or modification is one in relation to which compensation may be payable.
65. Article 59(5) requires the Department to serve notice of an order on any person who is an owner, occupier or lessee of the land or any other person it considers will be affected. Those served with the notice must be given at least 28 days in which they can request a hearing by the Planning Appeals Commission.

### *Fees for Hazardous Substances Consent Applications*

66. An application for hazardous substances consent must be accompanied by an appropriate fee payment. These are set out in regulation 20. The fees should enable recovery of the Department's normal administration costs in handling consent applications. The level of fees will be reviewed regularly with this objective in mind.
67. For applications for a consent up to but not exceeding twice the controlled quantity of a substance, the fee is £250. For proposals for consent which exceeds twice the controlled quantity, the fee is £400. This is based on the premise that, by and large, the more a proposal exceeds the controlled quantity, the greater the off-site risk that could arise, and more careful consideration is therefore likely to be necessary. For applications for removal of conditions and continuation of consent where hsc already exists a flat rate of £200 applies. The scale of fees will be reviewed from time to time, as other planning fees are reviewed.
68. Deemed consent is an entitlement which does not require a decision from the Department, so there is no charge for these claims.

## Registers of Applications and Consents

69. Article 124 of the 1991 Order requires the Department to keep a register containing information about applications for hazardous substances consent, etc. The content of the Register is prescribed in the Planning (General Development) Order (Northern Ireland) 1993.

## Health and Safety Requirements

70. By virtue of Article 63 of the 1991 Order, no hazardous substances consent or contravention notice may require or allow anything to be done in contravention of any of the “relevant statutory provisions” or any prohibition notice or improvement notice served under or by virtue of any of those provisions. To the extent that such a consent or notice purports to require or allow any such thing to be done, it will be void; and it will need to be revoked or modified to render it wholly operative.
71. The “relevant statutory provisions”, “improvement notice” and “prohibition notice” are given the same meaning as in the Health and Safety at Work (Northern Ireland) Order 1978. Both the NIHHS and COMAH Regulations are “relevant statutory provisions”.

## Exemptions From Hazardous Substances Consent Requirements

72. Regulation 4 of the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 sets out circumstances in which hazardous substances consent is not required, as exceptions to normal requirements.

### *Temporary presence during transportation*

73. Article 53(2) of the 1991 Order provides that the temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account (for consent purposes) unless -
- i) it is unloaded; or,
  - ii) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which (not taking account of the substance being transported) there is required to be such a consent for any substance.
74. The effect of this is that the temporary presence of hazardous substances at a site should not by itself be sufficient to require a hazardous substances consent, if, excluding the substances held only on a temporary basis, no other substances are present at the site in

quantities which require, or as a result of the addition rule, combine to require a hazardous substances consent. However, where a consent is required for the presence at a site of any hazardous substance (excluding substances being transported) then those substances present on a temporary basis inside the site will also have to be taken into account in calculating the quantity of the substances present at the site.

75. The term “temporary presence” is not defined in the 1991 Order. The question of whether a vehicle’s presence is temporary or not will be a matter of fact and degree, depending on the particular circumstances. The Department may reach the view, for example, that a controlled quantity of a substance has been kept on a vehicle for a sufficiently long period in one particular place for it to amount to a storage use which is outside the purpose of this exemption. Judgement may also be required in considering whether a substance has been “unloaded”. Only the Courts can give an authoritative interpretation of the law on this point. However the view is taken that unloading will have taken place when a vehicle is divested of its load, even if the substance remains in a container or packaging.
76. The exemption in regulation 4(1) complements that in Article 53(2) of the 1991 Order, by dealing with the situation where a hazardous substance has been unloaded while it is being transported from one place to another. This is intended to cover the situation where a substance has been taken off one vehicle or vessel for the express purpose of transferring it to another. As with the Article 53(2) exemption, it will be a matter of judgement as to whether the presence is a temporary one. Moreover, there should be a clear intention to transfer the substance to another means of transport (as may be illustrated, for instance, by a transportation contract) as distinct from the situation where a substance has effectively gone into storage.

### *Gas Pipelines*

77. The hazardous substances consent system does not apply to controlling the presence of substances in gas pipelines. Instead, existing controls relating to such pipelines, as set out in the Gas (Northern Ireland) Order 1996<sup>1</sup> and the Pipelines Safety Regulations (Northern Ireland) 1997<sup>2</sup> will continue to be relied upon. However, substances contained in that part of a pipeline which is on, over or under the site to or from which it leads should be aggregated with other substances on the site for control purposes, because they should be regarded as part of the overall inventory of substances on that site. Similar considerations apply where a pipeline is wholly within a site. In the case of a gas undertaker’s supply pipelines, however, it is considered that it would be

---

<sup>1</sup> S.I. 1996/275 (N.I.2)

<sup>2</sup> S.R. 1997 No. 193



impracticable to take account of the gas in a service pipe connected to a consumer's premises. Appropriate exemptions to cover substances in a service pipe or in a pipeline outside of a site to which it has an outlet or inlet are contained at regulation 4(2) of the Regulations.

### *Maritime emergencies*

78. The situation may arise where a ship or other sea-going craft containing a hazardous substance is allowed to enter a harbour in a dangerous condition or where, in the interests of health or safety, the harbour master waives the usual requirements for advance notice. The substance may need to be removed and stored as a matter of urgency. To cater for this, regulation 4(3) of the Regulations exempts from hazardous substances consent requirements for the storage of a substance removed from such a vessel, for a period of up to 14 days from when it is unloaded. This will allow time for suitable alternative storage arrangements to be made, if necessary.

### *Waste land-fill sites*

79. Regulation 4(5) of the Regulations exempts hazardous substances present at waste land-fill sites (*for the purposes of disposal to waste land-fill*) from the consent procedures. The presence of such substances may of course be subject to controls exercised through the waste management licensing system to be introduced by the Environment and Heritage Service. The exemption does not apply to wastes being disposed of by means of incineration.

### *Hazards created by ionising radiation*

80. The consent procedure does not apply to the presence of a hazardous substance which creates a hazards 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. Substances present at such nuclear sites which emit ionising radiation and are also capable of falling within one of the categories of substances in Part B of Schedule 1 are exempt from the consent procedure. However, hazardous substances present at sites licensed under the Nuclear Installations Act 1965 which do not create a hazard through ionising radiation will be subject to consent if they exceed the controlled quantities – see regulation 4(6) of the Regulations.

### *Explosives*

81. Explosives present at factories and magazines controlled by licences issued by the Secretary of State in accordance with the provisions of the

Explosives Act 1875 are not included in the list of hazardous substances in Schedule 1. Similarly, explosives present at ports which are controlled by licences issued by the Secretary of State under the Explosives Acts 1875 - 1970 are excluded from the list.

### *Exemption for small quantities of hazardous substances ("2% rule")*

82. Regulation 4(7) of the Regulations provides an exemption under which small quantities of a hazardous substance may be disregarded when calculating the quantity of hazardous substances present at a site. Amounts not exceeding 2% of the relevant controlled quantity of a substance may be disregarded if their location at the site is such that they cannot act as an initiator of a major accident elsewhere on the site. The responsibility for determining whether such small quantities of hazardous substances are in a location which cannot act as an initiator of a major accident elsewhere on a site is, in the first instance, one for the site operator. In doing so, he will wish to take into account his responsibilities under the management of Health and Safety at Work Regulations. These Regulations require risk assessments to be made of the danger arising from the presence of these substances at the site and for the risk assessments to be submitted to HSENI. Site visits by HSENI inspectors will seek to ensure the exemption is not being abused.
83. This exemption does not apply to Chlorine, pressurised LPG, Hydrogen selenide or Selenium hexafluoride (substances numbered 6, 14, 35 and 39 in Part A of Schedule 3). The storage of Chlorine and pressurised LPG, even in such small amounts as 2% of their controlled quantities, is considered by HSENI always to present a significant off-site risk. For both Hydrogen selenide and Selenium hexafluoride, the controlled quantity at which a hazardous substances consent is required is 1 tonne. This is the amount which applying the 2% rule to these substances would allow to be disregarded. Therefore to maintain existing health and safety standards, it has been decided this exemption should not apply to these substances.

### *Emergencies*

84. Article 62 of the 1991 Order enables the Department to override hazardous substances control in cases of emergency. Where it is considered necessary for the provision of essential services or commodities for a hazardous substance to be present on, over or under land - in circumstances where consent would be required - the Department may make a direction that the presence of that substance does not constitute a contravention of hazardous substances control. Such a direction, which may be subject to conditions or exceptions, will be valid for a maximum of three months but may be withdrawn at any

time, or renewed. The HSENI, Environment and Heritage Service and District Council will normally be consulted before these powers are used.

### *Crown land*

85. Like planning control, hazardous substances control does not apply to the Crown. However, where a Crown body wishes to keep or use a hazardous substance in circumstances which would otherwise have required hazardous substances consent, similar procedures to those pertaining to a hsc application should be followed, but on a non-statutory basis.
86. The Department may, under Article 114 of the 1991 Order, grant hazardous substances consent in respect of Crown land in anticipation of its disposal. Any consent granted under this section applies only to the presence of a substance after the land has ceased to be Crown land; or, for so long as it continues to be Crown land, to the presence of a substance by virtue of a private interest in the land.

### **Enforcement**

87. Contravention of hazardous substances control is an offence under Article 61 of the 1991 Order and under Article 81 the Department may deal with any contravention of controls by the issue of a hazardous substances contravention notice.
88. The procedures for issuing and bringing into effect hazardous substances contravention notices follow closely those applying to planning enforcement notices. The provisions of Articles 69 –72 and 74 – 76 of the 1991 Order which relate to enforcement notices and appeals have been applied with modifications to hazardous substances – see regulations 18 and 19 and Schedule 4 to the Regulations.

### *Transitional immunity*

89. Paragraph 4 of Schedule 4 to the 1991 Order, as amended by the Regulations provides that during a transitional period of six months following the commencement of the new controls, no offence is committed under Article 61 and no hazardous substances contravention notice may be served in the circumstances specified. In effect, the transitional exemptions in this Paragraph apply where the substance was present on, over or under the land during the establishment period and where the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.

90. The terms "establishment period", "established quantity", "relevant date" and "transitional period" are all defined in Schedule 4 paragraph 4(10) of the 1991 Order.

