

Hazardous substances consent: a guide for industry

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Publication title: Hazardous substances consent: a guide for industry

Date published: September 2000

Product code: 00 PD 0844

Price: Free

Summary

This booklet is a guide to the controls set out in the Planning (Hazardous Substances) Act 1990 and takes account of changes to the consent procedures as a result of Directive 96/82/EC on the control of major accident hazards (the Seveso II Directive).

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Introduction

About this booklet

- 1.** This booklet is a guide to the controls set out in the Planning (Hazardous Substances) Act 1990 and the Regulations made under that Act. The Act requires hazardous substances consent (hsc) to be obtained for the presence of hazardous substances at or above specific amounts, known as controlled quantities.
- 2.** The booklet explains the objectives of the controls and the procedural requirements that apply in England. It takes account of changes to the consent procedures introduced as a result of Council Directive 96/82/EC on the control of major accident hazards (the Seveso II Directive). It is intended to help you decide whether you need to obtain hsc; to help you make an application; and to explain what happens afterwards.
- 3.** The emphasis is on practical guidance. You should not rely on this booklet as an authoritative interpretation of the law. If, when you have read it, you are in doubt as to what to do, you are advised to contact your local council or seek professional advice.

What is the purpose of the consent procedure?

- 4.** The controls ensure that hazardous substances can be kept or used in significant amounts only after the responsible authorities have had the opportunity to assess the degree of risk arising to persons in the surrounding area, and to the environment. They are concerned with the storage and use of hazardous substances which could, in quantities at or above specified limits, present a major off-site risk.
- 5.** Where the presence of a hazardous substance is directly associated with a proposed development, local planning authorities are able to exercise a degree of control over the siting and use of hazardous substances through the development control system. This consent procedure allows for control to be exercised over the presence of hazardous substances whether or not associated development requiring planning permission is involved. It is geared to regulating the storage and use of hazardous substances. It will enable breaches of control which may present serious risks to be dealt with quickly and effectively.
- 6.** The controls are planning controls. They do not replace or duplicate the requirements of the Health and Safety at Work etc Act 1974, or the relevant statutory provisions defined in Part I of that Act. Even after all reasonably practicable measures have been taken to ensure compliance with the requirements of the 1974 Act, there will remain the residual risk of an accident which cannot entirely be eliminated. The controls will ensure that this residual risk to people in the vicinity or to the environment is taken into account before a hazardous substance is allowed to be present in a controlled quantity. The extent of this risk will depend upon where and how a hazardous substance is to be present; and the nature of existing and prospective uses of the application site and its surroundings.
- 7.** The responsibility for deciding whether the risk is tolerable for the community and hence whether a particular proposal to store or use a hazardous substance should be allowed is one for the local hazardous substances authority. This authority will normally be the same

Council or other authority which would act as local planning authority in dealing with any related development proposal. The Health and Safety Executive will advise the hazardous substances authority on the nature and severity of the residual risk to persons in the vicinity arising from the presence of a hazardous substance. The Environment Agency will advise on the risk to the environment.

Do the controls override planning permission requirements?

8. No, these are separate requirements. Where planning permission is also required for development associated with storage or use of hazardous substances, separate applications and approvals are necessary. Applicants and local authorities may wish to ensure that related applications for hsc and for planning permission are submitted and dealt with together.

What if there is a conflict with Health and Safety requirements?

9. These controls serve a different purpose from health and safety controls. The Act recognises that safety is an overriding concern. It provides, at section 29, that a hazardous substances consent must not allow or require anything to be done which is at variance with the relevant statutory provisions defined in Part I of the Health and Safety at Work etc Act 1974 or any prohibition or improvement notice served under those provisions. Any consent that purported to do so would need to be modified or revoked, as necessary, by the hazardous substances authority.

Which authorities will decide hsc applications?

10. Responsibility for determining **hazardous substances consent** applications, for checking claims for deemed consent, and for administering and enforcing the procedure, rests with hazardous substances authorities (hsa). Usually this will be the same council or other body that would act as the local planning authority in dealing with any associated application for planning permission. If you are submitting an application for hazardous substances consent for the first time, or if you are in any doubt about which body is the local hazardous substances authority, you may wish to contact your local Council for confirmation that they are also the hazardous substances authority.

Are there any special arrangements for statutory undertakers?

11. These bodies are subject to the consent procedure in the same way as anybody else. Where a statutory undertaker has to apply to a Government department for authorisation of a development involving the presence of a hazardous substance in a controlled quantity, that department may, in authorising the scheme, direct that hazardous substances consent is deemed to be granted. To enable such a proposal to be considered, an application form should be completed in the normal way and submitted to the appropriate Government department.

Relevant legislation

12. The statutory framework for the controls is contained in the Planning (Hazardous Substances) Act 1990 (referred to in this booklet as the 1990 Act) and associated Regulations. These are the Planning (Hazardous Substances) Regulations 1992 (SI 1992 No 656) (referred to in this booklet as the 1992 Regulations) and the Planning (Control of Major-Accident Hazards) Regulations 1999 (SI 1999 No 981) (referred to in this booklet as

the 1999 Regulations) The 1999 Regulations made some important amendments to the 1992 ones, notably to the substances for which consent is required and to controlled quantities. Copies of the Act and the Regulations are obtainable from The Stationery Office bookshops. A copy of SI 1999 No 981 may also be obtained free of charge via The Stationery Office web site (www.legislation.hmso.gov.uk/stat.htm).

13. Advice on the consent procedures, and on how these inter-relate with other planning controls affecting hazardous installations and proposed developments in their vicinity, can also be found in DETR Circular 4/2000.

14. Separate Regulations administered by the Health and Safety Executive implement the majority of the requirements of the Seveso II Directive. If your establishment falls within the scope of this Directive it is almost certain that you will need to obtain a hazardous substances consent; and if you need a consent, you will also have to meet the wider health and safety requirements of this Directive. For information, in the United Kingdom (except Northern Ireland) the relevant Regulations are the Control of Major-Accident Hazards Regulations 1999 (SI 1999 No 743). Again, a copy can be obtained from The Stationery Office or through its website.

Part One

Deciding whether you need hazardous substances consent

When is hazardous substances consent required?

1.1 Consent is required if you store or use specified hazardous substances at or above specified controlled quantities.

For which substances is a consent required?

1.2 The hazardous substances that are subject to controls and the amounts at or above which a hazardous substances consent is required (known as the controlled quantities) are set out in Schedule 1 to the 1992 Regulations, as amended by 1999 Regulations.

1.3 The list of substances is in three parts. Part A consists of named hazardous substances. Part B applies to un-named substances that fall within specified generic categories of substances or preparations. Part C is designed to deal with a situation where a controlled quantity of a hazardous substance within either Part A or B may be present, but **only as a result of a loss of control of an industrial chemical process**. In this latter case which is the type of incident that gave rise to the Seveso Directive the consent will be required for the substances used in the relevant industrial chemical process, and not for the substance(s) that may be released in the event of an accident.

1.4 For convenience the revised list of substances and the controlled quantities is reproduced at Annex 1 at the end of this booklet.

Why does the list of substances contain named substances as well as generic categories of substances?

1.5 The introduction to the booklet referred to Council Directive 96/82/EC on the control major accident hazards (the Seveso II Directive). A requirement of this Directive is that its objectives of preventing major accidents and limiting their consequences are taken into account in land use planning policies. The Directive applies to establishments at which dangerous substances are present at or above specified qualifying quantities. There were many similarities between the substances specified in the Directive as "dangerous substances" and those specified as hazardous in the Regulations that implement the hazardous substances consent procedure. This requirement of the Seveso Directive was therefore implemented through the consent procedure. To ensure full compliance with the Directive all the substances that it covers, including those that fall within the generic categories of substances and preparations, are included.

1.6 Effectively, hazardous substances consent is now required for the presence of hazardous substances present at any "establishment" that falls within the scope of the Seveso Directive.

What is defined as an "establishment"?

1.7 The term "establishment" is not defined in the 1990 Act or the associated Regulations. Where it is used it has the same meaning as in the Seveso Directive. There it is defined as meaning "the whole area under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities".

How does this apply to the hazardous substance consent procedure?

1.8 Previously it was necessary to consider the amount of hazardous substances that were present on, over or under the land to which the application related and on over or under other land (or in or on a structure) within 500 metres of the land for which the claim related and controlled by the same person. Now you may also have to take into account quantities of hazardous substances that are present on, over or under any other land which is controlled by the same person and which, in all the circumstances, forms a single establishment with the land for which the claim for consent is being made.

1.9 There is no limit to the distance that may exist between areas of land that may be considered to constitute a single "establishment". But in most cases operators will be clear what constitutes the "establishment".

Why is this necessary?

1.10 It ensures that substances on two or more sites that are close to each other and under the same control are taken into account in assessing the risk to public safety. And it ensures that the controls cannot be circumvented by sub-dividing a site or by transferring ownership of an adjoining piece of land to a connected body. Any two bodies corporate are to be treated as one person for the purposes of hsc controls if one is a subsidiary of the other or if both are subsidiaries of the same body corporate.

Are there any differences between the substances subject to hazardous substances consent and the dangerous substances specified in the Directive?

1.11 There are some differences. For example Part A of the list includes hazardous substances that are not "named substances" in the Directive. And some of the controlled quantities for these substances are lower than specified in the Directive for the same substance.

Why are there differences?

1.12 To comply with the Directive, all the substances and minimum qualifying quantities specified in it are included within the list of substances that are subject to consent. But for some substances, adopting the qualifying quantities specified in the Directive would mean that established domestic health and safety and planning controls would have been weakened. For example, the amount of LPG that could be held without the need for

consent would have doubled from 25 tonnes to 50 tonnes. It was considered more important to maintain the existing level of controls over dangerous substances than to weaken safety standards to harmonise with the Directive.

1.13 The list of substances named in Part A of the list is therefore greater than that specified in the Directive. All of these are substances that would otherwise fall within one or more of the categories of substances and preparations specified in the Directive. For these substances the controlled quantity is lower than would have been the case if they were to be considered within their generic categories.

Do I need a hazardous substances consent?

1.14 First, check whether any of the named substances at Part A of the Schedule are present at your site at or above the specified controlled quantities. If they are then you will need to obtain a hazardous substances consent. In many cases the substances present at your site may not be included in Part A; but they may fall within one or more of the categories of substances or preparations that are specified in Part B of the Schedule. If so, and they are present at or above the controlled quantity, then again you will need to obtain a consent. But see also paragraph 1.18 below.

1.15 Another useful guide is to ask whether your establishment is one that is subject to the requirements of the Seveso Directive and the Control of Major Accident Hazards (the COMAH Regulations). If it is, then you will need to have a consent.

How do I know whether substances present at my establishment fall within one or more of the categories of substances or preparations?

1.16 The generic categories of substances and preparations used in Part B of the Schedule are those that are used by the Chemical (Hazards Information and Packaging for Supply) Regulations 1994 (CHIP Regulations). For the purpose of the consent procedure, substances and preparations are classified according to regulation 5 of these Regulations whether or not the substance or preparation is required to be classified for the purpose of the CHIP Regulations. Pesticides are approved and classified under the Food and Environment Protection Act 1985.

1.17 If you are in any doubt about whether any substances present at your site fall within one or more of these categories of substances or preparations please check with your local office of the Health and Safety Executive.

How do I decide the substances for which I need a consent?

1.18 The general rule is that a hazardous substances consent is required for the presence on, over or under land of any hazardous substance specified in Part A of the list of substances or included in one or more of the categories of substances or preparations at Part B, unless the aggregate quantity of the substance is less than the controlled quantity.

You may also require a consent for the presence of dangerous substances even

though the amount of the substance present is below than the controlled quantity for that substance. This may happen because substances within the same generic category or that have similar hazard characteristics are added together, according to an addition rule, to determine whether consent is required for some or all of them. Basically, the quantities present are expressed as fractions of their controlled quantities and added together. If the sum equals or exceeds 1, then a consent is required for *each* of the substances included in the addition.

1.19 A consent may also be required if, as a result of a loss of control of an industrial chemical process, a substance that appears in either Part A or B of the Schedule may be present at the establishment in an amount at or above its controlled quantity, even though the substance would not normally be present. In this circumstance, the consent would not be for the dangerous substance(s) that would be produced during any loss of control of the chemical process. The consent would be required for the substances present at the site that in the event of a loss of control would lead to the production of the released dangerous substance(s) (See Part C of the Schedule of hazardous substances and controlled quantities).

Do I always use the "controlled quantity" as the divisor when applying this addition rule?

1.20 No. For a number of named substances in Part A of the list the divisor to be used for the addition rule is different. In these cases, it is listed in column 3 of the Schedule of hazardous substances. In the main, these are substances that are not specifically named in the Seveso Directive, but would fall within one or more of the generic categories of substances. For these substances, the divisor to be used is the controlled quantity for the generic category of substance in which it would normally fall.

1.21 This approach has been taken to ensure the addition rule is consistent with the way it is applied under the HSE COMAH Regulations. To do otherwise might mean that operators had to obtain hazardous substances consent even though their establishment would not fall within the scope of the Seveso II Directive.

1.22 The following examples explain how the addition rule works Example 4 illustrates how Part C of the Schedule applies.

Example 1

Assume that the following substances are present together at an establishment

Substance/Category	Amount present	Controlled Quantity
bromine	21.00 tonnes	20.00 tonnes
chlorine	3.00 tonnes	10.00 tonnes
very toxic	1.00 tonne	5.00 tonnes

toxic	5.00 tonnes	50.00 tonnes
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Bromine is present in an amount greater than its controlled quantity. It therefore requires a hazardous substances consent.

None of the other substances or categories of substance exceeds its controlled quantity. But they all have similar hazard characteristics they are all either very toxic or toxic substances and fall within categories 1, 2 and 10 of Part B of Schedule 1. They must therefore be added together. Expressed as fractions of their controlled quantities the sum is as follows : $3/10 + 1/5 + 5/50 = 0.30 + 0.20 + 0.10 = 0.60$

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. Bromine is not included in the aggregation calculation. To do so would simply mean that a consent would be required for all of the other substances.

Example 2

Substance/Category	Amount present	Controlled Quantity
bromine	15.00 tonnes	20.00 tonnes
chlorine	3.00 tonnes	10.00 tonnes
hydrogen selenide	0.50 tonnes	1.00 tonne
ethylene oxide	2.00 tonnes	5.00 tonnes
propylene oxide	1.00 tonnes	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 these substances is present at amounts greater than its individual controlled quantity. But substances that have similar hazard characteristics have to be considered under the addition rule.

Bromine, chlorine, hydrogen selenide and the very toxic and toxic substances have similar characteristics. They have to be added together. Expressed as fractions the addition is: $15/20 + 3/10 + 0.5/50 + 1/5 + 5/50 = 0.75 + 0.30 + 0.01 + 0.20 + 0.10 = 1.36$ (* for this substances the divisor used differs from the controlled quantity see paragraph 1.20)

The sum of these fractions is greater than 1. So for each of these 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 hazardous substances authority 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 characteristics. 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 fractions the addition is: $\frac{2}{5} + \frac{1}{5} + \frac{3}{50} = 0.40 + 0.20 + 0.06 = 0.66$

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

Example 3

A number of dangerous substances are present at an establishment. None of them are substances named specifically in Part A of Schedule 1 but they are all within the categories of dangerous substances and preparations at Part B of Schedule 1. The site operator does not wish to name the individual substances, preferring to apply for consent under their generic headings. The substances shown on the consent application form are as follows:

Substance/Category	Amount present	Controlled Quantity
Very toxic	7.00 tonnes	5.00 tonnes
Toxic	35.00 tonnes	50.00 tonnes
Dangerous for the Environment	50.00 tonnes	200.00 tonnes

These substances have similar hazard characteristics and they therefore have to be added together for the purpose of determining whether a consent is needed. Expressed as fractions of their controlled quantities the sum is as follows:

$$\frac{7}{5} + \frac{35}{50} + \frac{50}{200} = 1.40 + 0.70 + 0.25 = 2.35$$

The sum of the addition exceeds 1, so for each of the substances a hazardous substances consent is required.

When the aggregation rule is applied only to substances that fall within Part B of Schedule 1 all of the substances have to be taken into account. In the above example it would not be permissible to disaggregate the very toxic substances from the calculation.

Example 4

Substances A, B and C are present at a site and are used in a chemical process to produce substance Z. None of the substances A, B, C or Z used or produced in the chemical process requires a hazardous substances consent, either because they do not fall within Part A or B of the Schedule, or they do not exceed the controlled quantity or,

following the addition rule, the sum of the fractions does not exceed 1. However, in the event of a loss of control of the chemical process, it is known that in some circumstances A, B and C will react to produce a different substance, ZX, which is included in either Part A or B of the Schedule of hazardous substances, at an amount that exceeds its controlled quantity. A consent would therefore be required for substances A and B and C.

When the hazardous substances consent procedure was first introduced I obtained consent for the hazardous substances present at my site. Do I now need to obtain another one?

1.23 Provided there has been no change either in the substances or quantities for which you obtained the consent then there is no need for you to obtain another consent for those substances. This applies regardless of whether the consent is one that was "deemed" on the basis of an "established presence" or whether it was an express consent for which you had to submit a application to the hazardous substances authority. Any conditions that applied to these consents will also continue to apply.

1.24 If you use or store other hazardous substances for which consent is now required, or if you use or store hazardous substances at quantities that now exceed the controlled quantities for these substances, then you will need to obtain consent for their presence.

Are there any exceptions to the normal hsc requirements?

1.25 Yes. Full details of exemptions are contained in section 4(3) of the 1990 Act and in regulation 4 of the 1992 Regulations, as amended by the 1999 Regulations. But they are summarised below.

Temporary Presence Of Hazardous Substances In Transit

1.26 Hazardous substances that are in transit present a difficulty. In some circumstances they may be present for long enough and in sufficient quantity to present a risk to people and the environment. The legislation offers a limited exemption. While a hazardous substance is being transported from one place to another its "temporary presence" need not be taken into account **unless**

it is unloaded; or,
it is present on over or under land in respect of which there is a hazardous substances consent in respect of substances other than those present only on a temporary basis.

1.27 The terms "temporary presence" and "unloaded" are not defined in the Act and will need to be interpreted according to the particular circumstances. A hsa may, for example, take the view that a controlled quantity of hazardous substance has been present on a vehicle in one place, with no intention to move it , for sufficiently long period of time for this to amount to storage. Assuming it is present only temporarily whilst in the process of being transported, the question may arise as to whether unloading has taken place. Only a Court

can give an authoritative interpretation of the law. But the Departments informal view is that at the point where a vehicle is divested of its load (even if the substance remains in its container or packaging) an act of unloading would have taken place. This would also be the case where a container of a hazardous substance is unloaded directly from a ship onto the quayside.

1.28 Provided that they are present only on a temporary basis, substances that are in transit from one place to another, and have been unloaded for the purpose of transferring from one means of transport to another, are exempt from the consent procedure. As above, it will be for the hsa to judge whether the presence is a temporary one. Moreover, there should be a clear intention to transfer the substance to another means of transport as distinct from the situation where a substance has effectively gone into storage.

1.29 This exemption will *not* apply if the site at which the hazardous substances are to be stored temporarily is one for which a hazardous substances consent is already required because of the presence of other hazardous substances which are *not* being transported. In these circumstances, the 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.

Pipelines

1.30 A hazardous substances consent is not required for the presence of hazardous substances in pipelines, except for substances present in that part of a pipeline which is on, over or under the establishment to or from which it is connected, or in a pipeline used to convey a hazardous substance from one part of the establishment to another. Substances so present are regarded as part of the overall inventory of substances at an establishment. For a public gas undertakings supply pipelines, a further exemption is given for gas in a service pipe.

Maritime Emergencies

1.31 An exemption applies 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. In such cases hazardous substances may need to be removed and stored as a matter of urgency. The storage of hazardous substances removed from such a vessel is exempt from the consent requirements for a period of 14 days from the date of unloading. This will allow time for suitable alternative storage arrangements to be made, if necessary.

Waste Land-Fill Sites

1.32 Regulation 4(4) exempts hazardous substances present at waste land-fill sites from the consent procedures. The presence of such substances may be subject to controls exercised through the waste management licence issued by the Environment Agency. The exemption applies only to hazardous substances at a waste land-fill site and not to substances present at other disposal sites, e.g. at waste disposal incinerators.

Hazards Created By Ionising Radiation

1.33 The consent procedure does not apply to hazardous substances which also create a hazard from ionising radiation if they are 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. Hazardous substances present at sites licensed under the Nuclear Installations Act 1965 which **do not** create hazards through ionising radiation will be subject to consent if they exceed the controlled quantities.

Exemption For Small Quantities Of Hazardous Substances ("2% Rule")

1.34 Regulation 4(6) provides an exemption under which small quantities of a hazardous substance present at a site may be disregarded when calculating the aggregate quantity of hazardous substances. Small amounts, those not exceeding 2% of the relevant controlled quantity of a substance, may be disregarded if their location is such that they cannot act as an initiator of a major accident elsewhere on the site. Examples of how the 2% rule might apply are given below:

Example 1

An operator holds 1000 tonnes of ammonium nitrate (substance no 2 in Part A of the Schedule) at a site. No other hazardous substance is present on the site. The controlled quantity for this substance is 1000 tonnes, so he would normally have to obtain a hazardous substances consent. He has stored the ammonium nitrate in 50 storage containers each containing 20 tonnes of ammonium nitrate; and none of the containers is located in such a way that it can act as the initiator of a major accident elsewhere on the site. The operator is therefore able to disregard these amounts and there is no need for him to claim a consent.

Example 2

As in example 1, the operator holds 1000 tonnes of ammonium nitrate. It is held in two storage containers, one holding 980 tonnes, the other only 20 tonnes. The 20 tonnes storage container is located on the site in such a way that it cannot act as the initiator of a major accident elsewhere on the site. So it may be disregarded. There is therefore no need for the operator to obtain a hazardous substances consent.

Example 3

The following substances are present at a site. Each of the substances is stored in a single separate container.

Substance/Category	Amount present	Controlled Quantity
bromine	8.00 tonnes	20.00 tonnes
ethyleneimine	3.00 tonnes	10.00 tonnes

hydrogen selenide	0.50 tonnes	1.00 tonne
very toxic	1.00 tonne	5.00 tonnes
toxic	5.00 tonnes	50.00 tonnes

None of the substances present are at amounts greater than their individual controlled quantities. But they all have common hazard characteristics and fall within categories 1, 2 and 10 of Part B of Schedule 1. So they have to be added together (see 1.19 above).

Expressed as fractions the addition is:

$$8/20 + 3/10 + 0.5/50 * + 1/5 + 5/50 = 0.40 + 0.30 + 0.01 + 0.20 + 0.10 = 1.01$$

The sum of these fractions is greater than 1. So for each of the substances the controlled quantity is deemed to be present and a hazardous substances consent would be required for each of them.

If the very toxic substance was stored in two separate containers one of which contained 0.9 tonne and the other 0.1 tonne then the calculation, and outcome could be different. The hazardous substance in the smaller container represents 2% of the controlled quantity for that substance. If this is stored in such a way that it could not act as the initiator of a major accident elsewhere on the site, it may be disregarded when calculating the aggregate quantity. So the calculation would then be:

$$8/20 + 3/10 + 0.5/50 * + 0.9/5 + 5/50 = 0.40 + 0.30 + 0.01 + 0.18 + 0.10 = 0.99$$

The sum of these fractions is less than 1 so there is no need for a consent for any of the substances.

(* the divisor for hydrogen selenide differs from the controlled quantity. See paragraph 1.20)

Does The 2% Rule Apply To Every Dangerous Substance?

1.35 No. For consent purposes 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 1). The storage of chlorine and pressurised LPG, even in such small amounts as 2% of their controlled quantities, is considered to have the potential to create a significant off-site risk. Hydrogen selenide and selenium hexafluoride are excluded to maintain existing health and safety standards in relation to these substances.

1.36 The responsibility for determining whether small quantities of hazardous substances may be disregarded under this exemption is, initially, 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 1999. These require risk assessments to be made of the danger arising from the presence of these substances at the site. Site visits will seek to ensure the exemption is not being abused in order to avoid legitimate controls under the consent procedure.

Explosives

1.37 Explosives present at factories and magazines controlled by licences issued by the Health and Safety Executive in accordance with the Assent procedures of the Explosives Act 1875 are not included in the list of hazardous substances in Schedule 1. Similarly, explosives present at ports which are subject to and controlled by licences issued by HSE under the Dangerous Substances in Harbour Areas Regulations 1987 are excluded from the list.

1.38 Explosives present at stores licensed by County Councils under the provisions of the Explosives Act 1875 *are included* within the list of hazardous substances at Schedule 1. The quantity of explosives licensed by County Councils is substantially less than the controlled quantity for either of the generic categories of explosives the substances may fall within, so there should be no question of a hazardous substances consent being required for the presence of these explosives alone. However, it is possible that in aggregation with other hazardous substances a hazardous substances consent may be required.

Part Two

Applying for hazardous substances consent

What are the steps to obtaining a hazardous substances consent?

2.1 Contact your hsa. Telephone or write to them asking them to send you a copy of the relevant application form together with relevant notices and certificates for publicity purposes. Form 1 is for general applications. Form 2 is for applications to remove conditions attached to a previous consent or to continue with a consent following a partial change in the control of the land to which the consent relates. (See paragraph 6.4).

2.2 Copies of application forms can also be obtained in the 1999 Regulations that can be downloaded from The Stationery Office web site, or you may produce your own form. If you do so it must contain all of the information on the prescribed form, otherwise it may not be valid.

2.3 Study the form. The information that you provide, including relevant maps and drawings, forms the basis on which the application will be determined. So it is important that it is correct and as full as possible. Incorrect information may lead to delays.

2.4 Provide maps and plans. Regulation 5 sets out the information that should be given on accompanying maps and plans. A general application for hazardous substances consent must include:

a **site map**, to a scale of not less than 1:10,000, identifying the application site and showing National Grid lines and reference numbers; and, a **substance location plan**, to a scale of not less than 1:2,500, showing any area of the site where the substance is to be stored;

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; and, access points to and from the land.

2.5 Applications, including plans, will be open to inspection by the public. So if you are in doubt as to what could or should appropriately be disclosed, it would be as well to have a prior informal discussion with the hsa (see paragraph 3.9).

2.6 It would also be helpful if topographical features of the site could be indicated. Where existing and proposed works are shown on the same drawing, new works should be easily distinguishable.

Why so much information?

2.7 This is needed to ensure that the hsa and those it consults on the application, such as the Health and Safety Executive and the Environment Agency, have adequate information to enable them to consider the implications of proposal carefully. Even where the degree of risk does not warrant refusal of the application, they may suggest imposing suitable conditions and these will depend on the nature of what is being proposed.

Filling in the form

2.8 The information to be entered on the application form should be self-explanatory from the headings. Where the space provided on the form is insufficient to answer the question fully, or to provide all the information you would wish to convey, make use of a continuation sheet or add an addendum to the form. The required information must be provided in respect of each hazardous substance or generic category of substance for which consent is required.

How many copies of the form are required?

2.9 The application must be accompanied by **3 copies** of the form, the map and plan submitted with it, and any required notice or certificate.

Before making an application, can I discuss my proposals with the hazardous substances authority?

2.10 This is up to you and the hsa. If your proposal is relatively straightforward and you are satisfied you understand the procedure for making an application there may be no need for you to do so. But if you are not clear, you may find that an informal discussion beforehand could save time and trouble later on. If you do wish to do this, it may be useful to go through the application form beforehand working out the answers to questions that may arise in the course of discussion. It would also be helpful to have at least some preliminary or sketch drawings available.

Is there anything else I need to do before applying for consent?

2.11 Before submitting an application, you need to publicise that you intend to do so. This will enable interested persons to inspect the application and associated documentation, so you should have a completed application form and accompanying documents ready when embarking on these publicity steps.

What are these publicity requirements?

2.12 Before submitting an application, you must carry out two publicity steps designed to ensure that persons living and working in the area around the application site who may be interested in your proposals have an opportunity to make their views known to the hazardous substances authority.

2.13 You must publish in a local newspaper a notice of the application, in accordance with prescribed Form 3, which you can obtain from the hsa when you obtain the application

form. The newspaper notice must be published at some time within the period of 21 days immediately preceding the date on which you make the application. It will state when and where your application will be available for public inspection. You will be responsible for arranging for the documents to be available for inspection at a suitable place within the locality.

2.14 You must also post a copy of the same notice on the application site, displayed in such a way as to be easily legible to members of the public without their needing to go onto the land. This site notice must be left in position for not less than 7 days in the period of 21 days immediately preceding the making of the application. If you do not have rights of access to the application site that would enable you to do this, then reasonable steps must be taken to acquire these rights.

2.15 When you subsequently make the application, you or your agent will need to certify that the above action has been taken. The application will need to be accompanied by a copy of the newspaper notice, certified as having been published and specifying the name of the newspaper and date of publication. A certificate (on Form 4, also obtainable from the hsa) should confirm that the site notice requirements have been complied with or, if not, through no fault of your own, an explanation of why not.

Notifying site owners of applications

2.16 As the applicant for hsc, you do not have to own the application site. You may own none of it or only part of it. In these circumstances, it is right that any other owners should be given the opportunity to comment on the application. Every application must therefore also be accompanied by a signed certificate relating to ownership. This will be one of the certificates A to D set out in Form 5. Copies are available from the hsa.

2.17 If you are the sole owner that is, you are the freeholder of all the land and there are no leaseholders with leases of 7 or more years to run certificate A should be completed. If not, and you know the names and addresses of the other owners, you should give them notice on Form 6 and complete certificate B. Certificate C or D will only be appropriate if you cannot ascertain all, or some, of the other owners in order to serve individual notices on them.

How much does an application cost?

2.18 For applications where no one substance exceeds twice the controlled quantity, the fee is £250. For proposals involving the presence of a substance in excess of twice the controlled quantity, the fee is £400. Where an application is for the removal of conditions attached to a grant of consent or for the continuation of a consent upon partial change in ownership of the land the fee is £200.

Part Three

Conditions that apply to deemed hazardous substances consent

3.1 Transitional arrangements in the regulations allowed operators to claim a hazardous substances consent based on the established presence of hazardous substances present at their site in the 12 months prior to the regulations coming into effect. This is referred to as the "establishment period". Claims for these consents referred to as "deemed consents" are subject to standard conditions that control the maximum quantity of a substance that may be present at the site, and where and how it may be kept or used. The standard conditions are set out fully in Schedule 3 of the 1992 Regulations. This section of the booklet explains these standard conditions.

The standard conditions: introduction

3.2 The standard conditions are designed to ensure that you can carry on keeping or using a substance in the same place, and in the same manner, as during the establishment period. In order to achieve a suitable balance, and bearing in mind that these standard conditions will attach to all deemed consents, in a wide range of circumstances, it has been necessary to prescribe a tightly-drawn set of conditions.

The established quantity condition

3.3 The first condition relates to the maximum aggregate quantity of hazardous substance that may be present

- (i) on, over or under the land to which the claim relates;
- (ii) on, over or under other land within 500 metres and controlled by the same person;
- (iii) in or on any part of a structure within 500 metres and controlled by the same person;
- (iv) on, over or under other land controlled by the same person and which in all the circumstances forms with the land a single establishment.

3.4 Section 11 (7)(a) of the 1990 Act specifies that the maximum amount of hazardous substance that shall be present at any one time shall not exceed the "established quantity". The "established quantity" is the maximum amount that was present at any one time during the establishment period. Claims for deemed consent required claimants to specify this maximum quantity.

Where and how substances may be present

3.5 The standard conditions, set out at Schedule 3 to the 1992 Regulations regulate the place 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. Essentially they are designed to avoid the possibility of a substance being used in a significantly different manner and/or in a different part of the site, with the potential for significantly increasing off-site risks, without the hazardous substances authority having the opportunity to exercise detailed control.

3.6 For each substance (or category of substance), claims for deemed consent were required to detail areas of the site where, during the establishment period, the substances were stored either in moveable storage containers or in a vessel. For this purpose a vessel is a container that is affixed to the land, or is a container that is affixed to a building or that forms part of plant or machinery that is affixed to land or a building. The standard conditions specify that the hazardous substances in either a vessel or a moveable container shall not be present outside of these specified areas

3.7 In detailing **vessel areas**, claimants for deemed consents set the boundaries of these areas subject to general conditions specified in the regulations. First, the boundary of the vessel area cannot at any point be more than 75 metres away from any vessel or building that contained a vessel in which the substance was present during the establishment period; or from fixed plant and machinery (excluding pipework) used during the establishment period for an industrial process invoking that substance. Second, the boundaries of any two areas for the same substance shall not overlap.

3.8 To avoid unduly restrictive control of relatively small quantities, you can ignore, for the purposes of complying with the condition at (i) above, the presence in a vessel of no more than 10 per cent of the substances controlled quantity. Similarly, for the purposes of complying with the condition at (ii) above, you should ignore the storage of a substance in moveable containers in an area where the quantity of the substance so stored does not exceed 10 per cent of its controlled quantity.

Manner in which a substance may be present

3.9 Again, the purpose of the standard conditions is to ensure that hazardous substances present during the establishment period can only be used or kept in a particular manner within a vessel area if it has been similarly present within the **same vessel area** during the establishment period.

3.10 The standard conditions at paragraphs 1 to 5 of Schedule 3 to the 1992 Regulations relate directly to this information. They work as follows. In operating under a deemed consent for a particular substance, you will either wish to store or use that substance at **below** ambient temperature; or **at** ambient temperature; or at **above** ambient temperature. Whichever is appropriate will determine which set of conditions applies. For convenience, the standard conditions are reproduced as Annex 2 to this booklet.

3.11 For the purposes of these conditions you should not regard a substance as being present at other than ambient temperature if this is by virtue only of it being heated to maintain its fluidity during seasonal variations in temperature; or because of any cooling effect resulting from the vaporisation of the substance during the withdrawal of vapour from the vessel; or if the substance enters a vessel at other than ambient temperature but then

moves to ambient temperature upon entry. Also for the purposes of these conditions, you should not take account of any increase in pressure during the operation of a pressure relief system.

3.12 Substances contained in moveable containers are not subject to the standard conditions at paragraphs 1 to 5 of Schedule 3. But they are subject to other conditions. Paragraph 7(2) of Schedule 3 provides that the quantity of a substance stored in a moveable container storage area must not exceed the maximum amount of the substance that was stored there during the establishment period. Paragraph 7(3) provides that the capacity of any individual container in which the substance is present in that area must not exceed 10 per cent of the controlled quantity, if it was not stored in that area during the establishment period in a moveable container of a greater capacity; or the capacity of the largest moveable container in which it was stored in that area during that period in any other case.

What if I wish to store or use a substance outside the terms of a deemed consent?

3.13 If a substance is covered by a deemed consent but you wish to exceed the terms of any of the standard conditions, you will need to apply to the hazardous substances authority for the relevant conditions to be removed or varied. If, on the other hand, you wish to introduce a substance not covered at all by a deemed consent, you will need to apply for a consent.

As new substances are classified under CHIP as hazardous substances, will I be able to claim a deemed hazardous substances consent on the basis of established presence?

3.14 No. As new substances are classified under the CHIP Regulations, any that fall within the scope of the Seveso II directive may require the operator to obtain a hazardous substances consent if they are present at or above controlled quantities. Operators will be required to apply to their hazardous substances authority to obtain an express consent.

Part Four

Deciding applications: What the hazardous substances authority has to do

What happens after an application is submitted?

4.1 If your application is in order, the hsa will acknowledge it. It will place a copy on the register of hsc applications, to be available to anyone who wants to see it. If it does not consider the application is valid it will let you know why.

4.2 If it considers that the application has been properly made but that it doesn't contain sufficient information to enable the authority to determine it, or if it wishes to verify certain particulars of it, it will come back to you, specifying what it needs.

4.3 Anyone has a right to comment upon your proposals. It is for the hsa to assess the merits of these comments when it considers your application. It is also required to carry out consultations with certain bodies before deciding your application. These include, in particular, the Health and Safety Executive and the Environment Agency. HSE will advise the hsa about the risks arising from a proposed land use involving the presence of a hazardous substance and the potential effects upon populations in the vicinity. The Environment Agency will advise on risks to the environment. Other bodies that will be consulted include the local parish or community council, fire and civil defence authorities and, in appropriate cases, English Nature. Consultees will be given 28 days in which to make their views known.

4.4 Before reaching decision, the hsa has to weigh up all the comments received in the light of local needs and conditions, any relevant provisions of a development plan, and any other material considerations.

How long will the authority take to reach a decision?

4.5 A decision has to be given within 8 weeks from receipt of a valid application, or within any extended period that you may agree in writing with the authority. If no decision is made, you can appeal to the Secretary for State for the Environment, Transport and the Regions against the failure to determine the application. But please bear in mind that an appeal may take significantly longer to decide than persevering with the hsa.

What form will the decision take?

4.6 The authority may grant consent, either with or without conditions, or may refuse it. If it refuses consent or grants it subject to conditions, it is required to give you full reasons for the decision. This will help you to decide whether or not to contest the decision.

4.7 When granting consent, the authority must specify the land and the substance(s) to which the consent relates; and the maximum quantity of each substance or category of

substance that may be present at any one time. It may impose conditions relating to how and where a substance is to be kept or used; the times when it may be present; or the permanent removal of a substance by a certain date. It may also make the consent conditional on the commencement or execution of development on the land that is authorised by a planning permission.

What if the authority refuses consent or imposes conditions which are unacceptable?

4.8 If you are refused consent, you will wish to consider carefully the reasons for this. You may be able to overcome the objections by changing your proposal in some way and submitting a new application. A discussion with the authority may help to establish whether this is a worthwhile course to pursue. On the other hand, the hsa may have granted consent but imposed conditions which you consider unreasonable or are otherwise unwilling to accept. Again, a discussion with the authority may help.

4.9 Ultimately, if you remain so unhappy with the authority's decision that you wish to contest it, you may appeal to the Secretary of State.

Called-in applications

4.10 Normally, the hazardous substances authority will decide your application. The Secretary of State for the Environment, Transport and the Regions has the power to take an application out of its hands and require it to be referred to him for his own determination. This will be very much the exception. But it might arise, for instance, where any associated application for planning permission is being called-in; or where an application raises issues of more than local importance in its own right, including safety issues of exceptional concern or major policy issues.

4.11 Where your application is called-in, the hsa must inform you of this and the reasons for it. You and the hsa may ask to be heard before an Inspector, at a local inquiry. It is likely, in any event, that the Secretary of State would wish to hold an inquiry where an application is of sufficient importance to warrant being called-in. You will be advised at the time of the appropriate requirements.

4.12 Part Five provides further information about inquiries procedures. For call-ins, you will be asked to provide a full preliminary statement of case within 6 weeks of notification that an inquiry is to be held.

Part Five

Appealing against the decision

In what circumstances can an appeal be made?

5.1 An appeal can be made to the Secretary of State if the hazardous substances authority

- refuses to grant consent;
- refuses an application for a continuation of consent upon change in ownership of part of the land;
- refuses to grant any consent, agreement or approval required by a condition imposed on a consent;
- refuses an application to vary or remove conditions attached to a previous grant of consent;
- grants consent but imposes conditions which are unacceptable to you: or
- fails to reach a decision within the statutory time limit of 8 weeks, or any longer period you have agreed.

Is there a time limit on making appeals?

5.2 Appeals may be made at any time within 6 months of the decision or, if no decision has been made, within 6 months from when a decision should have been given. This gives you time to discuss matters with the authority to see if there is any possibility of finding a way of overcoming its objections bearing in mind that an appeal is intended to be a last resort. The Secretary of State has the discretion to extend the appeal period in a particular case, but he will do so only where there is compelling reason for the delay.

How do I make an appeal?

5.3 Appeal forms are available from the Planning Inspectorate, Tollgate House, Houlton Street, Bristol BS2 9DJ. Two copies will be sent for completion, one to be returned to the Planning Inspectorate and one to be sent to the authority.

What procedure is to be followed?

5.4 There are two possible procedures local inquiry or written representation. These are described below.

Local Inquiries

5.5 Both you and the hsa have the right to be heard before an Inspector. A public local inquiry normally will be held if either of you exercises that right. Alternatively, the Secretary

of State may decide that an inquiry should be held even if he is not asked to arrange one.

5.6 Where an inquiry is held the spirit of the Town and Country Planning (Inquiries Procedure) Rules will be followed, as appropriate. You will be advised at the time of what needs to be done, but you may wish to note the following. Both you and the hsa will be asked to provide before the inquiry a full statement of the case you intend to present at the inquiry. The hsa will be asked to provide its within 6 weeks of being notified that an inquiry is to be held, and you will be asked to provide yours within 9 weeks. The Department will give you at least 28 days prior notice of the inquiry and will ask you to post a site notice, as well as asking the hsa to advertise the inquiry. If you or one of your witnesses intends to give evidence at the inquiry by reading from a proof of evidence, you will be asked to submit a copy of this to the Inspector not later than 3 weeks before the inquiry.

The hsa will be asked to provide the venue for the inquiry. Procedure at the inquiry itself will largely be at the discretion of the Inspector, but you will normally begin and have the final right of reply. You and the hsa will be able to cross-examine each other and anybody else giving evidence. Third parties can appear at the discretion of the Inspector.

Written Representations

5.8 Where neither you nor the hsa asks for an inquiry, and the Secretary of State does not consider that one is necessary, the appeal will be determined following exchanges of written representations between the parties and a site visit by the Inspector. Again, you will be advised at the time of what is required. Basically, the procedure will be as follows. Your notice of appeal will comprise your initial representation. The hsa will be asked to provide comments within 28 days of the lodging of the appeal and you will be given a further 17 days in which to comment on its submission. Other interested parties will also have the opportunity to make representations. You will be allowed to see and comment on these.

5.9 During the site inspection, the Inspector will not be able to discuss the merits of the case or listen to arguments from any parties. Should it be necessary, or should you wish, to accompany the Inspector on the site inspection, the hsa will also be asked to send along a representative.

What are the respective merits of the two procedures?

5.10 Experience of the planning appeals system is that, for suitable cases, the written representation method generally provides a quicker, cheaper and more convenient route to a decision. It is particularly suited to the less complex and controversial cases. On the other hand, you may prefer to have the opportunity to air your views at a public forum and to cross-examine opposing witnesses.

5.11 Even where both you and the hsa express a preference for the written representation procedure, the Department may still wish to call an inquiry. This might arise where, for instance, it is considered that an inquiry would be a more suitable method of eliciting the information required to reach a properly informed decision, or where a proposal is particularly controversial.

What happens after the inquiry, or close of written representations?

5.12 The Inspector will provide the Secretary of State with a report, including a recommendation. The Secretary of State will consider this and reach a decision, which will be notified to you and others in a reasoned decision letter, accompanied by a copy of the inspectors report.

Will any appeals be decided by Inspectors?

5.13 The Secretary of State may, by regulations, prescribe classes of appeal for determination by an Inspector instead of himself. No such regulations have been made as yet, but this will be kept under review.

Part Six

After consent has been granted

Can I operate under the consent straight away?

6.1 Yes, unless the consent contains conditions that preclude this. For example, a condition may require you to submit for approval details of a specified aspect of the proposals which was not fully described in the application. Also, you must ensure that you have any other statutory approvals that may be required in connection with your proposal, eg a planning permission if development is involved.

Can anybody implement the consent?

6.2 Unless a condition is imposed limiting use of the consent to a specified person or company the consent will normally run with the land, rather than being personal to the applicant. This means that if the land is sold in its entirety, the new owner will be able to implement the consent. However, where there is a **partial** change in control of the land to which a consent relates (e.g. part of the land is sold, but not all of it) that consent is revoked unless an application for its continuation has previously been made.

6.3 This provision, at section 17 of the 1990 Act, is to ensure that, when the control of land is divided, a sensible arrangement is made for the keeping of hazardous substances on the remaining parts. If no such provision were made, there could be an inappropriate result. For example, if there were a consent to keep a substance at a hazardous installation site, and it were proposed to sell a part of that site which had been used only as a staff playing field, it would be inappropriate for any proportional benefit of the consent to transfer to the purchaser.

How do I apply for a continuation of consent?

6.4 Applications must be made on Form 2 which you may obtain from the relevant hsa. The application must be submitted **before** the partial change in control occurs. It must also be accompanied by particulars of the extant hazardous substances consent; and by a **change of control plan**, drawn to a scale of not less than 1:2,500, which identifies each area of the site under separate control *after* the proposed change of control.

6.5 Once you have completed the form, the procedures for publicising, submitting and deciding the application will be the same as those for a general application, described earlier in this booklet. You must provide three copies of the form and any accompanying documentation, together with the appropriate fee.

Is there scope for altering the conditions of a consent?

6.6 As noted earlier, you can appeal to the Secretary of State (within six months) against any conditions that are unacceptable to you. You can also apply to the hsa to vary or revoke any conditions subject to which consent has previously been granted. For instance, you may wish to see if you can persuade the hsa to change its mind, without the trouble of

appealing. Or you may initially be prepared to accept the conditions but later on, after the appeal period has expired, you may have reason to want them removed. For example, consent may have been granted subject to a condition restricting the storage of a substance to a particular location, and you may now wish to re-locate.

6.7 Alternatively, you may wish to exceed the terms of the standard conditions attaching to a deemed consent, as set out in section 11 (7)(a) of the 1990 Act and in Schedule 3 to the 1992 Regulations. For example, you may want to extend the area within a site where a substance may be present under a deemed consent, or to keep an amount of a substance above the "established quantity".

6.8 In all these circumstances, you may apply to the hsa for release of a condition attached to a consent. In considering such applications the hazardous substances authority can **only consider the conditions**; it cannot overturn the original decision by refusing hsc outright. So you can apply for a condition to be varied or removed without calling into question the principle of the consent. If the hsa decides that the conditions should be varied or removed, it will grant a new consent accordingly. If it decides that the conditions should not be changed, the application will be refused, but the original consent will still stand.

6.9 Applications for the removal of conditions are made on Form 2. If the application relates to a condition restricting the location of a hazardous substance, it must be accompanied by a *change of location plan*, drawn to a scale of not less than 1:2,500. This must identify the location of the substance at the date of the application *and* the proposed location. Particulars must be given of the relevant hazardous substances consent.

Do I need to publicise applications to vary or remove conditions, or for change of ownership?

6.10 Yes. The same procedures will apply to publicising and determining these applications as for applications for a new consent. This is because they can give rise to issues of similar, or possibly even greater, significance. Applications will therefore need to be accompanied by the appropriate notices and certificates and fee payment referred to in Part Three. Three copies of the form and all the accompanying documentation must be provided.

Will the existence of a consent affect future development nearby?

6.11 Where a site benefits from a hazardous substances consent, the Health and Safety Executive, or in some cases the Environment Agency, will set a consultation distance within which the local planning authority will consult for advice on proposals for certain types of development.

6.12 HSE will inform the local planning authority whether or not it has any objections on health and safety grounds to a proposed development. This advice will take account of the conditions of a hazardous substances consent and will be based on the full quantity of a hazardous substance for which consent has been (or is deemed to have been) granted.

What happens if I do not implement the consent?

6.13 If a consent relates to one substance and that substance has not been present in a controlled quantity for 5 years, or if a consent relates to a number of substances none of which has been present for 5 years, the hsa may revoke the consent without any liability for compensation.

Are there other circumstances in which the consent can be revoked?

6.14 The hazardous substances authority may revoke or modify a consent to such extent as it considers expedient. Such action would require confirmation by the Secretary of State, and the authority would be liable to pay compensation. The authority may also revoke or modify a consent where there has been a material change of use of the land to which the consent relates. In such cases the action by the hsa would again require confirmation by the Secretary of State but there would be no liability to pay compensation.

6.15 Where there has been a change of person in control of part of the land to which the consent relates, the consent is automatically revoked unless an application for continuation of the consent has previously been made to the authority. Where such an application has been made, the authority may modify or revoke the consent subject to liability for compensation.

What if I want to give up the consent or reduce the quantity of hazardous substances for which I have consent?

6.16 There is no provision in the legislation that relates specifically to this. But if, for whatever reason, you no longer wish to have a consent or you wish to reduce the maximum inventory that you may hold under a consent you should discuss the matter with the hazardous substances authority.

Part Seven

If you operate without the required consent

What action can the hsa take?

7.1 If you have contravened hazardous substances control ie. you have not complied with the terms or conditions of a consent, or you did not obtain consent where you should have done the hsa has several options:

- (i) it may prosecute you. Contravention of control is in itself an offence;
- (ii) it may issue a hazardous substances contravention notice, specifying the steps to be taken to rectify the breach of control, in which case it will serve a copy of that notice on you;
- (iii) it may seek a Court injunction to restrain any actual or expected breach of control; or
- (iv) it may simply negotiate with you to achieve discontinuance of the breach without recourse to formal action. Or, if you wish to continue with an unauthorised activity which appears unobjectionable, it may ask you to submit an application for consent retrospectively.

7.2 The decision as to the best way to proceed will be for the hsa to take in the light of the particular circumstances. It will normally wish to take account of the nature of the unauthorised use, the degree of risk arising from it, and whether or not the breach of control seemed to be intentional. In a less serious case where a breach has been quite inadvertent, it may consider action under (iv) to be appropriate.

7.3 But it should be remembered that a contravention of hazardous substances control could lay people in the surrounding area open to serious and immediate risk bearing in mind that the controlled quantities have been set at levels where major off-site risks can arise. The fact that contravention is a criminal offence reflects the potential gravity of such a breach. The penalties, and hazardous substances contravention notices, are explained further below.

Prosecution of an offence

7.4 Where a serious contravention of control has clearly and wilfully been committed, a hsa may consider that it is in the public interest to prosecute the offender(s). Section 23 of the 1990 Act enables the authority to take such action against the person in control of the land or (apart from where there is a breach of a consent condition) against any person who knowingly causes or allows the substance to be present. Where the accused is a body corporate, a director, manager, secretary or other similar officer whose approval, connivance or negligence contributed to the commission of the offence may be prosecuted.

What are the Penalties

7.5 The maximum penalty on summary conviction is £20,000 and the penalty for conviction on indictment is an unlimited fine. In determining the amount of any fine, the Court will have particular regard to any financial benefit arising from the offence.

Are there defences?

7.6 Yes. Subsections (5) to (7) of section 23 provide defences where you can prove that at the time of the alleged offence you did not know, and had no reason to believe, that the breach of control had taken place; or that you took all reasonable precautions and exercised all due diligence to avoid committing the offence; or that you could have avoided it only by taking action amounting to a breach of statutory duty.

Hazardous substances contravention notices

7.7 The provisions enabling hazardous substances authorities to serve a hazardous substances contravention notice, requiring remedial steps to be taken, are similar to those enabling local planning authorities to serve a planning enforcement notice. Many of the enforcement provisions set out in Part VII of the Town and Country Planning Act 1990 are applied, with appropriate modifications, to contravention of hazardous substances control. The relevant statutory provisions are set out in sections 24 and 25 of the Planning (Hazardous Substances) Act 1990 and in Part 5 of and Schedule 4 to the 1992 Regulations.

7.8 The hsa must serve copies of a hazardous substances contravention notice on the owner of the land and on any other person who either appears to be in control of or to have an interest in the land. It must specify in the notice the alleged contravention of control; the steps to be taken to remedy it; the date on which it is to take effect (which must be at least 28 days from the date of service); and a further period within which the required steps must be taken. The notice will be accompanied by a statement of the hsa's reasons for issuing it and information about the right of appeal to the Secretary of State. Should the notice be appealed against it cannot take effect unless and until it is upheld by the Secretary of State. Once a contravention notice has taken effect, non-compliance with it is an offence, with the same penalties set out at paragraph 7.5 above.

7.9 By virtue of section 29 of the Planning (Hazardous Substances) Act 1990, a contravention notice cannot require anything to be done in contravention of the relevant statutory provisions defined in Part I of the Health and Safety at Work etc Act 1974, or any prohibition or improvement notice served under those provisions.

Appeals against contravention notices

7.10 Any person who is required to be served with a contravention notice may appeal to the Secretary of State for the Environment against that notice. The appeal must be made in writing to the Planning Inspectorate at the address given at paragraph 5.3 and must be

received, or posted in time to be delivered in the ordinary course of post, before the date stated in the notice as the date on which it is to take effect. It must specify the grounds of appeal and the submissions to be put forward in support of each of those grounds, and be copied to the hsa. Any failure to observe these requirements may lead to the appeal being dismissed (or, in the case of an appeal lodged after the due date, being turned away as "out of time").

7.11 The grounds on which an appeal can be made are as follows:

- (a) that hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land to which the notice relates or, as the case may be, that a condition alleged in the contravention notice not to have been complied with ought to be discharged;
- (b) that the matters alleged in the notice to constitute a contravention of hazardous substances control have not occurred;
- (c) that these matters (if they occurred) do not constitute a contravention of hazardous substances control;
- (d) that copies of the notice were not served as required by section 24(4) of the 1990 Act;
- (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of control;
- (f) that any period specified in the notice as the period within which any step is to be taken falls short of what should reasonably be allowed.

What is the procedure for an appeal?

7.12 The hsa is required to serve, within 28 days of receiving a copy of the appeal, a statement of its response to it. A failure to comply with this requirement may lead to the appeal being allowed and the notice quashed. Both the appellant and the hsa have the opportunity of asking to be heard before an Inspector at a local inquiry. The Secretary of State may, in any event, decide to hold an inquiry. Otherwise, the appeal will be conducted by exchanges of written representations. The hsa will notify persons in the locality of the appeal and give them the chance to comment.

Is a fee payable?

7.13 A fee is payable in respect of the application for hazardous substances consent that is deemed to be made when an appeal is brought, although there are circumstances, as set out in regulation 25 of the 1992 Regulations, in which the fee may be refunded. The amount payable is the same as that applying when an application is made in the normal way.

Determination of a contravention notice appeal

7.14 In allowing or dismissing an appeal, the Secretary of State will give directions giving effect to that determination: for instance, he may direct that the contravention notice be quashed (if the appeal is allowed) or that its terms should be varied. He may correct any defect, error or misdescription in the notice, or direct that its terms be varied, so long as this can be done without injustice to the appellant or to the hsa. Furthermore, the Secretary of State may, in determining the appeal, grant hsc for the presence of the substances to which it relates, or discharge any condition subject to which hsc was granted. (See paragraph 7.13 above any contravention notice appeal carries with it a deemed application for hsc in respect of the substances referred to in the notice).

7.15 The Secretary of States decision, the reasons for it and its effect will be explained in a decision letter addressed to the appellant and copied to the hsa (and other interested parties).

Annex Index

Annex 1: List of hazardous substances and controlled quantities (Schedule 1 of 40 the Planning (Hazardous Substances) Regulations 1992) (available to download below)

Annex 2: Standard Deemed Consent Conditions (Schedule 3 of the Planning 45 (Hazardous Substances) Regulations 1992) (available to download below)

