Circular 04/00: Planning controls for hazardous substances

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

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Summary

This Circular provides guidance on the operation of the consent procedure for hazardous substances which implement the land use planning requirements of Directive 96/82/EC, known as the Seveso Directive, on the control of major-accident hazards. This replaces Circular 11/92.

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Background

1. This circular replaces DOE Circular 11/92. It gives guidance on how the consent procedure for hazardous substances operates following changes introduced to implement the land use planning requirements of the Seveso II Directive (Directive 96/82/EC on the control of major-accident hazards). The advice given is intended to be a guide and is not definitive. An authoritative statement of the law can only be made by the Courts.

The SEVESO II Directive

2. Member States were required to implement Directive 96/82/EC (see endnote 1) on the control of major-accident hazards (the SEVESO II Directive) by 3 February 1999. It repeals the Seveso I 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.

3. The Directive requires Member States to introduce controls on establishments where dangerous substances are present above certain quantities. The dangerous substances and qualifying quantities are set out in Annex I to the Directive. The list comprises a number of named substances; and, 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. The controls vary according to the quantity of dangerous substances kept or used on the site.

4. Lower tier establishments (those where the quantity of dangerous substance exceeds a minimum qualifying quantity but falls below an upper one) are required to notify the Competent Authority of the presence of dangerous substances and to have in place major-accident prevention policies. Top tier establishments (those where the quantity of dangerous substances exceeds the upper qualifying quantity) must comply with additional requirements. These include preparation of a safety report, public access to safety reports, preparation and testing of on-site and off-site emergency plans, and informing members of the public likely to be affected by a major accident. These requirements of the Directive are implemented though the Control of Major-Accident Hazards Regulations 1999 (see endnote 2). The Health and Safety Executive is responsible for these Regulations.

5. In England, the Competent Authority comprises the HSE and the Environment Agency acting jointly.

Endnotes

1. OJ L 10, 14,1.97, p13.
2. SI 1999 No 743

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Land use planning requirements of the SEVESO II Directive

6. Article 12 of the Directive effectively requires land-use planning controls to apply to *all* establishment's (see endnote 3) within the scope of the Directive, whether lower-tier or top-tier. It requires that:

> *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 developments are 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 uder paragraph 1. The procedures shall be designed to ensure that technical advice is available, either on a case-by-case or on a generic basis, when decisions are taken."*

7. In England a system of hazardous substances consent is already in operation under the Planning (Hazardous Substances) Act 1990 and Regulations under that Act. The controls require consent 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 hazardous substances authorities the opportunity to consider whether the proposed storage or use of the proposed 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 hazardous substances authority must consult bodies including the Health and Safety Executive and the Environment Agency before making a decision on any application for consent. If consent is agreed, as a matter of practice, a consultation zone will be established within which proposals for future development will also be referred to consultees to consider possible effects on public safety. Because of the similarities of the existing procedures for hazardous substances consent and the land use planning requirements of the directive, those requirements have been implemented by means of amendment to the Planning Hazardous Substances Act 1990 and the Planning (Hazardous Substances) Regulations 1992 (SI 1982 No 656). Amendments have also been made to the Town and Country Planning (General

Development Procedure) Order 1995 (see endnote 4) and the Town and Country Planning (Development Plan) Regulations 1991 (see endnote 5). These amendments are made by the Planning (Control of Major-Accident Hazards) Regulations 1999 (SI 1999 No 981).

8. In this Circular, "the 1990 Act" means the Planning (Hazardous Substances) Act 1990, as amended by the Environmental Protection Act 1990, the Planning and Compensation Act 1991, and the Radioactive Substances Act 1993; "the principal Act" means the Town and Country Planning Act 1990; "the 1992 Regulations" means the Planning (Hazardous Substances) Regulations 1992 and the 1999 Regulations means the Planning (Control of Major Accident Hazards) Regulations 1999.

Endnotes

3. establishment means as defined in the Seveso II Directive, ie "establishment" shall mean the whole area under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures"

4. SI 1995 No 419

5. SI 1991 No 2794

Guide to the procedures

Purpose Of The Controls

9. The hazardous substances consent controls are designed to regulate the presence of hazardous substances so that they cannot be kept or used above specified quantities until the responsible 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 etc Act 1974 and its relevant statutory provisions (defined at s.53 of that Act) which are enforced by the Health and Safety Executive. Even after all reasonably practicable measures have been taken to ensure compliance with the requirements of the 1974 Act, there will remain a residual risk of an accident which cannot entirely be eliminated. These controls ensure that this residual risk to persons in the surrounding area and to the environment is properly addressed by the land use planning system.

10. Local planning authorities are able to exercise a degree of control over those substances through the development control system where the presence of hazardous substances 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 an application for planning permission. The hazardous substances consent provisions enable specific controls to be exercised over the presence of hazardous substances whether or not associated development is involved. Hazardous substances authorities 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

11. The requirement for hazardous substances consent does not override the need for planning permission to be obtained where 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 hazardous substances consent are required, two separate applications will be necessary and the respective statutory requirements must be followed. It may not be possible, or practicable, to act upon one authorisation without having obtained the other. Developers and local authorities will, so far as is possible, wish to ensure that related applications for hazardous substances consent and for planning permission are dealt with together. This will help ensure speedier resolution of the applications and will avoid unnecessary duplication in providing information.

12. This does not necessarily mean that similar decisions need be given on both applications, as there may be considerations which are material to one application but not to the other. For example, an authority 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 their role as local planning authority they may consider that

planning permission should be refused for associated development because of a wider planning consideration eg, the adverse effect of a proposed building on amenity, or inadequate access arrangements. In such circumstances, it would be perfectly proper for contrasting decisions to be made on the different applications.

13. Authorities will wish to ensure that any such related decisions are not mutually inconsistent, such as could arise from the imposition of conditions containing conflicting requirements. Furthermore, even where planning permission conditions do not actually conflict with hazardous substances consent conditions, differences in the detailed requirements may cause confusion. So far as possible, it will generally be desirable and appropriate for detailed control over the manner in which a hazardous substance is to be kept or used to be regulated by hazardous substances consent conditions.

Simplified Planning Zones (SPZ) And Enterprise Zones (EZ)

14. Although, in certain circumstances, development may be carried out on land within a SPZ or an EZ without the need for an express grant of planning permission, no exemption is provided in respect of hazardous substances consent. Therefore, where a proposal within such a zone would involve the presence of a hazardous substance at or above the controlled quantity, hazardous substances consent must be obtained in the normal way.

Hazardous Substances Authorities

15. Hazardous substances authorities are defined at s.1 and 3 of the 1990 Act (s.2 was repealed by s.162(2) and Schedule 16, part VII to the Environmental Protection Act 1990). These provisions are designed to ensure that the hazardous substances authority will usually be the same council or other body that would act as the local planning authority in dealing with any associated application for planning permission. This will help ensure consistency in the handling of any linked applications.

16. The hazardous substances authority will usually be the council of the district or London borough in which the land is situated. In England the hazardous substances authority is:

i. in Greater London, the London Boroughs (s.l);
ii. in Metropolitan areas, the metropolitan district council (s.l);
iii. in non-metropolitan areas, the district council (s.l) except where the land is used for mineral working or for waste disposal, in which case the county council is the hazardous substances authority (s.3);
iv. in National Parks, where a National Park authority is the planning authority for that National Park, that authority is the hazardous substances authority for land in that National Park (Environment Act 1995, Schedule 9, paragraph 14);
v. in the Norfolk and Suffolk Broads, the Broads Authority (s.3);
vi. in Housing Action Trust areas, the housing action trust under the Housing Act 1988 where it is the local planning authority for all kinds of development (s.3);

Isles Of Scilly

17. The effect of s.35 of the 1990 Act is to make the Council of the Isles of Scilly the hazardous substances authority in respect of all land in the Isles.

Hazardous Substances Consent

18. 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 (subsections (1) and (2) of s4 of the 1990 Act).

19. In determining the aggregate quantity (see paragraphs 30 -33) of the substance present on land (land A), 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, in all the circumstances (including in particular the purposes for which both areas of land are used) forms with land A, a single establishment (see s.4(2)(aa)). Subsections 2(b) and 2(c) of s.4 refer specifically to other land or structures which are within 500 metres of the land (for structures this includes any part which is within 500 metres) which is the subject of the application for consent, and which must always be included in any calculation to establish the aggregate quantity present. There is no precise limit to the distance that may exist between areas of land that may be considered to constitute a single "establishment" by virtue of subsection (2)(aa). In most cases it should be clear what constitutes the "establishment" having regard to all the circumstances. But, for example, in cases where facilities shared by other establishments are involved, this may be more difficult to establish.

20. The person in control of the land may not necessarily be the same person as the legal owner; for example a site may be under the control of a tenant under a short lease rather than the freeholder. Any two bodies corporate are to be treated as being one person if one is a subsidiary of the other, or both are subsidiaries of the same body corporate (s.39(3) of the 1990 Act).

Hazardous Substances And Controlled Quantities

21. The list of substances and controlled quantities for which hazardous substances consent is required is given in Schedule 1 to the 1992 Regulations as amended by the Planning (Control of Major-Accident Hazards) Regulations 1999. Hazardous substances are listed in column 1 of the Schedule and the relevant controlled quantity is listed in column 2.

22. The Schedule is in three parts. Part A comprises named hazardous substances. Part B applies to substances that fall within generic categories. Part C is designed to deal with a situation where a controlled quantity of a hazardous substance within either Part A or B of the Schedule may be present but *only as a result of a loss of control of an industrial chemical process*. In this latter case, the consent will be required for the substances used in the relevant industrial chemical process (see paragraphs 27 -29).

23. The substances included in Part A comprise all of the named substances from Part 1 of Annex I to the SEVESO II Directive. For these substances (numbered 1-32 in the Schedule) the controlled quantity is the lower qualifying quantity specified in the Directive except where

the same substance was previously subject to hazardous substances consent at a lower controlled quantity. In these cases that lower controlled quantity has been retained. Part A also includes hazardous substances not included as named substances in the Directive (those numbered 33-63 in the Schedule). These are substances that would generally fall within one of the categories of substances specified in Part 2 of Annex I to the SEVESO II Directive (Categories of Substances and Preparations). These substances previously required hazardous substances consent at controlled quantities lower than those which will apply to the generic categories of substances and preparations to which they would belong. Therefore, to maintain existing health and safety standards, these substances are being included as named substances and at controlled quantities that remain unchanged from those that 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 were considered within its category of substances (toxic) a consent would be required only for the presence of 50 tonnes or more.

24. Part B includes all of the categories of hazardous substances specified in Part 2 of Annex I to the SEVESO II Directive. The controlled quantities that apply are the lower qualifying quantities specified in the Directive for these categories of substances. Substances that were formerly subject to hazardous substances consent at controlled quantities equal to or greater than the relevant qualifying quantity from the Directive are included here. An example is acrolein (2-propenal) for which a hazardous substances consent was previously required for amounts above 200 tonnes. Acrolein is classified as a toxic substance for which the controlled quantity is 50 tonnes, so a consent is now required at the lower level.

25. 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 for 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 of this 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 1).

26. Where a substance which is not a named substance 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 1).

27. Part C of the Schedule is designed to deal with a situation in which hazardous substances listed in Part A or that fall within a category in Part B may be present in a quantity at or above controlled quantities *only during loss of control of an industrial chemical process.* This is the kind of incident that gave rise to the Seveso directive. An example of when Part C might apply is given below.

28. Substances W, X and Y may be used in a chemical process to produce, under normal controlled operating processes, substance Z. Under such circumstances, the operator would not need a hazardous substances consent, if the substances either do not fall within Parts A or B of the Schedule or, if they do, are not present at or above their controlled quantity. However, if in the event of a loss of control of the 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 S might be

produced at a quantity at or above its controlled quantity, a consent will be required for substances W, X and Y.

29. It is *not* intended that the hazardous substances authority should grant consent for the hazardous substances generated during a loss of control of the industrial chemical process. The requirement is for the operator to obtain consent for the presence of the substance(s) which are used in that chemical process. The controlled quantity for the process substances will be the quantity whose presence, alone or in combination with other substances used in the process, 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 to predict accurately the type and quantity of substance that may be generated if there is a loss of control of an industrial chemical process. Nonetheless it is important that they attempt to do so and, as necessary, obtain a consent.

Aggregate Quantities

30. Generally, a consent will always be required when the aggregate quantity of a hazardous substance is present in an amount equal to or greater than its controlled quantity. (In some circumstances small quantities of hazardous substances not exceeding 2% of the controlled quantity may be discounted so the controlled quantity could be exceeded without a need for consent - see paragraphs 92-93).

31. 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 SEVESO II Directive, the aggregation of 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 1).

32. 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 1). Where a number of substances which represent a similar type of hazard, eg 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/Category	*Amount present*	*Controlled Quantity*
bromine	21.00 tonnes	20.00 tonnes 10.00
chlorine	3.00 tonnes	tonnes
hydrogen selenide	0.50 tonnes	1.00 tonnes 5.00

very toxic	1.00 tonnes	tonnes
toxic	5.00 tonnes	50.00 tonnes

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 1. 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 33 below for an explanation of the controlled quantity used for this substance in this calculation.)

Example 2

The following substances are present together at an establishment

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 tonnes
ethylene oxide	2.00 tonnes	5.00 tonnes
propylene oxide	1.00 tonnes	5.00 tonnes
very toxic	1.00 tonnes	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 that 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 1. 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 sum of these fractions is 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 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 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.

33. The controlled quantity to be used in the addition rule is that listed in column 2 of either Part A or Part B of Schedule 1 to the Regulations, subject to the following exception. Where, for substances in Part A of Schedule 1, a separate, *greater* quantity is shown in column 3 that quantity will be the controlled quantity *only for the purposes of the addition rule*. As explained in paragraph 26, 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 SEVESO II Directive for the same named substance or category of substance. To ensure consistency with the HSE COMAH Regulations the (higher) controlled quantities specified in the Directive are used in the addition rule even though a lower controlled quantity has been retained in deciding whether consent is required. To do otherwise might mean that operators had to obtain hazardous substances consent even though the establishment would not fall within the scope of the Seveso II Directive.

Applying For Hazardous Substances Consent

34. Applications will be made to the relevant hazardous substances authority.

35. Before an application for hazardous substances consent is made, publicity has to be given to the application by way of a notice in a local newspaper; a site notice; and a notice to any persons other than the applicant who is an owner of the land in question (see endnote 6). The notices have to be in accordance with forms prescribed at Schedule 2 to the 1992 Regulations. This provides the opportunity for representations to be made to the hazardous substances authority. The applicant is required, during the periods afforded for representations, to make a copy of the application available for inspection in the locality.

36. An application for consent has to be made on either Form 1 or Form 2, prescribed at Schedule 2 to the Regulations. The use of prescribed forms is to ensure consistency; to help those authorities who receive very few applications; and to ensure that HSE and the Environment Agency receive the information they need to carry out a proper assessment of the risks arising from a particular proposal. 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. Hazardous substances authorities should ensure they have an adequate supply of all the prescribed forms. It is open to applicants, if they so wish, to apply on forms they have produced themselves, provided that such forms accord with the prescribed format.

37. In submitting an application, applicants are required to list first any named substances appearing in Part A of Schedule 1 for which they are applying for a hazardous substances consent, then those in Part B and finally those in Part C. Where they are applying for a consent in respect of substances falling within Parts B or C of the Schedule, they may list them under the relevant category or description or they may choose to list them specifically by name. While this may not always be practicable, applicants should be encouraged to list the individual substances and amounts for which consent is being sought. This will ensure HSE and the Environment Agency are better able to assess any risks from the proposed presence of the hazardous substances and to apply appropriate conditions. For risk assessment purposes, HSE will treat unspecified generic substances on the basis of exemplar substances within each

category.

38. Where a hazardous substances authority in England wishes to obtain a hazardous substances consent itself, it will apply to the Secretary of State for the Environment, Transport and the Regions. The application should include the information required by the prescribed form and by Regulations 5-8 of the 1992 Regulations (see Regulation 26 of the 1992 Regulations). The application, accompanied by the appropriate fee payment required by Regulation 24, should be made to the appropriate Government Office for the Regions.

Determination Of Applications By The Hazardous Substances Authority

39. Unless the applicant agrees to an extended period, hazardous substances authorities have 8 weeks from receipt of a valid application in which to determine it. 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 Secretary of State for the Environment against the hazardous substances authority's failure to determine the application (Regulation 11 (3) of the 1992 Regulations and s.21 (2) 1990 Act).

40. Before determining a consent application, the hazardous substances authority is required to consult the Health and Safety Executive, the Environment Agency and the other bodies set out in Regulation 10 (see endnote 7). These include fire and civil defence authorities, other relevant planning authorities and public utilities. Where it appears to the hazardous substances authority that an area of particular natural sensitivity or interest may be affected, the Nature Conservancy Council for England must be also consulted. The hazardous substances authority must give consultees not less than 28 days to comment (Regulation 11).

41. The role of HSE and the Environment Agency is to advise the hazardous substances authority on the risks arising from the presence of hazardous substances. HSE has the expertise to assess the risks arising from the presence of a hazardous substance to persons in the vicinity; the Environment Agency has the expertise to assess and advise upon the likely risks arising to the environment. However, the decision as to whether the risks associated with the presence of hazardous substances, either to persons or to the environment, are tolerable in the context of existing and potential uses of neighbouring land is one which should be made by an elected authority (the hazardous substances authority).

42. When the hazardous substances authority has reached a decision, it is required to notify it to the applicant, the Health and Safety Executive, the Environment Agency, owners who have made representations, any other consultees who have made representations to it, and the appropriate district, London borough or county council where that council is not also the hazardous substances authority. If it refuses consent, or grants it subject to conditions, the hazardous substances authority is required to give full reasons for the decision, including any conditions, and to refer to the right of appeal to the Secretary of State (Regulation 11 of the 1992 Regulations).

43. Where an application relates to more than one substance, the hazardous substances authority may make different determinations in relation to each substance (s.9(3) of the 1990 Act).

44. When granting consent the hazardous substances authority 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 anyone time (s.9(4) of the 1990 Act). Without prejudice to the hazardous substances authority's general power to impose conditions (s. 9(1)), particular provision is made about the conditions that may be imposed (s.10(1)). It should be noted that any condition relating to how a hazardous substance is to be kept or used may be imposed only if HSE has advised that any consent should be subject to such condition(s). It is for the hazardous substances authority to enforce such conditions and not HSE (see also paragraph 115).

45. Where a hazardous substances authority is considering imposing a condition restricting where a substance may be present within a site, it should try to avoid imposing undue restrictions on the presence of relatively small amounts of that substance elsewhere on the site. For example, for the purposes of the standard conditions of *deemed* consent, Regulation 16(1) provides that a hazardous substance can be stored in a moveable container in a different area of a site from where it has previously been so stored, provided the quantity of the substance stored in that area does not exceed 10 per cent of the substance's controlled quantity. This avoids the situation whereby the presence of a relatively small amount of the substance in a moveable container in a different part of the site - perhaps merely to service a staff kitchen - would breach the standard conditions. Authorities may wish to consider adopting a similar approach, and make a suitable exemption, where they wish to impose conditions restricting the location of a substance within a site. Otherwise the effects of the condition may be unduly onerous and therefore unreasonable. Hazardous substances authorities should also note that small amounts of a hazardous substance - those that do not exceed 2% of the substance's controlled quantity - may under certain circumstances be disregarded when calculating the amount of hazardous substances present at a site (see paragraph 94).

Development Plans

46. In considering hazardous substances consent applications, or planning applications for development at or in the vicinity of sites at which hazardous substances are present, authorities must have regard to the provisions of the development plan, so far as it is material to the application (s.9 of the 1990 Act).

47. To implement the requirements of Article 12.1 of the SEVESO II Directive, Regulation 20 of the Town and Country Planning (Development Plan) (England) Regulations 1999 (see endnote 8) requires that in formulating their general policies in Part 1 of a unitary development plan, local planning authorities shall have regard to the objectives of the Directive. These are:

> *to prevent major accidents and limit the consequences of such accidents for man and the environment;*
>
> *in the long term, to maintain appropriate distances between establishments and residential areas, areas of public use and areas of particular natural sensitivity or interest; and,*
>
> *in relation to existing establishments, for additional technical measures so as not to*

increase risks to people.

Guidance is also provided in PPG 12.

Called-In Applications And Appeals To The Secretary Of State

48. Under s.20 of the 1990 Act, the Secretary of State can require an application to be referred to him for his own determination. This should be very much the exception. It might arise where, for instance, an associated application for planning permission is being called-in; or where a hazardous substances consent application raises matters of exceptional importance in its own right. If they are minded to grant consent (or planning permission) against the advice of the Competent Authority, hazardous substances (and local planning) authorities are requested to give the Competent Authority prior notification and to allow them 21 days in which to consider whether to ask the Secretary of State for the Environment, Transport and the Regions to call-in the application.

49. Appeals under s.21 of the Act can be made to the Secretary of State against the hazardous substances authority's failure to determine an application within the prescribed period; or against a decision of the hazardous substances authority to

i. refuse to grant hazardous substances consent; or
ii. refuse to grant any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent; or
iii. grant hazardous substances consent subject to conditions.

Appeal forms are available from the Planning Inspectorate, Tollgate House, Houlton Street, Bristol BS2 9DJ.

50. Where a hazardous substances consent application or appeal comes before the Secretary of State under s.20 or 21, the applicant/appellant and the hazardous substances authority will have a right to be heard before an appointed person. The hearing will normally take the form of a public local inquiry. Furthermore, the Secretary of State may cause a local inquiry to be held even where the principal parties do not exercise that right, if he considers that this would be the most appropriate means of determining the case. For these inquiries, the spirit of the Town and Country Planning (Inquiries Procedure) Rules 1992 will be followed, as appropriate. Where an inquiry is not asked for and the Secretary of State does not propose to hold one, the appeal will be determined following exchanges of written representations and a site visit. It is intended that the procedure for such cases should generally follow the spirit, of the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (see endnote 9).

Endnotes

6. "owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.
7. the requirement to consult does not apply where a body (except for HSE, Environment Agency and in certain circumstances the Nature Conservancy Council for England has indicated that they do not wish to be consulted.
8. SI 1999 No 3280

9. SI 1987 No 701

Transitional provisions consequent upon changes made by the Planning (Control of Major-Accident Hazards) Regulations 1999

Deemed Hazardous Substances Consent

51. Section 11 of the 1990 Act contains provisions which 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 1999 came into force (20 April 1999). This period of 12 months is referred to as the "establishment period" (s.ll (8) of the 1990 Act as applied by Regulation 4 of the 1999 Regulations). 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 hazardous substances authority.

52. Claims for deemed consent had to be made to the appropriate hazardous substances authority within 6 months of the date when the Planning (Control of Major Accident Hazards) Regulations 1999 came into force. They must be made on the form prescribed for this purpose at Schedule 2 to the Regulations (Form 8) 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.

53. Deemed consent is subject to standard conditions set out at s.ll (7)(a) of the 1990 Act, as applied by Regulation 4 of the 1999 Regulations, and at Schedule 3 to the 1992 Regulations. Those at s.11(7)(a) control the maximum aggregate quantity of a hazardous substance(s) that may be present under the terms of the deemed consent. Those at Schedule 3 to the 1992 Regulations 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 hazardous substances authority having the opportunity to exercise detailed control.

Standard Conditions Applying To Deemed Contents: Established Quantity

54. Under the first standard condition (s.11 (7)(a) as applied by Regulation 4 of the 1999 Regulations) the maximum aggregate quantity of a substance that may be present on, over or under the land must not at anyone time exceed the established quantity. The established quantity means the maximum quantity which was present on, over or under the land at anyone time within the "establishment period" (see paragraph 51). In other words, the maximum amount which was present during the 12 months prior to 20 April 1999. The land referred to here includes other land controlled by the same person and within 500 metres of the land, any structure controlled by the same person any part of which is 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 19).

Standard Conditions Applying To Deemed Consents: Area Where A Substance May Be Present

55. For each substance included in a 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 per cent of the controlled quantity of the substance has been stored in moveable containers during the establishment period. 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 during that period (ignoring vessels in which no more than 10 per cent of the controlled quantity of the substance has been present) (see Regulation 14 and Form 8 in Schedule 2).

56. Regulation 14(4) 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(4)(b), 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 (automotive petrol and other petroleum spirit), Regulation 16(2) enables a vessel identified in a petroleum-spirit licence 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.

57. Having regard to the areas so identified for each substance, the standard location conditions at paragraphs 6 and 7 of Schedule 3 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 6 of Schedule 3, no account is to be taken of the presence in a vessel of no more than 10 per cent of the substance's controlled quantity. Similarly, for the purpose of the condition at paragraph 7(1) of Schedule 3, 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 per cent of its controlled quantity (see Regulation 16(1) and (3)). 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

58. The information required in Part 4, Table B of the deemed consent claim form (Form 8) will establish the manner in which a substance was present during the establishment period. The standard conditions at paragraphs 1 to 5 of Schedule 3 to the Regulations regulate how a substance may be present in a vessel within a vessel area under the terms of a deemed consent. They relate directly to the information given by the claimant in Table B. These conditions ensure that a substance can be kept or used within a vessel area only in the

manner in which it was kept or used within that same vessel area during the establishment period (as indicated by the information given in Table B).

59. For every substance covered by the claim, the claimant must give separate information 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 1 to 6 of Schedule 3. 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 per cent of the controlled quantity.

60. The conditions in paragraphs 1 to 6 of Schedule 3 will operate in the following way. The substance will either be kept or used

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.

61. If it is intended to store a substance at ambient temperature, it will be necessary for the conditions at either paragraphs 2 or 3 of Schedule 3 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 4 or 5 of Schedule 3 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.

62. 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, a hazardous substance shall not be stored in a moveable container area in a moveable container whose capacity exceeds 10% of the controlled quantity for that substance unless, during the establishment period, it was stored in such a container. In any event, it shall not be stored in a moveable container with a capacity greater than that of the largest container in which it was stored during the establishment period. The conditions relating to deemed consents claimed in 1992 allowed for up to twice the maximum quantity of the substance stored in moveable containers during the establishment period to be stored in a moveable container storage area. The conditions attached to consents claimed following introduction of the 1999 Regulations now allow only for up to the maximum amount held in moveable containers. Please note that this does not affect the conditions attached to deemed consents claimed in 1992.

Hazardous Development Authorised Before The Planning (Control Of Major-Accident Hazards) Regulations 1999 Came Into Effect

63. The situation may arise where planning permission has been granted for a development 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 deemed hazardous substances consent is not available because the substances concerned have not been present at the site during the establishment period. In this situation hazardous substances authorities would be expected to give sympathetic consideration to any application for hazardous substances consent subsequently made which is in line with the terms of the planning permission. Consent: should not normally be withheld unless there are compelling reasons for such a decision, involving a significant change in the material circumstances.

Deemed consent

Hazardous Substances Consent Granted By Virtue Of Authorisation Of A Government Department (s.12)

64. Where a development by a statutory undertaker or local authority requires the authorisation of a government department, and the development would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the department concerned may, on granting that authorisation, direct that hazardous substances consent is deemed to be granted, subject to any conditions that may be specified in the direction. The term "government department" includes any Minister of the Crown. This section is similar in effect to s.90 of the principal Act relating to deemed planning permission. The intention is that all relevant approvals for such projects should be considered at the same time as the application for authorisation. The department concerned must consult the Health and Safety Executive before making a direction that hazardous substances consent is deemed to be granted, and will be expected to ensure administratively that other appropriate consultations take place, including with the relevant local authority and the Environment Agency.

Variation and revocation of consents

Applications To Remove Conditions (s.13)

65. Section 13 of the 1990 Act relates to applications for the removal of a condition (or conditions) attached to a previous grant of hazardous substances consent. 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 re-locate; or a condition may require the removal of a substance by a certain date and the applicant may subsequently have good reasons for continuing to use that substance after that date. *In considering such an application. the hazardous substances authority can consider only the conditions - it cannot overturn the original decision*. Thus, an operator can apply for a condition to be varied or removed without calling into question the principle of the consent. If the hazardous substances authority decide that the conditions to which the consent is subject should be varied or removed altogether, it must grant a new consent. Where it decides that the conditions attaching to the consent should not be changed, the application must be refused, but the original consent remains.

66. These provisions apply to the standard conditions attaching to a deemed consent as well as to conditions attached to a consent specifically granted by a hazardous substances authority. So, if a site operator wishes to secure a change to 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 s.13.

67. By virtue of s.13 (5), where there is consent for more than one substance the hazardous substances authority may have regard to a condition relating to a substance to which the application does not relate only 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 subsection (6) where more than one consent has been granted in respect of the same land.

Applications To Continue A Consent After Change In Control Of Part Of The Land (s.17)

68. Section 17 of the 1990 Act 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 under s17. This provision is designed to avoid inappropriate results. For example, an operator has a consent to keep hazardous substances at a site that includes a staff sports ground. The sports ground is at the outer perimeter of the site, well removed from the process plant and no hazardous substances are ever present there. If the operator sells only the sports ground it may be inappropriate that the

consent should be split proportionally between the owners. 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.

69. Section 18(1) empowers the hazardous substances authority to modify or revoke a consent which is subject to a s.17 (1) application. Where it does, s.19 entitles the person who controlled the whole of the land before the change in control to be compensated for any loss or damage sustained and directly attributable to the modification or revocation. It is likely that a hazardous substances authority 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 a typical case, where the consent has to be modified to refer to only one part of a property that has been divided, it seems unlikely that a sensible modification will normally give rise to any claim to compensation.

70. Applications to be determined under s.13 or 17 will be made on Form 2 at Schedule 2. 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. The same publicity and consultations procedures as for applications for a new consent will therefore apply (Regulation 5 (10)). These applications may also be called in under s.20 and adverse decisions appealed against under s.21. There is no right of appeal against the failure of an authority to determine a s.17 application within the prescribed period, or any agreed extended period, because any such failure means that the application will be deemed to have been granted (s.18(7) of the 1990 Act).

Revocation Or Modification Of Hazardous Substances Consent

71. Section 14 of the 1990 Act gives hazardous substances authorities the power to make an order revoking or modifying a hazardous substances consent. The Secretary of State must confirm such an order before it can take effect. Subsection (1) gives a general power to authorities to revoke or modify a consent where they consider it expedient to do so; subsection (2) sets out particular circumstances in which a consent may be revoked. An important distinction is that with orders made under subsection (1) (but not orders made under subsection (2)) a person suffering damage as a result may be entitled to compensation in the circumstances described in s.16.

72. As with planning permission, hazardous substances consent 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. It may be undesirable for a hazardous substances consent which has fallen into disuse to continue to have effect, however, as it could restrict unnecessarily the uses to which neighbouring land can be put. Moreover, a hazardous substances consent for the presence of a substance in connection with a particular use of land may not necessarily be apt in respect of other uses. When there is a material change in the use of the land it may therefore be undesirable for a hazardous substances consent to continue to have effect. The general effect of s.14(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 subsection (4) that an order must 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.

73. Section 15 sets out the procedures for confirmation of revocation and modification orders. These are modelled on the procedures for confirming orders that revoke or modify planning permission (under section 98 of the principal Act). Subsection (2) enables the Secretary of State to confirm an order with or without modifications. Subsection (3) requires the hazardous substances authority to serve notice of an order on any person who is an owner, or is otherwise in control of the land or any other person who it considers will be affected. Those served with the notice must be given at least 28 days in which they can require the Secretary of State to afford them and the hazardous substances authority an opportunity of being heard before an appointed person. In effect, this provision will ensure that an opposed order will normally be considered at a public inquiry.

Fees For Hazardous Substances Consent Applications

74. An application for hazardous substances consent must be accompanied by the appropriate fee, as set out in Regulation 24. The fees should enable recovery of local authorities' normal administration costs in handling consent applications.

75. 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 that exceed 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 the more detailed the consideration likely to be necessary. A flat rate of £200 applies for applications for removal of conditions and continuation of consent where hazardous substances consent already exists.

76. Hazardous substances authorities may have received claims for deemed consent. As deemed consent is an entitlement which does not require a decision from the local authority, no fee is chargeable.

Registers Of Applications And Consents

77. Section 28 of the 1990 Act (as amended by Schedule 13 and Schedule 16, Part VII to the Environmental Protection Act 1990) requires every hazardous substances authority to keep a register containing information about applications for hazardous substances consent, and applications for continuation of consent under s.17; the decisions given on such applications; consents deemed to have been granted under s.ll or 12; revocations and modifications of consents; and directions made in an emergency under s.27. Regulation 23 of the 1992 Regulations sets out the detailed requirements for the manner in which the register should be kept.

78. An annual bulletin will be published of the numbers of applications received and determined, and the nature of the decisions given. This will be compiled from information supplied by hazardous substances authorities to HSE when they consult on applications for consent, and notify the Executive of subsequent decisions. It is important therefore that hazardous substances authorities notify decisions to HSE as quickly as possible after they are taken. Hazardous substances authorities should also notify HSE of every claim made for a deemed hazardous substances consent.

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Health And Safety Requirements

79. By virtue of s.29 of the 1990 Act, 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.

80. The terms "relevant statutory provisions", "improvement notice" and "prohibition notice" are given the same meaning as in Part 1 of the Health and Safety at Work etc Act 1974(HSWA) The term "relevant statutory provisions" is defined at s.53 of HSWA as meaning the provisions of Part 1 of that Act and any health and safety regulations; and the existing statutory provisions specified in Schedule 1 to the HSWA (which includes numerous statutes such as the Petroleum (Consolidation) Act 1928) and Regulations, orders and other instruments of a legislative character made or having effect under any of those enactments. The Notification of Installations Handling Hazardous Substances Regulations(NIHHS) and SEVESO II Regulations are "relevant statutory provisions".

81. In developing and operating any installation or pipeline, operators are under a general duty under the HSW A to ensure the health and safety of their employees and others, so far as is reasonably practicable. Depending on the nature of their activities they could be subject to a range of specific requirements imposed by other health and safety legislation, as referred to above. Furthermore, the HSWA empowers HSE inspectors to serve improvement notices and prohibition notices. Improvement notices require action to be taken within a specified time to remedy a contravention of health and safety requirements. Where there is a risk of serious personal injury, a prohibition notice can stop an activity immediately or prohibit a new activity

from commencing.

82. Safety must be an overriding concern. If, therefore, in exercising its powers under the 1990 Act, a hazardous substances authority permits or requires something to be done which is (or which becomes) contrary to any of the "relevant statutory provisions" or any prohibition or improvement notice served under any of those provisions, s.29 is designed to ensure that those safety provisions will prevail. Where a hazardous substances authority has reason to believe (perhaps as a result of representations from a site operator) that a consent or contravention notice, or part of it, is rendered void, it must consult the Health and Safety Executive as soon as is reasonably practicable. If HSE advises that the consent or notice is rendered wholly void, the hazardous substances authority must revoke it; if the advice is that part of the consent or notice is rendered void, the hazardous substances authority must so modify it as to render it wholly operative. Since revocations or modifications under this section are made for overriding safety reasons they do not attract any entitlement to compensation.

Exemptions from hazardous substances consent requirements

83. Regulation 4 of the 1992 Regulations sets out circumstances in which hazardous substances consent is not required, as exceptions to normal requirements.

Temporary Presence During Transportation

84. Section 4(3) of the Act 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 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.

85. 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 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.

86. The term "temporary presence" is not defined in the Act. 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 hazardous substances authority 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.

87. The exemption in Regulation 4(1) complements that in s.4(3) of the Act, 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 s.4(3) 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); where a substance has effectively gone into storage it would not be covered by this exemption.

Pipelines

88. The hazardous substances consent system does not apply to controlling the presence of substances in local or cross-country pipelines. Existing controls relating to such pipelines, as set out in the Pipe-lines Act 1962 (see endnote 10) and the Pipelines Safety Regulations 1996 (see endnote 11), 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 public gas undertaking's supply pipelines, however, it is considered that it would be 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).

Maritime Emergencies

89. 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) exempts from hazardous substances consent requirements the presence 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

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

Hazards Created By Ionising Radiation

91. The consent procedure does not apply to the presence of a hazardous substance which also creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of s.l of the Nuclear Installations Act 1965. However, hazardous substances present at sites licenced 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")

92. Regulation 4(6) 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 1992 which requires risk assessments to be made of the danger arising from the presence of these substances at the site and for these to be submitted to HSE. Site visits by HSE inspectors will seek to ensure the exemption is not being abused.

93. For the purposes of hazardous substances consent this exemption does *no*t 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 by HSE to have the potential to create 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.

Explosives

94. 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 (see endnote 12) are excluded from the list (see paragraphs A19-A21 of Annex A).

95. 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 present at a site they could combine to make it necessary for them to be subject to a consent.

Endnotes

10. 10 and 11 Eliz. II chapter 58
11. SI 1996 No 825
12. SI 1987 No 37

Emergencies

96. Section 27 of the 1990 Act enables the Secretary of State 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 hazardous substances consent would be required - the Secretary of State 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 Health and Safety Executive will normally be consulted before these powers are used.

Crown land

97. Like planning control, hazardous substances control does not apply to the Crown. 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 hazardous substances consent application should be followed, but on a non-statutory basis. This would be consistent with the practice adopted for development control purposes as set out in Part IV of Circular 18/84 and would ensure that any associated request for the local authority's views on a related development proposal could be considered at the same time. The Crown body concerned will be expected to carry out similar publicity procedures to those required by Regulations 6-8 of the 1992 Regulations, following which they should send to the hazardous substances authority for that area two completed copies of Form 1 at Schedule 2 to the Regulations - marked "Notice of Hazardous Substances Proposal by Crown body" together with associated plans. The hazardous substances authority will be expected to carry out the same consultations as it would for a statutory application, and to send its view on the proposal to the Crown body concerned within 8 weeks of receipt, unless an extension of time has been agreed. Similar procedures to those set out at paragraphs 19 to 25 of Part IV of Circular 18/84, in respect of development proposals by Crown bodies, should be followed.

98. Where a non-Crown body or person has an interest in land in which the Crown also has an interest, that person or body is subject to the requirements of the provisions for hazardous substances control. By virtue of s.31 (2) of the 1990 Act, a hazardous substances authority may make a revocation or modification order under s.14; or issue a contravention notice under s.24; or apply for an injunction under s.26AA in relation to such land only with the consent of the "appropriate authority". The appropriate authority for this purpose is the Crown body which has an interest in the land, as specified in s.31(5).

99. A hazardous substances authority may, under s.32, 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

Alternative Methods Of Enforcement

100. A hazardous substances authority has several courses of enforcement action available under the 1990 Act to deal with a contravention of hazardous substances control. Under s.23 such contravention is an offence which it may prosecute. Alternatively, s.24 provides for the issue of a hazardous substances contravention notice specifying the steps to be taken to rectify a contravention of control. Furthermore, s.26AA, inserted by Schedule 3 to the Planning and Compensation Act 1991, enables the hazardous substances authority to apply for an injunction in respect of an actual or expected contravention of control. The circumstances in which there is a contravention of hazardous substances control are specified in s.23(2).

101. Where a hazardous substances authority has identified a breach of control it should, before issuing a hazardous substances contravention notice, consider first of all whether it is expedient and appropriate to do so, having regard to any material consideration. For more serious breaches of control, the hazardous substances authority may consider that direct prosecution or injunctive proceedings should be undertaken instead. Or there may be instances - for example, where a breach of control has been unintentional - where the hazardous substances authority may be able to secure early remedial action without recourse to statutory action (if need be, by drawing the offender's attention to the powers available to them). Since the controlled quantities of hazardous substances have been set at amounts at or above which it is considered that major hazards could arise to persons in the surrounding area, or to the surrounding environment itself, authorities should be mindful of the serious risks that may arise if prompt and effective action is not taken.

Offences

102. Section 23(1) of the 1990 Act provides that, subject to the provisions of that section, if there is a contravention of hazardous substances control the appropriate person is guilty of an offence. The rest of the section specifies when there is a contravention of control; identifies the appropriate person who may be guilty of an offence; specifies penalties, and provides for appropriate defences.

103. Where a hazardous substance is present at or above the controlled quantity without consent, or where the quantity of the substance present exceeds the maximum permitted by a consent, any person in control of the land or any person who knowingly causes, or who allows, the substance to be present is guilty of an offence. Where there is a failure to comply with a condition attached to a consent, the person in control of the land is guilty of an offence. It should be noted that where the person committing an offence is a body corporate, s.331 of the principal Act (as applied by s.37 of the 1990 Act) provides that a director, manager, secretary or other similar officer of that body whose consent, connivance or negligence contributed to the commission of the offence may also be prosecuted.

104. The maximum penalty on summary conviction of an offence under s.23 is £20,000, in

view of the amendments made to that section by paragraph 10 of Schedule 3 to the Planning and Compensation Act 1991; and the penalty on conviction on indictment is an unlimited fine. Subsections (5) to (7) of s.23 provide statutory defences in the event of any proceedings under that section.

Hazardous Substances Contravention Notices-General

105. Section 24 of the 1990 Act, as amended by Schedule 3 to the Planning and Compensation Act 1991, gives hazardous substances authorities the power to issue a hazardous substances contravention notice where there has been a contravention of control (except where it appears that the contravention could be avoided only by the taking of action which amounts to a breach of a statutory duty - see s.24(3).

106. An offence is committed if a contravention notice is not complied with after it has taken effect. There may be delays, though, before a notice comes into effect because the procedure includes a right of appeal to the Secretary of State against its requirements. As the unauthorised presence of a hazardous substance could have serious and immediate consequences, the offence provided by s.23 enables the hazardous substances authority, when satisfied that a contravention of control has knowingly been committed, to bring an offender to court relatively quickly, should it consider such action to be in the public interest.

107. The provisions of s.24 have been modelled, so far as appropriate, on those enabling local planning authorities to issue planning enforcement notices under s.l72 and 173 of the principal Act. The provisions applying to appeals against hazardous substances contravention notices and determination of such appeals are also similar to those in respect of planning enforcement notice appeals. In pursuance of the enabling powers in s.25 of the 1990 Act, the 1992 Regulations apply the provisions of s.174 to 181, and 188, of the principal Act with appropriate modifications. More detailed guidance about the operation of these sections, as amended by the Planning and Compensation Act 1991, is given in DOE Circular 10/97.

Enforcement - Liaison With HSE

108. Enforcement of hazardous substances consent controls is the responsibility of hazardous substances authorities. They should liaise with the Health and Safety Executive where:

a. hazardous substances appear to be present in contravention of the controls in circumstances which give rise to health and safety concerns, where HSE may wish to consider whether enforcement action is also appropriate under the Health and Safety at Work etc Act 1974;
b. it is necessary to establish that the requirements of a hazardous substances contravention notice would not conflict with the requirements of health and safety legislation; or
c. the action to be taken may be influenced by HSE's advice on the residual risk.

In any event, where a hazardous substances contravention notice is issued, authorities are

requested to send a copy of the notice to the HSE Area Office for information.

Issue And Service Of A Hazardous Substances Contravention Notice

109. By virtue of s.24 of the 1990 Act and Regulation 17 of the 1992 Regulations, a hazardous substances contravention notice must:

a. identify the land to which it relates, whether by reference to a plan or otherwise;
b. specify the alleged contravention of hazardous substances control;
c. specify the steps required by the authority to be taken to remedy, wholly or partly, the contravention of control (which may include the removal of a substance from the land);
d. specify the date on which it is to take effect, which must be not less than 28 days from the date of service of copies of the notice; and
e. specify a further period within which each required remedial step is to be taken.

Service of the notice must be accompanied by a statement setting out the hazardous substances authority's reasons for issuing the notice, and giving information about the right of appeal to the Secretary of State.

110. Section 24 and Regulation 17 provide that a copy of a hazardous substances contravention notice must be served on the following persons:

a. the owner of the land to which it relates;
b. any person other than the owner who appears to the hazardous substances authority to be in control of the land; and
c. any other person who has an interest in the land which, in the hazardous substances authority's opinion, is materially affected by the notice.

111. Under s.24(8), as amended by Schedule 3 to the Planning and Compensation Act 1991, the hazardous substances authority may withdraw a notice at any time before or after it takes effect. Where it does so, it should immediately notify the withdrawal to every person who was served with a copy of the notice, or who would be so served if the notice were re-issued.

Appeals against hazardous substances contravention notices

112. Any person having an interest in the land to which the notice relates, or a relevant occupier, may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him. (A "relevant occupier" means a person who, on the date on which the notice is issued occupies the land by virtue of a licence and continues to so occupy the land when the appeal is brought). The appeal must be made before the notice takes effect, and may be made on any of the grounds set out at paragraph 1 (b) of Schedule 4 to the 1992 Regulations.

Transitional immunity

113. Section 26 of the 1990 Act, as amended by Schedule 3 to the Planning and Compensation Act 1991, and as applied by Regulation 4(3) of the 1999 Regulations provides that during a transitional period of six months following the commencement of the amended controls, no offence is committed under s.23 and no hazardous substances contravention notice may be served in the circumstances specified. In effect, the transitional exemptions in this section apply where the substance was present on, over or under the land during the establishment period, consent was either not required for the substance or the quantity present during that period and it was not present during that period in a quantity greater in aggregate than the established quantity.

114. The terms "establishment period", "established quantity", "relevant date" and "transitional period" have the same meanings as in s.ll, as applied by Regulation 4(2) of the 1999 Regulations relating to deemed consents.

Local Authority Financial And Manpower Implications

115. The costs of administering the consent procedure will vary between local authorities, as installations handling hazardous substances tend to be concentrated in certain areas. On the evidence of 6 years during which the hazardous substances consent procedure has been in place, it is considered unlikely that there will be more than a hundred new applications for hazardous substances consent each year throughout England and the effect on most authorities will be negligible.

Annex A - Inter-Relationship of Hazardous Substances Consent with Planning Permission and Other Controls

Health and Safety Executive's advisory role

A1. HSE's role in the land use planning system is to provide local authorities with advice on the nature and severity of the risks presented by major hazards to people in the surrounding area so that those risks can be given due weight, when balanced against other relevant planning considerations, in making planning decisions. This role is recognised by the requirement at Article 10 of the General Development Procedure Order (GDPO) (see endnote 13) for HSE to be consulted on:

- proposed development involving the siting of new establishments where hazardous substances may be present; or
- modifications to existing establishments which could have significant repercussions on major accident hazards; or
- proposed development that is in the vicinity of existing hazardous installations and pipelines where the siting is such as to increase the risk or consequences of a major accident; or
- development within an area that has been notified to the local planning authority by the Health and Safety Executive because of the presence of hazardous substances and which involves residential accommodation, or more than 250 square metres of retail floor space, or more than 500 metres of office floor space, or more than 750 metres of floor space to be used for an industrial purpose or which otherwise is likely to result in a material increase in the number of people working within or visiting the notified area.

There is also a requirement for HSE to be consulted on every application for a hazardous substances consent. HSE may advise either on a case-by-case basis or, for certain more straightforward proposals, through the issue of generic guidance.

A2. Where HSE is consulted on developments in the vicinity of major-accident hazard sites, it should be provided with a 1/10,000 map with the development and site/pipeline clearly marked. Copies of the application forms/plans showing the distance in metres from the proposed development to the boundary of the major hazard site/pipeline should also be provided.

A3. HSE's role is an advisory one. It has no power to direct refusal of planning permission or of hazardous substances consent. Where HSE advises that there are health and safety grounds for refusing, or imposing conditions on, an application, it will, on request, explain to the local planning or hazardous substances authority the reasons for their advice. Where that advice is material to any subsequent appeal, it is prepared to provide expert evidence at any local inquiry.

A4. HSE's advice to planning authorities in respect of proposed developments in the vicinity of

hazardous installations is based on the following general principles:

- the risk considered is the residual risk which remains after all reasonably practicable preventive measures have been taken to ensure compliance with the requirements of the Health and Safety at Work etc Act 1974 and its relevant statutory provisions;
- where it is beneficial to do so, HSE's advice takes account of risk as well as hazard -that is the likelihood of an accident as well as its consequences;
- account is taken of the size and nature of the proposed development, the inherent vulnerability of the exposed population and the ease of evacuation or other emergency procedures. Some categories of development (eg, schools and hospitals) are regarded as more sensitive than others (eg, light industrial). HSE weight their advice accordingly, enabling it to advise planning authorities on appropriate uses of land within the consultation distances they recommend are established around major hazard sites; and,
- HSE considers the risk of serious injury, including that of fatality, attaching particular weight to the risk where a proposed development might result in a large number of casualties in the event of an accident.

A5. In view of their acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from HSE that planning permission should be refused for development for, at or near to a hazardous installation or pipeline, or that hazardous substances consent should be refused, should not be overridden without the most careful consideration. Where a local planning or hazardous substances authority is minded to grant planning permission or hazardous substances consent against HSE's advice, it should give HSE advance notice of that intention, and allow 21 days from that notice for HSE to give further consideration to the matter. During that period, HSE will consider whether or not to request the Secretary of State for Environment Transport and the Regions to call-in the application for his own determination.

A6. The Secretary of State exercises the power to call-in applications very selectively. Applications are only called-in if they raise planning issues of more than local importance, including safety issues of exceptional concern or other major planning issues. Call-in of hazardous substances consent applications will be similarly selective. In accordance with this policy, HSE will normally consider its role to be discharged when it is satisfied that the local authority is acting in full understanding of the advice received and the consequences that could follow. It will consider recommending call-in action only in cases of exceptional concern or where important policy or safety issues are at stake.

A7. For each type of development HSE's advice to local planning authorities will take account of the maximum quantity of a hazardous substance permitted by a hazardous substances consent and any conditions attached to it.

A8. Where, as a result of an application for a hazardous substances consent, or a claim for a deemed consent, an establishment is for the first time brought within scope of the hazardous substances consent procedure, HSE will wish to establish, and notify the local planning authority of, a consultation distance within which proposed future development should be notified to it. Some changes may also be required to consultation distances around sites that already have a consent for the presence of hazardous substances. Because of the potential

number of sites, it may take some time to notify planning authorities of new consultation zones. Planning authorities that have received applications for deemed consents may consider it advisable to liaise with HSE on the implications for development plans.

A9. Hazardous substances authorities are required to inform HSE, and other statutory consul tees, of all their decisions on hazardous substances consent applications. Local planning authorities should similarly notify HSE of all decisions on planning applications on which HSE has been consulted. This will enable HSE to give informed advice on future applications for hazardous substances consent or planning permission at the site or in its vicinity.

Pipelines

A10. The construction of an underground pipeline (of any length) by a public gas transporter does not require an express grant of planning permission, in view of the permitted development rights conferred by Class F of Part 17 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). A condition of the GPDO permission is that, where it is intended to lay a notifiable pipeline (as defined in Article 1 of the GPDO), at least 8 weeks advance notice must be given in writing to the local planning authority. Where the developer is not a public gas transporter, a cross-country pipeline of more than 10 miles may be granted deemed planning permission by the Secretary of State for Trade and Industry when authorisation is given under s.1 of the Pipe-lines Act, 1962. For a private supplier's local pipeline of 10 miles or less planning permission needs to be sought from the local planning authority in the normal way.

A11. Where it is proposed to construct a pipeline that will carry a dangerous fluid as defined in schedule 2 of the Pipelines Safety Regulations 1996 and an express grant of planning permission is required, the local planning authority should consult HSE.

Consultation with HSE on proposed development in the vicinity of hazardous installations, pipelines, nuclear installations and explosives sites.

A12. Article 10(1) of the Town and Country Planning (General Development Procedure) Order 1995 requires local planning authorities to consult with HSE in respect of certain proposals to develop land within an area notified to them by HSE because of the presence within the vicinity of toxic, highly reactive, explosive or flammable substances. The types of development within this consultation zone on which HSE is be consulted include all residential development; retail, office and industrial development above floor areas specified in paragraph (d) of the table in Article 10; and any development likely to result in a material increase in the number of persons working within or visiting the notified area. In respect of the last-mentioned category, particular regard should be had to developments involving the most vulnerable sections of the community, such as the very young, the sick or the elderly; hotels and other developments where people may be unfamiliar with their surroundings; and leisure and recreational developments which may result in a large number of people congregating in one place.

A13. Article 10(zb) of the GDPO also requires local planning authorities to consult with HSE and the Environment Agency and, in appropriate cases, with the Nature Conservancy Council

for England on development:

- involving the siting of new establishments; or
- consisting of modifications to existing establishments which could have significant repercussions on major accident hazards; or
- including 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 major accident.

A14. These provisions are designed to ensure compliance with the land use planning requirements of Council Directive 96/82/EC on the control of major-accident hazards. It is possible that some proposed developments falling within the scope of Article 10(zb) may also fall within the scope of Article 10(d). In considering proposed development and in consulting on those proposals, it is for planning authorities to satisfy themselves that the requirements of the both subparagraphs have been satisfied. As used in Article 10(zb) of the GDPO, the term "establishment" has the same meaning as in the Directive.

A15. HSE will continue to notify local planning authorities of relevant "consultation zones" around sites where hazardous substances are present. In practice, this will be all establishments subject to the COMAH Regulations; pipelines notified to HSE under the Pipeline Safety Regulations 1996; and licensed explosives factories or magazines, harbour areas or other sites licensed by HSE under the Explosives Act 1875 or Part IX of the Dangerous Substances in Harbour Areas Regulations 1987. The consultation zone is the limit of the area where HSE considers there to be a significant off site risk to people.

A16. HSE will keep the consultation zones under review and will inform the local planning authority if changes are appropriate. Similarly, the local planning authority should liaise with HSE if it becomes aware of changed circumstances that might affect the consultation zone.

Nuclear installations

A17. With regard to proposed developments in the vicinity of licensed nuclear installations, the consultation requirements can vary between sites. The present administrative arrangements will therefore continue to apply, under which HSE specify for each such site a relevant consultation zone and the type of developments on which it should be consulted.

A18. Where the local planning authority is in any doubt about whether HSE should be consulted in a particular case, it is advised to contact the appropriate HSE Area Office.

Licensed explosives facilities

A19. The consultation procedures described above apply to development in the vicinity of licensed explosive factories, magazines and ports. However, explosives present at explosives factories and magazines controlled by licences issued by HSE in accordance with the Assent

provisions of the Explosives Act 1875 are not included in the list of hazardous substances subject to the consent requirements. Ports handling explosives are controlled by licences issued by HSE under the Dangerous Substances in Harbour Areas Regulations 1987 and are also not subject to the consent requirements. Each licence provides, *inter alia*, that each place keeping or handling explosives shall be separated from other occupied buildings. This "safety distance" varies according to the types and quantities of explosives present. The existence of a licence specifying certain safety distances does not of itself prevent construction or activities within these distances. Where such development does take place, however, it might entail further restrictions being imposed on the licensee to the extent that continuing operations with explosives may become uneconomic.

A20. Licensees are therefore usually alert for any development which occurs or is proposed in the vicinity of their premises and which may seriously affect their operations. In order that HSE may also be aware, at an early stage, of the possibility of encroachment on the safety distances, local planning authorities are now required to consult HSE about applications for development in the vicinity of licensed explosives factories, magazines and ports, where HSE has notified a consultation zone. Licensees of ports and all new and certain existing factory and magazine sites, on being issued with a licence, are required to prepare and send to the local planning authority a safeguarding map. The map will have on it purple, yellow and green lines. In the context of advice given by the Explosives Inspectorate of the HSE to local planning authorities from time to time, the purple line is the extent of the consultation distance; Band 3 lies between the purple and yellow lines; Band 2 between the yellow and green lines; Band 1 between the green line and the boundary of the site (usually in black). Any enquiries should be directed to the appropriate HSE Area Office.

A21. Explosives present at sites licensed by local authorities under the Explosives Act 1875 are subject to the consent requirements. It is unlikely that the amount of explosives present at these sites will exceed the controlled quantity for explosive substances, and the presence of these substances on their own should not normally required a hazardous substances consent. However, if they are present with other hazardous substances it is possible there will be a need for a hazardous substances consent.

Confidentiality

A22. Local authorities should bear in mind the provisions of s.28 of the Health and Safety at Work etc Act 1974 which imposes restrictions on the disclosure of certain information without the consent of the person by whom the information was furnished. HSE has advised that, based on the experience of recent years, there are unlikely to be many occasions when the disclosure of information will give rise to problems. Nevertheless, if an authority is uncertain whether these restrictions applied to particular information at the time when it was provided by HSE, advice should be sought from HSE .

HSE involvement in appeals against adverse decisions on planning and hazardous substances consent applications

A23. Where a local authority is notified of an appeal in respect of an application for hazardous

substances consent, or in respect of an application for planning permission for hazardous development or for development in the vicinity of a hazardous installation or pipeline on which HSE has previously been consulted (see above), it should immediately notify the appropriate HSE Area Office. If the appeal is, or if related planning and hazardous substances consent appeals are, to be dealt with by exchanges of written representations, a copy of any advice from HSE (except for advice which may not be disclosed - see paragraph A22 above) should be attached to the authority's statement of case. In the case of appeals which go to inquiry, advice by HSE will not constitute an expression of views within the meaning of rule 12 of the Town and Country Planning (Inquiries Procedure) Rules 1992 (see endnote 14). However, HSE will be prepared to provide a witness at any local inquiry to answer questions on any advice given and should therefore be given early notification of arrangements for a local inquiry. Any advice received from HSE, whether given at application stage or on consultation at appeal stage, should be quoted (other than advice which may not be disclosed) in the statement served by the authority under rule 6(1) of the 1992 Rules. A note should be included to the effect that HSE will be prepared to make a representative available at the inquiry if the appellant so requests in writing to the Department of the Environment, Transport and the Regions not later than 14 days before the date of the inquiry. A copy of the statement should be sent to HSE, at the same time as it is served.

Endnotes

13. as amended by Regulation 6 of the Planning (Control of Major Accident Hazards) Regulations 1999 (SI 981)

14. SI 1992 No 2038. These Rules apply to planning appeals to be determined by the Secretary of State. Planning appeals to be determined by Inspectors are governed by the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) Rules 1992 (SI 1992 No 2039). Neither set of Rules formally applies to appeals in relation to hazardous substances consent but where an inquiry is to be held it is the intention to follow the spirits of the Rules.