



Planning (Hazardous Substances) Act 1990

1990 CHAPTER 10

Contraventions of hazardous substances control

23 Offences.

- (1) Subject to the following provisions of this section, if there is a contravention of hazardous substances control, the appropriate person shall be guilty of an offence.
- (2) There is a contravention of hazardous substances control—
 - (a) if a quantity of a hazardous substance equal to or exceeding the controlled quantity is or has been present on, over or under land and either—
 - (i) there is no hazardous substances consent for the presence of the substance; or
 - (ii) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
 - (b) if there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted.
- (3) In subsection (1) “the appropriate person” means—
 - (a) in relation to a contravention falling within paragraph (a) of subsection (2)—
 - (i) any person knowingly causing the substance to be present on, over or under the land;
 - (ii) any person allowing it to be so present; and
 - (b) in relation to a contravention falling within paragraph (a) or (b) of that subsection, the person in control of the land.
- (4) A person guilty of an offence under this section shall be liable [^{F1}on summary conviction, or on conviction on indictment, to a fine].

[^{F2}(4A) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial

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benefit which has accrued or appears likely to accrue to him in consequence of the offence]

- (5) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
- (a) that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or
 - (b) that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty.
- (6) In any proceedings for an offence consisting of a contravention falling within subsection (2)(a), it shall be a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe—
- (a) if the case falls within paragraph (a)(i)—
 - (i) that the substance was present; or
 - (ii) that it was present in a quantity equal to or exceeding the controlled quantity;
 - (b) if the case falls within paragraph (a)(ii), that the substance was present in a quantity exceeding the maximum quantity permitted by the consent.
- (7) In any proceedings for an offence consisting of a contravention falling within subsection (2)(b), it shall be a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted.

Textual Amendments

- F1** Words in s. 23(4) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 20** (with reg. 5(1))
- F2** S. 23(4A) substituted (2.1.1992) for the words following s. 23(4)(b) by [Planning and Compensation Act 1991 \(c. 34, SIF 123:1\)](#), s. 25, **Sch. 3 Pt. 1 para. 10(b)** (with s. 84(5)); S.I. 1991/2905, **art. 3**

Modifications etc. (not altering text)

- C1** S. 23 restricted and modified by [S.I. 1992/725](#), **art. 4**
- C2** S. 23: power to apply conferred (10.11.1993) by [1993 c. 28](#), **ss. 171(4)(c)**; [S.I. 1993/2762](#), **art. 3**
- C3** S. 23 restricted (E.) (28.4.2010) by [The Planning \(Hazardous Substances\) \(Amendment\) \(England\) Regulations 2010 \(S.I. 2010/1050\)](#), regs. 1(1), **3**

Commencement Information

- I1** S. 23 wholly in force at 1.6.1992 see [S.I. 1992/725](#), art. 3; s. 23 in force for certain purposes at 11.3.1992 see [S.I. 1992/725](#), art. 2

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3(4A) inserted by [2023 c. 55 Sch. 17 para. 4\(b\)](#)
- s. 9(2)(ca) inserted by [2023 c. 55 Sch. 6 para. 14](#)
- s. 10(4) inserted by [2023 c. 55 s. 124\(6\)](#)
- s. 20(4A) inserted by [2008 c. 29 Sch. 10 para. 26](#)
- s. 21(5A) inserted by [2008 c. 29 Sch. 10 para. 27](#)
- s. 37(3) inserted by [2008 c. 29 Sch. 10 para. 29](#)
- s. 37(5) inserted by [2023 c. 55 s. 124\(7\)\(b\)](#)
- Sch. para. 2(4A) inserted by [2008 c. 29 Sch. 10 para. 30\(2\)](#)
- Sch. para. 2(9) inserted by [2008 c. 29 Sch. 10 para. 30\(3\)](#)
- Sch. para. 3(4A)(4B) inserted by [2008 c. 29 Sch. 10 para. 30\(4\)](#)
- Sch. para. 6(1A) inserted by [2008 c. 29 Sch. 10 para. 30\(6\)](#)