

## SCHEDULE 2

Regulation 4

### Exemptions

#### **Military establishments**

1. Hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at military establishments, installations or storage facilities.

#### **Nuclear sites**

2. Hazardous substances consent is not required for the presence of a hazardous substance which creates a hazard from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of section 1 of the Nuclear Installations Act 1965(1).

#### **Intermediate presence related to the transport of hazardous substances**

3. Hazardous substances consent is not required for the intermediate temporary presence of a hazardous substance on, over or under land where that presence is directly related to the transport of hazardous substances by road, rail, internal waterways, sea or air, outside establishments covered by these Regulations, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards.

#### **Pipelines**

4. Hazardous substances consent is not required for the presence of a hazardous substance where it is being transported in a pipeline, including a pumping station, outside establishments.

#### **Minerals**

5. Hazardous substances consent is not required for the presence of a hazardous substance in the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes.

6. Paragraph 5 does not apply to a hazardous substance present in connection with the matters referred to in paragraph 8(b) to (d).

#### **Land-fill sites**

7. Hazardous substances consent is not required for the presence of a hazardous substance at a waste land-fill site, including underground waste storage.

8. Paragraph 7 does not apply to a hazardous substance present in—

- (a) a site used for the storage of metallic mercury pursuant to Article 3(1)(b) of Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury(2);
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage related to the those operations; or
- (d) operational tailings disposal facilities, including tailing ponds or dams.

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(1) 1965 c.57. Section 1 was substituted by paragraph 17 of Schedule 12 to the Energy Act 2013 (c.32).

(2) OJ No L 304, 14.11.2008, p.75.

### **Emergency unloading from ships**

**9.** Hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency until the expiry of the period of 14 days beginning with the day it was unloaded, and a substance is to be treated as having been unloaded from a craft in an emergency if—

- (a) it was unloaded from a craft to which a direction under section 3(1) of the Dangerous Vessels Act 1985<sup>(3)</sup> (directions by Scottish Ministers to harbour master) applied; or
- (b) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(4)</sup> without requiring notification under regulation 6(1) of those regulations by virtue of an exemption under regulation 6(5).

### **Explosives**

**10.** Hazardous substances consent is not required for the presence of an explosive within the meaning of regulation 2(1) of the Explosives Regulations 2014<sup>(5)</sup> in relation to which—

- (a) a licence is required and has been granted under those Regulations by the Health and Safety Executive where it is the licensing authority by virtue of—
  - (i) paragraph 1(b) of Schedule 1 to those Regulations in cases where the assent of the local authority was required pursuant to regulation 13(3) of those Regulations or would have been required but for regulation 13(4)(b), (c), (d), (e), (f) or (g) of those Regulations; or
  - (ii) paragraph 1(d) of Schedule 1 to those Regulations; or
- (b) a licence is required and has been granted under those Regulations by the Office for Nuclear Regulation in cases where the assent of the local authority was required pursuant to regulation 13(3) of those Regulations or would have been required but for regulation 13(4)(b), (c), (d), (e), (f) or (g) of those Regulations.

**11.** Hazardous substance consent is not required where an explosives licence within the meaning of regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(6)</sup> has been issued.

### **Presence of established substances**

**12.** Hazardous substances consent is not required for the presence of a hazardous substance on, over or under land (“the relevant substance”) if—

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

**13.** Paragraph 12 does not apply where the quantity of the relevant substance exceeds the maximum quantity of the relevant substance which was present on, over or under the land at any time during the establishment period.

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(3) 1985 c.22.

(4) S.I. 1987/37, to which there are amendments not relevant to this instrument.

(5) S.I. 2014/1638.

(6) The definition of “explosives licence” was amended by S.I. 2014/469.

### **Presence of exempted substances**

14. The presence of a substance for which an exemption is provided under paragraphs 1 to 13 is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the principal Act or these Regulations.

### **Presence of small quantities of substances**

15. The presence of a quantity of a hazardous substance is not to be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the principal Act or these Regulations if it is present—

- (a) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site; and
- (b) in a quantity which is equal to or less than 2% of the relevant controlled quantity for that substance.

### **Minor changes to types and quantities of substances**

16. Where the conditions in paragraph 17 are met, hazardous substances consent is not required for a relevant minor change.

17. The conditions are that—

- (a) before the relevant minor change occurs the planning authority receives from, in relation to a nuclear site, the Office for Nuclear Regulation and the Scottish Environment Protection Agency and, in any other case, the Health and Safety Executive and the Scottish Environment Protection Agency, notice in writing (a copy of which has been sent to the person in control of the land to which the hazardous substances consent in question relates) with—
  - (i) details of the relevant minor change, including details of how hazardous substances are to be kept and used in consequence of that change;
  - (ii) confirmation that the relevant minor change will not result in a safety hazard change; and
  - (iii) confirmation that the relevant minor change will not result in a lower-tier establishment becoming an upper-tier establishment or vice versa; and
- (b) any hazardous substance that is held without hazardous substances consent in reliance on this exemption is kept and used in accordance with the details referred to in subparagraph (a)(i).

### **Interpretation**

18. In this Schedule—

“establishment period” means the period of 12 months ending on 31st May 2015;

“relevant minor change” means a change to the quantity or type of hazardous substances present in, on or under land in relation to which there is a hazardous substances consent, where hazardous substances consent would be required for that change but for paragraph 16;

“safety hazard change” means a change to an area notified to a planning authority by the Health and Safety Executive or the Office for Nuclear Regulation for the purposes of paragraphs 3 or 3A of Schedule 5 to the 2013 Regulations where that change results in—

- (a) that area encompassing an area which it did not previously encompass; or

**Status:** *This is the original version (as it was originally made).*

- (b) where the notification of that area included the identification of zones within that area corresponding to levels of risk, the expansion of any such zone.

**19.** Expressions appearing in this Schedule and in the Directive have the same meaning for the purposes of this Schedule as they have for the purposes of the Directive.