

SCHEDULES

SCHEDULE 2

Regulation 4

EXEMPTIONS

Loading, unloading and intermediate storage

1. 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

2. 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 any land in respect of which—

- (a) there is a hazardous substances consent for any substance, or
- (b) (not taking into account the quantity of the substance in the pipeline or pumping station) there is required to be such a consent for any substance.

Emergency unloading from ships

3. 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.

4. For the purpose of paragraph 3, 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⁽¹⁾ (directions by Secretary of State 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 of the Dangerous Substances in Harbour Areas Regulations 1987⁽²⁾, without requiring notification under paragraph (1) of regulation 6 of those Regulations by virtue of an exemption under paragraph (5) of that regulation.

Landfill sites

5. Subject to paragraph 7, hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site, including underground waste storage.

6. Paragraph 5 does not apply to—

(1) 1985, c. 22.

(2) S.I. 1987/37, to which there are amendments not relevant to these Regulations.

- (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⁽³⁾;
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage related to those operations; or
- (d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

Nuclear sites

7. 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⁽⁴⁾.

Minerals

8. Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes, except where present in connection with the matters referred to in paragraph 6(b) to (d) of this Schedule.

9. Hazardous substances consent is not required for the presence of a hazardous substance for the purposes of—

- (a) the offshore exploration and exploitation of minerals, including hydrocarbons; or
- (b) the storage of gas at underground offshore sites including both dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons are also carried out.

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⁽⁵⁾ 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.

⁽³⁾ O.J. No. L 304, 14.11.2008, p. 75.

⁽⁴⁾ 1965 c. 57; section 1 was substituted by paragraphs 16 and 17 of Schedule 12 to the Energy Act 2013 (c. 32).

⁽⁵⁾ S.I. 2014/1638. There are amendments to this regulation which are not relevant to these Regulations.

11. Hazardous substance consent is not required where an explosive license within the meaning of regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987⁽⁶⁾ has been issued.

Presence of established substances

12. Hazardous substances consent is not required in relation to a hazardous substance which is on, over or under any 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 one time during the establishment period.

Presence of exempted substances

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

Presence of small quantities of substances

15. The presence of a quantity of a hazardous substance—

- (a) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site, and
- (b) which is equal to or less than two per cent of the relevant controlled quantity for that 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 PHSA or these Regulations.

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—

- (a) that before the relevant minor change occurs, the hazardous substances authority receives from the COMAH competent authority, notice in writing, which must be copied by the COMAH competent authority to the person in control of the land to which the hazardous substances consent in question relates, confirming—
 - (i) details of the relevant minor change, including details about how substances are to be kept and used;
 - (ii) that the relevant minor change will not result in a safety hazard change; and

(6) [S.I. 1987/37](#). Regulation 2(1) was amended by article 6(2) of, and paragraphs 37 and 38(b) of Part 3 of Schedule 3 to, [S.I. 2014/469](#) There are other amendments to this regulation which are not relevant to these Regulations.

- (iii) that the relevant minor change will not result in a lower-tier establishment becoming an upper-tier establishment or vice versa; and
- (b) that any hazardous substances that are held without hazardous substances consent in reliance on this exemption are kept and used in accordance with the details set out in the notice from the COMAH competent authority.

Interpretation of this Schedule

18. In this Schedule—

“establishment period” (“*cyfnod sefydlu*”) means the period of 12 months ending on—

- (a) 4 September 2015; or
- (b) (if later) the date on which hazardous substances consent was first required for the relevant substance;

“relevant minor change” (“*mân newid perthnasol*”) 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 this Schedule;

“safety hazard change” (“*newid o ran perygl diogelwch*”) means a change to an area notified to a local planning authority by the Health and Safety Executive or the Office of Nuclear Regulation for the purposes of paragraphs (c) or (ca) of the Table in Schedule 4 to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012⁽⁷⁾, where that change results in—

- (a) that area encompassing land which it did not previously encompass; or
- (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 both 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.

(7) S.I. 2012/801 (W. 110).