
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 344

PLANNING

**The Planning (Hazardous Substances) (No.
2) Regulations (Northern Ireland) 2015**

Made - - - - *24th September 2015*

Coming into operation *16th October 2015*

The Department of the Environment is a designated ^{F1} Department for the purposes of section 2(2) of the European Communities Act 1972 ^{F2} (“the 1972 Act”) in relation to the prevention and limitation of the effects of accidents involving dangerous substances.

The Department of the Environment makes the following Regulations, in exercise of the powers conferred on it by section 2(2) and paragraph 1A of Schedule 2 to the 1972 Act and by sections 8(5) (c), 9(6)(c), 108(4) and (5), 109(1), (2) and (4), 111, 115(7), 116(3), 162(4), (10) and (12), 223 and 247(1) of the Planning Act (Northern Ireland) 2011 ^{F3}.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Department that it is expedient for the references in these Regulations to Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures ^{F4}, to be construed as references to that instrument as amended from time to time.

F1 [S.I. 1998/1750](#).

F2 [1972 c. 68](#): section 2(2) was amended by section 27 of the [Legislative and Regulatory Reform Act 2006 \(c.51\)](#) and section 3 of, and Part 1 of the Schedule to, the [European Union \(Amendment\) Act 2008 \(c.7\)](#)

F3 [2011 c.25 \(N.I.\)](#) see [section 250\(1\)](#) for definition of “the Department” and “prescribed”.

F4 [O.J. 353, 31.12.2008](#), p.1.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015 and shall come into operation on 16th October 2015.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 ^{F5} shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011;

“the CLP Regulation” means Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1907/2006;

“consent” means consent required under section 108 of the 2011 Act;

[^{F6}“the Department” means the Department for Infrastructure;]

“the Directive” means Council Directive 2012/18/EU of the European Parliament and of the Council ^{F7} on the control of major-accident hazards involving dangerous substances, [^{F8}as it had effect immediately before exit day,] ;

[^{F9}“the EIA Directive” means Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment as it had effect immediately before exit day;]

“the General Development Procedure Order” means the Planning (General Development Procedure) Order (Northern Ireland) 2015 ^{F10};

“the Hazardous Substances Regulations” means the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 ^{F11};

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001 ^{F12};

[^{F13}“major accident” has the same meaning as in regulation 2 of the Control of Major Accident Hazards Regulations (Northern Ireland) 2015.]

(3) In these Regulations

- (a) a reference to a section is a reference to that section of the 2011 Act.
- (b) references to the CLP Regulation are references to that Regulation as amended from time to time;
- (c) expressions appearing both in these Regulations and in the Directive have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive

(4) In these Regulations, and in relation to the use of electronic communications for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person to provide a name or address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;
- (b) references to forms, maps, plans, notices or other documents or copies of such things include references to such documents or copies of them in electronic form.

(5) Paragraphs (6) to (9) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any form, map, plan, notice or other document to any other person (“the recipient”).

(6) The requirement shall be taken to be fulfilled where the application or other document transmitted by means of electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(7) In paragraph (6), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(8) Where the electronic communication is received by the recipient outside the recipient's business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.

(9) A requirement in these Regulations that any application or other document should be in writing is fulfilled where the document meets the criteria in paragraph (6).

- F5** 1954 c 33 (N.I.)
- F6** Words in reg. 2(2) inserted (27.3.2019) by [The Planning \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2019 \(S.R. 2019/24\)](#), regs. 1, **8(2)**
- F7** O.J. No. L 197, 24.7.2012, p. 1
- F8** Words in reg. 2(2) substituted (31.1.2020) by [The Planning \(Environmental Assessments and Miscellaneous Amendments\) \(EU Exit\) \(Northern Ireland\) Regulations 2018 \(S.I. 2018/1235\)](#), regs. 1(2), **8(2)(a)**; 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 2(2) inserted (31.1.2020) by [The Planning \(Environmental Assessments and Miscellaneous Amendments\) \(EU Exit\) \(Northern Ireland\) Regulations 2018 \(S.I. 2018/1235\)](#), regs. 1(2), **8(2)(b)**; 2020 c. 1, Sch. 5 para. 1(1)
- F10** S.R. 2015 No. 72
- F11** S.R. 2015 No. 61
- F12** 2001 c.9 (N.I.) as amended by 2003 c.21
- F13** Words in reg. 2(2) inserted (31.1.2020) by [The Planning \(Environmental Assessments and Miscellaneous Amendments\) \(EU Exit\) \(Northern Ireland\) Regulations 2018 \(S.I. 2018/1235\)](#), regs. 1(2), **8(2)(c)**; 2020 c. 1, Sch. 5 para. 1(1)

PART 2

Hazardous Substances, Controlled Quantities and Exemptions

Hazardous substances and controlled quantities

- 3.—(1) Substances, mixtures or preparations—
- (a) falling within a category in column 1 of Part 1,
 - (b) specified in column 1 of Part 2 or,
 - (c) meeting the description in column 1 of Part 3,

of Schedule 2 and present as raw materials, products, by-products, residues or intermediates are hazardous substances for the purposes of the 2011 Act.

(2) The quantity specified in column 2 of Schedule 2 is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the purposes of the 2011 Act.

Exemptions

4.—(1) Hazardous substances consent is not required for the temporary presence of a hazardous substance during the period between its being unloaded from one means of transport to another,

including if it is in directly related intermediate temporary storage, while it is being transported from one place to another unless—

- (a) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance; or
- (b) in respect of which (not taking into account the quantity of the substance being transported) there is required to be such a consent for any substance.

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

(3) 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 of 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 being transported) there is required to be such a consent for any substance.

(4) Subject to paragraph (5), hazardous substances consent is not required for the presence of a hazardous substance which has been unloaded from a ship or other seagoing craft in an emergency until the expiry of a period of 14 days beginning with the day on which it was so unloaded.

(5) For the purposes of paragraph (4) a substance shall be treated as having been unloaded from a craft in an emergency if 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 Area Regulations (Northern Ireland) 1991^{F14}, without requiring notification under regulation 6(1) of those Regulations by virtue of an exemption under regulation 6(5) of those Regulations.

(6) 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.

(7) The exemption in paragraph (6) 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^{F15};
- (b) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
- (c) chemical and thermal processing operations and storage relating to those operations;
- (d) operational tailings disposal facilities, including tailing ponds or dams, containing a hazardous substance.

(8) 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^{F16}.

(9) 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 paragraphs 7(b) to (d).

(10) 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.

(11) Hazardous substances consent is not required for the presence of an explosive within the meaning of regulation 2(1) of The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006^{F17} in relation to which a licence is required and has been granted by the Department of Justice under Regulation 11(3) of those Regulations.

(12) Hazardous substances consent is not required where an explosives licence within the meaning of regulation 2(1) of the Explosives in Harbour Areas Regulations (Northern Ireland) 1995^{F18} has been issued.

(13) 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 operation at that time.

(14) Paragraph (13) 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.

(15) The presence of a substance to which paragraphs (1) to (14) apply shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the 2011 Act or these Regulations.

(16) The presence of a quantity of a hazardous substance—

- (a) in a location where it cannot act as a initiator of a major accident hazard 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,

shall not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any purpose of the 2011 Act or these Regulations.

(17) Where the conditions in paragraph (18) are met, hazardous substances consent is not required for a relevant minor change.

(18) The conditions are that—

- (a) before the relevant minor change occurs, the council receives from the Health and Safety Executive for Northern Ireland (HSENI) notice in writing (which has been copied 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;
 - (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 HSENI.