STATUTORY RULES OF NORTHERN IRELAND

2000 No. 101

PLANNING

The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000

Made - - - -	*20th March 2000*
Coming into operation	*24th April 2000*

The Department of the Environment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to the prevention and limitation of the effects of accidents involving dangerous substances, in exercise of the powers conferred upon it by that section and by Articles 53(3) to (5), 54(1), 60(3), 129(1) and paragraph 4(4) of Schedule 4 to the Planning (Northern Ireland) Order 1991(**3**) and of all other powers enabling it in that behalf, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000 and shall come into operation on 24th April 2000.

(2) In these Regulations—

"the 1991 Order" means the Planning (Northern Ireland) Order 1991;

"the Hazardous Substances Regulations" means the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993(**4**).

Amendments to the 1991 Order

2.—(1) Article 53 (requirement of hazardous substances consent) of the 1991 Order shall be amended in accordance with paragraphs (2) to (4).

(2) In paragraph (1)—

(a) after sub-paragraph (*a*) insert—

"(aa) on, over or under other land which is controlled by the same person and which, in all the circumstances (including in particular the purpose for which

(**1**) S.I. 1998/1750
(**2**) 1972 c. 68
(**3**) S.I. 1991/1220 (N.I. 11)
(**4**) S.R. 1993 No. 275

the land and the land mentioned in sub-paragraph (*a*) is used) forms with the land so mentioned a single establishment;";

(b) in sub-paragraph (*b*) for the word "it" substitute "the land mentioned in sub-paragraph (*a*)"; and

(c) in sub-paragraph (*c*) for the word "it" substitute "the land mentioned in sub-paragraph (*a*)".

(3) After paragraph (1) insert—

"(1A) A quantity of a substance which falls within more than one sub-paragraph of paragraph (1) shall only be counted once.".

(4) For paragraph (2) substitute—

"(2) 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—

(a) it is unloaded; or

(b) 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 into account the quantity of the substance being transported) there is required to be such a consent for any substance.".

Amendment to the Hazardous Substances Regulations

3.—(1) The Hazardous Substances Regulations shall be amended in accordance with paragraphs (2) to (9).

(2) In regulation 2(1) (interpretation), after the definition of "deemed consent", insert—

""the Directive" means Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances(**5**);".

(3) In regulation 3 (hazardous substances and controlled quantities)—

(a) for paragraph (1) substitute—

"(1) Substances, mixtures or preparations—

(a) specified in column 1 of Part A;

(b) falling within a category in column 1 of Part B; or

(c) meeting the description in column 1 of Part C,

of Schedule 3 and present as raw materials, products, by-products, residues or intermediates are hazardous substances for the purposes of the 1991 Order.";

(b) paragraph (2) shall be omitted.

(4) For regulation 4 (exemptions) substitute—

"**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 while it is being transported from one place to another unless 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 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 contained in an exempt pipeline or a service pipe.

(**5**) O.J. No. L10, 14.1.1997, p. 13

(3) Subject to paragraph (4), 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.

(4) For the purposes of paragraph (3) 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 Areas Regulations (Northern Ireland) 1991(**6**), without requiring notification under regulation 6(1) of those regulations by virtue of an exemption under regulation 6(5) of those regulations.

(5) Hazardous substances consent is not required for the presence of a hazardous substance on, over or under land at a waste land-fill site.

(6) 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(**7**).

(7) The presence of a quantity of a hazardous substance (other than that of a substance numbered 6, 14, 35 and 39 in column 1 of Part A of Schedule 3)—

(a) in a location where it cannot act as an 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 1991 Order or these regulations.

(8) The presence of a substance to which paragraphs (1) to (6) 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 1991 Order or these regulations.

(9) In this regulation—

(a) "exempt pipeline" means a pipeline used to convey a hazardous substance to or from a site, but does not include—

(i) that part of the pipeline on, over or under a site to which it has an outlet or inlet;

(ii) a service pipe;

(b) "service pipe" means a pipeline used by a person to whom a licence has been granted under Article 8(1) of the Gas (Northern Ireland) Order 1996(**8**) to supply gas to an individual customer from a main of that supplier;

(c) "major accident" means an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of any operation carried out on, over or under land in respect of which there is required to be a hazardous substances consent and leading to serious danger to human health or the environment, immediate or delayed, and involving one or more hazardous substances;

(d) the expressions "initiator", "major emission, fire or explosion", "resulting from uncontrolled developments", "leading to serious danger to human health or

(**6**) S.R. 1991 No. 509
(**7**) 1965 c. 57; section 1 was amended by S.I. 1974/2056 and S.I. 1990/1981
(**8**) S.I. 1996/275 (N.I. 2)

the environment, immediate or delayed", "waste land-fill site" and "ionising radiation" have the same meaning as in the Directive.".

(5) In regulation 10 (consultations before determining applications for hazardous substances consent) in paragraph (*b*) for "the Department of Economic Development" substitute "the Health and Safety Executive for Northern Ireland", and add "(*c*) the Fire Authority for Northern Ireland.".

(6) In regulation 16 (interpretation of deemed consent provisions)—

(a) for each reference to "Table C" substitute "Table B";

(b) in paragraph (2) for the words "71 in column 1 of Schedule 3" substitute "32 in column 1 of Part A of Schedule 3".

(7) In Schedule 1 (prescribed forms) for form 1 (general application for hazardous substances consent), form 2 (application for either hazardous substances consent without a condition imposed on a previous consent or application for the continuation of a hazardous substances consent following a change in control of part of the land) and form 5 (claim for deemed consent), substitute the new forms 1, 2 and 5 set out in Schedule 1 to these regulations.

(8) In Schedule 2 (deemed consent conditions)—

(a) for each reference to "Table C" substitute "Table B";

(b) in paragraph 8(1) for "regulation 12(3)" substitute "regulation 14(3)"; and

(c) in paragraph 8(2) omit the word "twice".

(9) For Schedule 3 (hazardous substances and controlled quantities) substitute the new Schedule 3 as set out in Schedule 2 to these regulations.

Transitional provisions

4. For the purposes of the transition to the amendments made by regulations 2 and 3—

(1) paragraph 4 of Schedule 4 to the 1991 Order (transitional provisions) shall apply with the following modifications—

(a) in sub-paragraph (1) for the words immediately following head (*b*) substitute—

"if—

(i) the substance was present on, over or under land at any time within the establishment period and was not a substance or quantity of substance for which hazardous substances consent was required before the relevant date; and

(ii) the substance has not been present during the transitional period in a quantity greater in aggregate than the established quantity.";

(b) sub-paragraph (2) shall be omitted;

(c) in sub-paragraph (3), after the words "establishment period" insert "for which hazardous substances consent was not required during that period";

(d) in sub-paragraph (5), for the words "(6) to (8)" insert "(7) and (8)";

(e) sub-paragraph (6) shall be omitted;

(f) in sub-paragraph (7) for the words "If at the commencement date such a notification was not so required, hazardous" substitute "Hazardous";

(g) for sub-paragraph (10) substitute—

"(10) In this paragraph—

"establishment period" means the period of 12 months immediately preceding the relevant date;

"established quantity" means in relation to any land, the maximum quantity which was present on, over or under the land at any one time within the establishment period;

"the relevant date" means the date on which the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000 came into operation;

"the transitional period" means the period of 6 months beginning with the relevant date."; and

(2) the conditions in Schedule 2 to the Hazardous Substances Regulations shall be modified by the substitution of the following condition for condition 1—

"**1.** The maximum aggregate quantity of the substance that may be present—

(a) on, over or under the land to which the claim for the consent relates;

(b) on, over or under other land which is controlled by the same person and which, in all the circumstances (including in particular the purposes for which the land and the land mentioned in sub-paragraph (*a*) is used) forms with the land so mentioned a single establishment;

(c) on, over or under other land which is within 500 metres of the land mentioned in sub-paragraph (*a*) and controlled by the same person; or

(d) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in sub-paragraph (*a*),

at any one time shall not exceed the established quantity and in calculating whether the established quantity is exceeded, a quantity of a substance which falls within more than one sub-paragraph of this paragraph shall only be counted once.".

Amendment to the Planning (Development Plans) Regulations (Northern Ireland) 1991

5.—(1) The Planning (Development Plans) Regulations (Northern Ireland) 1991(**9**) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (interpretation)—

(a) after the definition of "development plan" insert ""the Directive" means Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances;";

(b) after paragraph (2) add—

"(3) The expressions used in regulation 9A have the same meaning as in the Directive.".

(3) In regulation 9 (additional matters to be contained in a development plan) after paragraph (*b*) add—

"and

(c) such statement as the Department thinks appropriate with regard to the matters referred to in regulation 9A.".

(4) After regulation 9 insert—

"**Regard to be had to certain matters**

9A. In formulating its policies in a development plan the Department shall have regard to—

(a) the objectives of preventing major accidents and limiting the consequence of such accidents; and

(**9**) S.R. 1991 No. 119 as amended by S.R. 1994 No. 394