
STATUTORY RULES OF NORTHERN IRELAND

2015 No. 344

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

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 ^{M1}, 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 [^{F1}Article 13(1) of Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, as it had effect immediately before IP completion day;];
- (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 ^{M2}.

(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 ^{M3} 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 ^{M4} 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.

(19) In this regulation—

“establishment period” means the period of 12 months ending on—

- (a) the commencement of these Regulations; or
- (b) (if later) the date on which the hazardous substances consent was first required for the relevant substance;

“relevant minor change” means a change to the quantity or type of hazardous substances present on, over 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 regulation;

“safety hazard change” means a change to an area notified to the Department by HSENI for the purposes of paragraphs 2(a) of Schedule 3 Part 1 or Part 2 to the General Development Procedure Order, where that change results in—

- (a) that area encompassing any area 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.

Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015, PART 2. (See end of Document for details)

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Textual Amendments

- F1** Words in [reg. 4\(7\)\(a\)](#) substituted (31.12.2020) by [The Planning \(Environmental Assessments and Technical Miscellaneous Amendments\) \(EU Exit\) Regulations \(Northern Ireland\) 2020 \(SR 2020/300\)](#), [regs. 1\(2\)](#), [2\(3\)](#)
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Marginal Citations

- M1** S.R. 1991 No. 509
- M2** 1965 c. 57; [section 1](#) was amended by [S.I. 1974/2056](#) and [S.I. 1990/1981](#)
- M3** S.R. 2006 No. 425
- M4** S.R. 1995 No. 87

Changes to legislation:

There are currently no known outstanding effects for the The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015, PART 2.