

# SCHEDULES

## SCHEDULE 1

Regulation 3

### HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

#### PART 1

##### Categories of substances

This Part covers all hazardous substances falling under the hazard categories listed in Column 1:

<i>Column 1</i>	<i>Column 2</i>
<b>Hazard categories in accordance with the CLP Regulation</b>	<b>Controlled quantity in tonnes</b>
<b>Section 'H' – HEALTH HAZARDS</b>	
H1 ACUTE TOXIC Category 1, all exposure routes	5
H2 ACUTE TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 7)	50
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE Category 1	50
<b>Section 'P' – PHYSICAL HAZARDS</b>	
P1a EXPLOSIVES (see note 8) — Unstable explosives or — Explosives, Division 1.1, 1.2, 1.3, 1.5 or 1.6, or — Substances or mixtures having explosive properties according to method A.14 of Regulation <a href="#">(EC) No 440/2008</a> (see note 9) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures	10
P1b EXPLOSIVES (see note 8) Explosives, Division 1.4 (see note 10)	50

*Status: This is the original version (as it was originally made).*

<i>Column 1</i>	<i>Column 2</i>
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10
P3a FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, containing flammable gases Category 1 or 2 or flammable liquids Category 1	150 (net)
P3b FLAMMABLE AEROSOLS (see note 11.1) 'Flammable' aerosols Category 1 or 2, not containing flammable gases Category 1 or 2 nor flammable liquids category 1 (see note 11.2)	5,000 (net)
P4 OXIDISING GASES  Oxidising gases, Category 1	50
P5a FLAMMABLE LIQUIDS  — Flammable liquids, Category 1, or  — Flammable liquids Category 2 or 3 maintained at a temperature above their boiling point, or  — Other liquids with a flash point $\leq 60$ °C, maintained at a temperature above their boiling point (see note 12)	10
P5b FLAMMABLE LIQUIDS  — Flammable liquids Category 2 or 3 where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards, or  — Other liquids with a flash point $\leq 60$ °C where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards (see note 12)	50
P5c FLAMMABLE LIQUIDS  Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000
P6a SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES  Self-reactive substances and mixtures, Type A or B or organic peroxides, Type A or B	10
P6b SELF-REACTIVE SUBSTANCES AND MIXTURES and ORGANIC PEROXIDES  Self-reactive substances and mixtures, Type C, D, E or F or organic peroxides, Type C, D, E, or F	50
P7 PYROPHORIC LIQUIDS AND SOLIDS	50

<i>Column 1</i>	<i>Column 2</i>
Pyrophoric liquids, Category 1	
Pyrophoric solids, Category 1	
P8 OXIDISING LIQUIDS AND SOLIDS	50
Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	
<b>Section 'E' – ENVIRONMENTAL HAZARDS</b>	
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200
<b>Section 'O' – OTHER HAZARDS</b>	
O1 Substances or mixtures with hazard statement EUH014	100
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100
O3 Substances or mixtures with hazard statement EUH029	50

## PART 2

### Named hazardous substances

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
<b>Hazardous substances</b>		<b>Controlled quantity (tonnes)</b>
1. Ammonium nitrate (see note 13)		5,000
2. Ammonium nitrate (see note 14)		1,250
3. Ammonium nitrate (see note 15)		350
4. Ammonium nitrate (see note 16)		10
5. Potassium nitrate (see note 17)		5,000
6. Potassium nitrate (see note 18)		1,250
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3	0.1
9. Bromine	7726-95-6	20
10. Chlorine	7782-50-5	10
11. Nickel compounds in inhalable powder form: nickel monoxide, nickel		1

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<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide		
12. Ethyleneimine	151-56-4	10
13. Fluorine	7782-41-4	10
14. Formaldehyde (concentration $\geq$ 90%)	50-00-0	5
15. Hydrogen	1333-74-0	2
16. Hydrogen chloride (liquefied gas)	7647-01-0	25
17. Lead alkyls		5
18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (including Liquefied Natural Gas) (see note 19)		Natural Gas (including Liquefied Natural Gas) (LNG): 15  Liquefied Petroleum Gas (LPG): 25  Any other liquefied flammable gases : 50
19. Acetylene	74-86-2	5
20. Ethylene oxide	75-21-8	5
21. Propylene oxide	75-56-9	5
22. Methanol	67-56-1	500
23. 4, 4'-Methylene bis (2-chloraniline) and/or salts, in powder form	101-14-4	0.01
24. Methylisocyanate	624-83-9	0.15
25. Oxygen	7782-44-7	200
26. 2,4 -Toluene diisocyanate	584-84-9	10
2,6 -Toluene diisocyanate	91-08-7	
27. Carbonyl dichloride (phosgene)	75-44-5	0.3
28. Arsine (arsenic trihydride)	7784-42-1	0.2
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2
30. Sulphur dichloride	10545-99-0	1
31. Sulphur trioxide	7446-11-9	15
32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 20)		0.001

<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrachloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoil chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2- Naphthylamine and/or salts, 4-Nitrodiphenyl, and 1,3 Propanesultone		0.5
34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas oil blending streams) (d) heavy fuel oils (e) alternative fuels serving the same purposes and with similar properties as regards flammability and environmental hazards as the products referred to in points (a) to (d)		2,500
35. Anhydrous Ammonia	7664-41-7	50
36. Boron trifluoride	7637-07-2	5
37. Hydrogen sulphide	7783-06-4	5
38. Piperidine	110-89-4	50
39. Bis(2-dimethylaminoethyl) (methyl)amin	3030-47-5	50
40. 3-(2-Ethylhexyloxy)propylamin	5397-31-9	50
41. Mixtures (*) of sodium hypochlorite classified as Aquatic Acute Category 1 [H400] containing less than 5 % active chlorine and not classified under any of the other hazard categories in Part 1 of Schedule 1. _____  (* ) Provided that the mixture in the absence of sodium hypochlorite		200

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<i>Column 1</i>	<i>CAS number (1)</i>	<i>Column 2</i>
would not be classified as Aquatic Acute Category 1 [H400].		
42. Propylamine (see note 21)	107-10-8	500
43. Tert-butyl acrylate (see note 21)	1663-39-4	200
44. 2-Methyl-3-butenitrile (see note 21)	16529-56-9	500
45. Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (Dazomet) (see note 21)	533-74-4	100
46. Methyl acrylate (see note 21)	96-33-3	500
47. 3-Methylpyridine (see note 21)	108-99-6	500
48. 1-Bromo-3-chloropropane (see note 21)	109-70-6	500

## PART 3

### Substances used in an industrial chemical process

<i>Column 1 Hazardous Substances</i>	<i>Column 2 Controlled quantity</i>
Where it is reasonable to foresee that a substance falling within Part 1 or Part 2 (“HS”) may be generated during loss of control of the processes, including storage activities in any installation within an establishment, any substance which is used in that process (“S”).	The amount of S which it is believed may generate (on its own or in combination with other substances used in the relevant process) an amount equal to or exceeding the controlled quantity of the HS in question.

(See note 23)

## PART 4

### Notes to Parts 1 to 3

1. Substances and mixtures are classified in accordance with the CLP Regulation<sup>(1)</sup>.
2. Mixtures must be treated in the same way as pure substances provided they remain within concentration limits set according to their properties under the CLP Regulation, or its latest adaptation to technical progress, unless a percentage composition or other description is specifically given.
3. The controlled quantities set out in Parts 1 to 3 of this Schedule relate to each establishment. The quantities to be considered for the application of these Regulations are the maximum quantities which are present or are likely to be present at any one time.

<sup>(1)</sup> Regulation (EC) No 1272/2008 of the European Parliament and the Council.

4. The following rule governing the addition of hazardous substances, or categories of dangerous substances, applies where appropriate.

In the case of an establishment where no individual hazardous substance is present in a quantity above or equal to the relevant controlled quantity, the following rule must be applied to determine whether the establishment is covered by the relevant requirements of these Regulations. These

Regulations apply to establishments if the sum  $\frac{q^1}{Q_{L1}} + \frac{q^2}{Q_{L2}} + \frac{q^3}{Q_{L3}} + \frac{q^4}{Q_{L4}} + \frac{q^5}{Q_{L5}} + \dots$  is greater than or equal to 1,

where

$q_x$  = the quantity of dangerous substance  $x$  (or category of dangerous substances) falling within Part 1 or Part 2 of this Schedule; and

$Q_{Lx}$  = the relevant controlled quantity for hazardous substance or category  $x$  from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule, except as set out in the following paragraph.

For the purposes of calculating  $Q_{Lx}$  only, where the hazardous substance is one specified in column 1 of the following table, the relevant controlled quantity is as set out in column 2 of the following table A:

**Table A**

<i>Column 1</i>	<i>CAS number</i>	<i>Column 2</i>
15. Hydrogen	1333-74-0	5
18. Liquified flammable gases, Category 1 or 2 (including LPG) and natural gas (including liquid natural gas)		50

This rule must be used to assess the health hazards, physical hazards and environmental hazards. It must therefore be applied three times—

- for the addition of hazardous substances listed in Part 2 that fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1, together with hazardous substances falling within section H, entries H1 to H3 of Part 1;
- for the addition of hazardous substances listed in Part 2 that are explosives, flammable gases, flammable aerosols, oxidising gases, flammable liquids, self-reactive substances and mixtures, organic peroxides, pyrophoric liquids and solids, oxidising liquids and solids, together with hazardous substances falling within section P, entries P1 to P8 of Part 1;
- for the addition of hazardous substances listed in Part 2 that fall within hazardous to the aquatic environment acute category 1, chronic category 1 or chronic category 2, together with hazardous substances falling within section E, entries E1 and E2 of Part 1.

The relevant provisions of these Regulations apply where any of the sums obtained by (a), (b) or (c) is greater than or equal to 1.

5. In the case of hazardous substances which are not covered by the CLP Regulation, including waste, but which nevertheless are present, or are likely to be present, in an establishment and which possess or are likely to possess, under the conditions found at the establishment, equivalent properties in terms of major accident potential, these must be provisionally assigned to the most analogous category or named hazardous substance falling within the scope of these Regulations.

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**6.** In the case of hazardous substances with properties giving rise to more than one classification, for the purposes of these Regulations the lowest controlled quantities apply. However, for the application of the rule in Note 4, the lowest controlled quantity for each group of categories in Notes 4(a), 4(b) and 4(c) corresponding to the classification concerned must be used.

**7.** Hazardous substances that fall within Acute Toxic Category 3 via the oral route (H 301) fall under entry H2 ACUTE TOXIC in those cases where neither acute inhalation toxicity classification nor acute dermal toxicity classification can be derived, for example due to lack of conclusive inhalation and dermal toxicity data.

**8.** The hazard class Explosives includes explosive articles (see Section 2.1 of Annex I to the CLP Regulation). If the quantity of the explosive substance or mixture contained in the article is known, that quantity must be considered for the purposes of these Regulations. If the quantity of the explosive substance or mixture contained in the article is not known, then, for the purposes of these Regulations, the whole article must be treated as explosive.

**9.** Testing for explosive properties of substances and mixtures is only necessary if the screening procedure according to Appendix 6, Part 3 of the UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria (UN Manual of Tests and Criteria)(2) identifies the substance or mixture as potentially having explosive properties.

**10.** If Explosives of Division 1.4 are unpacked or repacked, they must be assigned to the entry P1a, unless the hazard is shown to still correspond to Division 1.4, in accordance with the CLP Regulation.

**11.**—(1) Flammable aerosols are classified in accordance with the Council Directive [75/324/EEC](#) of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers(3) (Aerosol Dispensers Directive). “Extremely flammable” and “Flammable” aerosols of Directive [75/324/EEC](#) correspond to Flammable Aerosols Category 1 or 2 respectively of the CLP Regulation.

(2) In order to use this entry, it must be documented that the aerosol dispenser does not contain Flammable Gas Category 1 or 2 nor Flammable Liquid Category 1.

**12.** According to paragraph 2.6.4.5 in Annex I to the CLP Regulation, liquids with a flash point of more than 35°C need not be classified in Category 3 if negative results have been obtained in the sustained combustibility test L.2, Part III, section 32 of the UN Manual of Tests and Criteria. This is however not valid under elevated conditions such as high temperature or pressure, and therefore such liquids are included in this entry.

**13.** Ammonium nitrate (5,000/10,000): fertilisers capable of self-sustaining decomposition

This applies to ammonium nitrate-based compound/composite fertilisers (compound/composite fertilisers contain ammonium nitrate with phosphate and/or potash) which are capable of self-sustaining decomposition according to the UN Trough Test (see UN Manual of Tests and Criteria, Part III, subsection 38.2), and in which the nitrogen content as a result of ammonium nitrate is—

(a) between 15.75%(4) and 24.5%(5) by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to

(2) More guidance on waiving of the test can be found in the A.14 method description, see [Commission Regulation \(EC\) No. 440/2008](#) of 30 May 2008 laying down test methods pursuant to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L 142, 31.5.2008, p. 1).

(3) O.J. L 147, 9.6.1975, p. 40.

(4) 15.7% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.

(5) 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.



Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers<sup>(6)</sup>;

- (b) 15.75% by weight or less and unrestricted combustible materials.

**14. Ammonium nitrate (1,250/5,000): fertiliser grade**

This applies to straight ammonium nitrate-based fertilisers and to ammonium nitrate-based compound/composite fertilisers which fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003 and in which the nitrogen content as a result of ammonium nitrate is—

- (a) more than 24.5% by weight, except for mixtures of straight ammonium nitrate based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%;
- (b) more than 15.75% by weight for mixtures of ammonium nitrate and ammonium sulphate;
- (c) more than 28%<sup>(7)</sup> by weight for mixtures of straight ammonium nitrate-based fertilisers with dolomite, limestone and/or calcium carbonate with a purity of at least 90%.

**15. Ammonium nitrate (350/2,500): technical grade**

This applies to ammonium nitrate and mixtures of ammonium nitrate in which the nitrogen content as a result of the ammonium nitrate is—

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances;
- (b) more than 28% by weight, and which contain not more than 0.2% combustible substances.

It also applies to aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 80% by weight.

**16. Ammonium nitrate (10/50): ‘off-specs’ material and fertilisers not fulfilling the detonation test**

This applies to—

- (a) material rejected during the manufacturing process and to ammonium nitrate and mixtures of ammonium nitrate, straight ammonium nitrate-based fertilisers and ammonium nitrate-based compound/composite fertilisers referred to in Notes 14 and 15, that are being or have been returned from the final user to a manufacturer, temporary storage or reprocessing plant for reworking, recycling or treatment for safe use, because they no longer comply with the specifications of Notes 14 and 15;
- (b) fertilisers referred to in Note 13(a), and Note 14 to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

**17. Potassium nitrate (5,000/10,000)**

This applies to those composite potassium-nitrate based fertilisers (in prilled/granular form) which have the same hazardous properties as pure potassium nitrate.

**18. Potassium nitrate (1,250/5,000)**

This applies to those composite potassium-nitrate based fertilisers (in crystalline form) which have the same hazardous properties as pure potassium nitrate.

**19. Upgraded biogas**

For the purpose of the implementation of these Regulations, upgraded biogas may be classified under entry 18 of Part 2 of Schedule 1 where it has been processed in accordance with applicable standards

<sup>(6)</sup> O.J. L 304, 21.11.2003, p. 1.

<sup>(7)</sup> 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate.

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for purified and upgraded biogas ensuring a quality equivalent to that of natural gas, including the content of Methane, and which has a maximum of 1% Oxygen.

**20. Polychlorodibenzofurans and polychlorodibenzodioxins**

The quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using the factors in Table 1—

**Table 1**

**WHO 2005 TEF\***

2,3,7,8-TCDD	1	2,3,7,8-TCDF	0.1
1,2,3,7,8-PeCDD	1	2,3,4,7,8-PeCDF	0.3
		1,2,3,7,8-PeCDF	0.03
1,2,3,4,7,8-HxCDD	0.1		
1,2,3,6,7,8-HxCDD	0.1	1,2,3,4,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDD	0.1	1,2,3,7,8,9-HxCDF	0.1
		1,2,3,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDD	0.01	2,3,4,6,7,8-HxCDF	0.1
OCDD	0.0003	1,2,3,4,6,7,8-HpCDF	0.01
		1,2,3,4,7,8,9-HpCDF	0.01
		OCDF	0.0003

(T = tetra, P = penta, Hx = hexa, Hp = hepta, O = octa)

\*Reference — Van den Berg et al: The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds.

**21.** In cases where this hazardous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lower controlled quantity applies.

**22.** Where a hazardous substance is covered by Part 1 of this Schedule and is also listed in Part 2, the controlled quantity set out in Column 2 of Part 2 apply.

**23.** In relation to Part 3—

- (a) where S also falls within Part 1 or Part 2, the classification with the lowest controlled quantity applies; and
- (b) where S also falls within Part 1 and Part 2, the controlled quantity which is lowest when the controlled quantities under Part 2 and Part 3 are compared applies.

**24.** 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.

## 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<sup>(8)</sup> (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<sup>(9)</sup>, 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—

- (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<sup>(10)</sup>;
- (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

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<sup>(8)</sup> 1985. c. 22.

<sup>(9)</sup> S.I. 1987/37, to which there are amendments not relevant to these Regulations.

<sup>(10)</sup> O.J. No. L 304, 14.11.2008, p. 75.

- (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<sup>(11)</sup>.

### **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<sup>(12)</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 explosive license within the meaning of regulation 2(1) of the Dangerous Substances in Harbour Areas Regulations 1987<sup>(13)</sup> 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—

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(11) 1965 c. 57; section 1 was substituted by paragraphs 16 and 17 of Schedule 12 to the Energy Act 2013 (c. 32).

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

(13) 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.

- (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
    - (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—

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- (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<sup>(14)</sup>, 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.

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<sup>(14)</sup> S.I. 2012/801 (W. 110).

SCHEDULE 3

Regulations 6(4), 7, 13(4) and 13(5)

PRESCRIBED FORMS, NOTICES AND CERTIFICATES

Form 1

**Posting of Notice of Application Certificate**

**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 6)**

**Certificate A**

I certify that:

I/the applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

The notice was left in position for not less than 7 days during the 21 day period preceding the application.

or

**Certificate B**

I certify that:

I have/the applicant has\* been unable to post the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application because I have/the applicant has\* no right of access or other rights in respect of the land that would enable me/the applicant\* to do so.

I have/the applicant has\* taken the following steps to acquire those rights, but have/has\* been unsuccessful.

(Give description of steps taken) .....

.....

or

**Certificate C**

I certify that:

I/the applicant\* posted the notice required by regulation 6(1)(b) of the above Regulations on the land which is the subject of the accompanying application.

The notice was, however, left in position for less than 7 days during the 21 day period preceding the application.

This happened because it was removed/obscured/defaced\* before 7 days had elapsed.

This was not my/the applicant's\* fault or intention.

I/the applicant\* took the following steps to protect and replace the notice:

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(Give description of steps taken) .....

Signed.....

\*on behalf of.....

Date.....

\* delete where inappropriate



Form 2

**Certificates under Regulation 7(1)\* or 13(4)\*(a)**

**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (Wales) Regulations 2015**

**Certificate A**

I certify that:

at the beginning of the period of 21 days ending with the date of the accompanying application/appeal\* nobody, except the applicant/appellant\*, was the owner **(b)** of any part of the land to which the application/appeal\* relates.

Signed.....

\*on behalf of.....

Date.....

**Certificate B**

I certify that:

I have/the applicant has/the appellant has\* given the required notice **(c)** to everyone else who, at the beginning of the period of 21 days ending with the date of the accompanying application/appeal, was the owner **(b)** of any part of the land to which the application/appeal\*relates, as listed below.

Owner's name .....

Address at which notice was served .....

Date on which notice was served .....

Signed.....

\*on behalf of.....

Date.....

**Certificate C**

I certify that:

I/the applicant/the appellant\* cannot issue a Certificate A or B in respect of the accompanying application/appeal\*.

I have/the applicant has/the appellant has\* given the required notice **(c)** to the persons specified below, being persons who at the beginning of the period of 21 days ending with the date of the

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application/appeal\*, were owners (b) of any part of the land to which the application/appeal \*relates.

Owner’s name .....

Address at which notice was served .....

Date on which notice was served .....

I have/the applicant has/the appellant has\* taken all reasonable steps open to me/the applicant/the appellant\* to find out the names and addresses of the remaining owners (b) of the land, or of a part of it, but have/has\* been unable to do so. These steps were as follows:—

(d) .....  
.....

Signed.....

\*on behalf of.....

Date.....

**Certificate D**

I certify that:

I/the applicant/the appellant\* cannot issue a Certificate A in respect of the accompanying application/appeal\*

I/the applicant/the appellant\* have/has\* taken all reasonable steps open to me/the applicant/the appellant\* to find out the names and addresses of everyone else who, at the beginning of the period of 21 days ending with the date of the application/appeal\*, was the owner (b) of any part of the land to which the application/appeal\* relates, but have/has\* been unable to do so. These steps were as follows:—

(d).....  
.....

Signed.....

\*on behalf of.....

Date.....

\* delete where inappropriate

---

(a) These Certificates are for use both with applications and appeals for hazardous substances consent. References to either regulation 7(1) or 13(4) should therefore be deleted as appropriate. One of certificates A, B, C or D must be completed.

(b) “Owner” means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(c) Form 3 (for applications) or Form 4 (for appeals).

(d) Insert description of steps taken.

### Form 3

**Notice of Application for Hazardous Substances Consent/Continuation of Hazardous Substances Consent\***  
**The Planning (Hazardous Substances) Act 1990**

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 7)**

**To be served on an owner(a)**

I give notice that (b).....

is applying to the (c).....

for hazardous substances consent/the continuation of hazardous substances consent\*

(d).....

at (e).....

Details about how you may inspect a copy of the application and make representations to (c).....are set out in the attached public notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

---

(a) "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(b) Insert applicant's name.

(c) Insert name of Council or other body to whom the application is to be made.

(d) Insert brief details of the consent being sought.

(e) Insert address or location of the application site.

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Form 4

Notice of Appeal  
The Planning (Hazardous Substances) Act 1990

**The Planning (Hazardous Substances) (Wales) Regulations 2015 (Regulation 13)**

To be served on an owner (a)

I give notice that (b).....

having applied to the (c)..... for hazardous substances consent/the continuation of hazardous substances consent\*

for (d).....

at (e).....

is appealing to the Welsh Ministers against the decision of the (b).....

—on the failure of the (b).....to give notice of a decision\*

If you wish to make representations about this appeal you should write to the Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff CF14 0NS within 21 days of the date of service of this notice.

Signed: .....

\*on behalf of.....

Date.....

\* delete where inappropriate

---

(a) "Owner" means a person having a freehold interest or a tenancy the unexpired term of which is not less than 7 years.

(b) Insert appellant's name.

(c) Insert name of Council or other body to whom the application was made.

(d) Insert a description of the proposals.

(e) Insert address or location of the application site.

SCHEDULE 4

Regulations 16, 18 and 20(1)

ENFORCEMENT – SPECIFIED MODIFICATIONS OF THE TCPA

PART 1

Appeals against hazardous substances contravention notices

1. In sections 174, 175, 176 and 177 of the TCPA as applied by regulation 16—
  - (a) each reference to an enforcement notice is to be read as if it were a reference to a hazardous substances contravention notice; and
  - (b) each reference to a local planning authority is to be read as if it were a reference to a hazardous substances authority.
2. Section 174 of the TCPA (appeals against enforcement notice), in its application in relation to a hazardous substances contravention notice, is to be read as if—
  - (a) subsection (2) read as follows—

“(2) An appeal may be brought on any of the following grounds—

    - (a) that, in respect of any contravention of hazardous substances control specified in the notice, hazardous substances consent ought to be granted for the quantity of the hazardous substance present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;
    - (b) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
    - (c) that those matters (if they occurred) do not constitute a contravention of hazardous substances control;
    - (d) that copies of the hazardous substances contravention notice were not served as required by or under section 24(4) of the Planning (Hazardous Substances) Act 1990;
    - (e) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
    - (f) that any period specified in the notice in accordance with section 24(5)(b) of that Act falls short of what should reasonably be allowed.”;
  - (b) subsection (4) read as follows—

“(4) A notice under subsection (3) must be accompanied by a copy of the hazardous substances contravention notice, together with a statement—

    - (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and
    - (b) setting out the appellant’s submissions in relation to each ground of appeal.”;
  - (c) in subsection (5)—
    - (i) the words “in that statement” were inserted immediately after “does not”;
    - (ii) the words “in that statement” were inserted immediately after “failed”; and
    - (iii) the words “within the prescribed time” and “within that time” were omitted.
3. Section 175 of the TCPA (appeals: supplementary provisions), in its application in relation to a hazardous substances contravention notice, is to be read as if in subsection (6), the words

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“section 25(1) of the Planning (Hazardous Substances) Act 1990” were substituted for “any other provisions of this Act”.

4. Section 176 of the TCPA (general provisions relating to determination of appeals), in its application in relation to a hazardous substances contravention notice, is to be read as if in subsection (3)—

(i) in paragraph (a), “within the prescribed time” were omitted; and

(ii) paragraph (b) read as follows—

“(b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fails to comply with regulation 17(2) of the Planning (Hazardous Substances) (Wales) Regulations 2015.”

5. Section 177 of the TCPA (grant or modification of planning permission on appeal against enforcement notice), in its application in relation to a hazardous substances contravention notice, is to be read as if—

(a) for paragraphs (a) and (b) were substituted—

“(a) grant hazardous substances consent for the presence of the hazardous substance on, over or under the land or on, over or under part of that land to which the hazardous substances contravention notice relates;

(b) discharge any condition subject to which hazardous substances consent was granted.”;

(b) subsections (1A) to (1C) were omitted;

(c) in subsection (2)—

(i) the words “hazardous substances consent” were substituted for “planning permission”; and

(ii) the words after “regard” were substituted with “to any considerations which a hazardous substances authority would have to have regard to under section 9(2) of the Planning (Hazardous Substances) Act 1990 when dealing with an application for hazardous substances consent.”;

(d) in subsection (3)—

(i) the words “hazardous substances consent” were substituted for “planning permission” in both places where it occurs; and

(ii) the reference to “Part III” were a reference to “the Planning (Hazardous Substances) Act 1990”;

(e) in subsection (4) both references to “or limitation” were omitted;

(f) in subsection (5)—

(i) paragraph (b) were omitted;

(ii) for the words from “planning permission” to the end, were substituted “hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control.”;

(g) in subsection (5A), the words “section 26A of the Planning (Hazardous Substances) Act 1990” were substituted for “section 303”;

(h) in subsections (6) and (7), the words “hazardous substances consent” were substituted for “planning permission”; and

(i) in subsection (8)—

- (i) the words “section 28 of the Planning (Hazardous Substances) Act 1990” were substituted for “section 69”; and
- (ii) the words “hazardous substances consent” were substituted for “planning permission”.

## PART 2

### Effect of hazardous substances contravention notices, etc.

6. In sections 178, 179, 180 and 181 of the TCPA, as applied by regulation 18—
  - (a) each reference to an enforcement notice is to be read as if it were a reference to a hazardous substances contravention notice; and
  - (b) each reference to a local planning authority is to be read as if it were a reference to a hazardous substances authority.
7. Section 178 of the TCPA (execution and cost of works required by enforcement notices) as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
  - (a) in subsection (2), in both places where the words “breach of planning control” occur, it read “contravention of hazardous substances control”;
  - (b) subsections (3) to (5) were omitted; and
  - (c) the following subsection were inserted after subsection (6)—

“(7) Where different periods are specified for different steps in a hazardous substances contravention notice by virtue of section 24(5)(b) of the PHSA, references in this section and in section 179 to the period for compliance with a hazardous substances contravention notice, in relation to a step, are to the period by the end of which the step is required to have been taken.”
8. Section 179 (offence where enforcement notice not complied with), as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
  - (a) subsection (1) read as follows—

“(1) Where, at any time after the end of the period for compliance with a hazardous substances contravention notice, any steps required by the notice to be taken before the end of that period have not been taken, any person other than the owner who is in control of the land and the owner of the land at that time is in breach of the notice.”;
  - (b) in subsection (2), for the words “the owner of the land” read “a person”;
  - (c) subsections (4) and (5) were omitted;
  - (d) in subsection (6), the words “or (5)” were omitted; and
  - (e) in subsection (7)(b), the words “section 188” read “regulation 19 of the Planning (Hazardous Substances) (Wales) Regulations 2015”.
9. Section 180 (effect of planning permission etc. on enforcement or breach of condition notice) as it has effect in relation to a hazardous substances contravention notice, is to be read as if—
  - (a) subsection (1) read as follows—

“(1) Where, after the service of a copy of a hazardous substances contravention notice, hazardous substances consent is granted for the presence of a hazardous substance on, over or under the land to which the notice relates or any part of that land, the notice ceases to have effect so far as inconsistent with that consent.”;
  - (b) subsection (2) were omitted; and

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(c) in subsection (3), the words “or breach of condition notice” were omitted.

**10.** Section 181 (enforcement notice to have effect against subsequent development) as it has effect in relation to a hazardous substances contravention notice, is to be read as if the following were substituted for subsections (1) to (5) of that section—

“(1) Compliance with a hazardous substances contravention notice does not discharge that notice.

(2) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires a hazardous substance to be removed from the land to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity at any time after the substance has been removed in compliance with the hazardous substances contravention notice is in contravention of that notice.

(3) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity (being greater than the controlled quantity), the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice, is in contravention of that notice.

(4) Without prejudice to subsection (1), where a provision of a hazardous substances contravention notice requires steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent was granted, after those steps have been taken no further steps may be taken which would constitute a breach of that condition, and the taking of such further steps is in contravention of that notice.

(5) Sections 178 and 179 apply to the contravention of a hazardous substances contravention notice to which this section applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority must not enter the land under section 178(1) without, at least 28 days before their entry, serving on the owner or occupier of the land a notice of their intention to do so.”

## PART 3

### Validity

**11.**—(1) Section 285 of the TCPA (validity of enforcement notices and similar notices), as applied by regulation 20(1), is to be read as if—

- (a) each reference to an enforcement notice were a reference to a hazardous substances contravention notice; and
- (b) subsections (3) and (4) were omitted.

(2) Section 289 of the TCPA (appeals to High Court relating to enforcement notices etc.), as applied by regulation 20(1), is to be read as if—

- (a) each reference to an enforcement notice were a reference to a hazardous substances contravention notice; and
- (b) each reference to a local planning authority in subsections (1) and (4A) were a reference to a hazardous substances authority.



SCHEDULE 5

Regulation 35

AMENDMENTS TO LEGISLATION

**Amendment of the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005**

1.—(1) The Town and Country Planning (Local Development Plan) (Wales) Regulations 2005<sup>(15)</sup> are amended as follows.

(2) In regulation 13 (LDP: additional matters to which regard is to be had)—

(a) for paragraph (1)(c) substitute—

“(c) the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment by pursuing those objectives through the controls described in Article 13 of Directive 2012/18/EU;”

(b) for paragraph (d) substitute—

“(d) the need, in the long term—

(i) to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes;

(ii) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures;

(iii) in the case of existing establishments, to take additional technical measures in accordance with Article 5 of Directive 2012/18/EU so as not to increase the risks to human health and the environment.”;

(c) in paragraph (2), for “Council Directive 96/82/ EC (as amended by Council Directive 2003/105/EC)” substitute “Directive 2012/18/EU”.

**Amendment of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012**

2.—(1) The Town and Country Planning (Development Management Procedure) (Wales) Order 2012<sup>(16)</sup> is amended as follows.

(2) In the Table in Schedule 4 (consultations before the grant of permission), in paragraph (x)—

(a) for the words in the second column (description of development) substitute—

“Development—

(i) involving the siting of new establishments;

(ii) consisting of modifications to existing establishments covered by Article 11 of Directive 2012/18/EU; or

(iii) which is new, including transport routes, locations of public use and residential areas in the vicinity of existing establishments, where the siting or development may be the source of or increase the risk or consequences of a major accident.”;

(b) for the words in the third column (consultee) substitute—

<sup>(15)</sup> S.I. 2005/2839 (W. 203), to which there have been amendments which are not relevant to this instrument.

<sup>(16)</sup> S.I. 2012/801 (W. 110).

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“The COMAH competent authority, and in relation to development falling within paragraph (iii), any person who is, according to the register held by the hazardous substances authority under regulation 22 of the Planning (Hazardous Substances) (Wales) Regulations 2015, the person who is in control of the land on which any existing establishment in question is located”;

(c) in Schedule 4 in the paragraph dealing with the Interpretation of Table, for paragraph (k) substitute—

“(k) in paragraph (x)—

(i) expressions appearing both in that paragraph and in Directive 2012/18/EU have the same meaning as in that Directive; and

(ii) “COMAH competent authority” (“*awdurdod COMAH cymwys*”) means—

(aa) in relation to a relevant nuclear site, the Office of Nuclear Regulation and the Natural Resources Body for Wales, acting jointly;

(bb) otherwise, the Health and Safety Executive and the Natural Resources Body for Wales acting jointly.”