
STATUTORY INSTRUMENTS

1990 No. 304

HEALTH AND SAFETY

The Dangerous Substances (Notification and Marking of Sites) Regulations 1990

<i>Made</i>	- - - -	<i>16th February 1990</i>
<i>Laid before Parliament</i>		<i>1st March 1990</i>
<i>Coming into force</i>	- -	<i>1st September 1990</i>

The Secretary of State, in exercise of the powers conferred on him by sections 15(1), (2), (3)(c), (4) (a), (5)(b), 80(1), (4), and 82(3)(a) of, and paragraphs 1(1)(b), 15(1) and 21(a) of Schedule 3 to, the Health and Safety at Work etc. Act 1974⁽¹⁾ (“the 1974 Act”), the provisions of the Acts mentioned in column 1 of Schedule 4 to these Regulations which are specified opposite thereto in column 4 of that Schedule and of all other enabling powers;

- (a) for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after carrying out by the said Commission of consultations in accordance with section 50(3) of that Act; and
- (b) it appearing to him that the repeal of the provisions of the Acts mentioned in column 1 of Schedule 4 to these Regulations which are specified opposite thereto in column 3 of that Schedule (provided for by section 80(1) of the 1974 Act as applied by the provisions specified in column 4 of that Schedule) is expedient, after the carrying out by him of consultations in accordance with section 80(4) of the 1974 Act,

hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Dangerous Substances (Notification and Marking of Sites) Regulations 1990, and shall come into force on 1st September 1990.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

(1) 1974 c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively.

“the 1984 Regulations” means the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984(2);

“classification” in relation to a dangerous substance (except in paragraph 1(c) of Schedule 1) means the classification for that substance ascertained in accordance with regulation 6 of the 1984 Regulations (whether or not the substance is required to be classified for the purposes of those Regulations);

“dangerous substance” means any substance which is dangerous for conveyance within the meaning of the 1984 Regulations, and any reference to “dangerous substances” (except in Regulation 6(5)) includes a reference to one dangerous substance;

“the Executive” means the Health and Safety Executive;

“fire authority” in relation to any site means the authority discharging in the area in which the site is situated the functions of fire authority under the Fire Services Act 1947(3);

“Part I of BS 5378” means British Standard number BS 5378: Part 1 1980 entitled “Safety Signs and Colours Part 1. Specification for colour and design” issued by the British Standards Institution, as published on 31 July 1980;

“site” means—

- (a) the whole of an area of land under the control of a person and includes a pier, jetty or similar structure whether floating or not; or
- (b) a structure, whether floating or not, which is within the inland waters of Great Britain and which is under the control of a person.

(2) Any reference in these Regulations to the person in control of a site is a reference to the person having such control in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

(3) For the purposes of these Regulations, in determining the total quantity of dangerous substances present at a site account shall be taken of any quantity of such substances which are in any vehicle, vessel, aircraft or hovercraft under the control of the person in control of the site which is used for storage purposes at the site; but no account shall be taken of any dangerous substances which are in a vehicle, vessel, aircraft or hovercraft used for transporting them or in the fuel tank of a vehicle, vessel, aircraft or hovercraft.

(4) In these Regulations, unless the context otherwise requires, any reference to—

- (a) a numbered regulation or Schedule is a reference to the Regulation or Schedule in these Regulations so numbered; and
- (b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which that reference appears.

Exceptions

3. The provisions of Schedule 1 (which sets out exceptions to the Regulations) shall have effect.

Notification

4.—(1) The person in control of a site shall, subject to regulation 10(1), ensure that there is not present at any one time a total quantity of 25 tonnes or more of dangerous substances at the site unless there has been notified in writing to the fire authority and the enforcing authority for this regulation the particulars specified in Part I of Schedule 2.

(2) S.I. 1984/1244, amended by S.I. 1986/1922, 1988/766 and 1989/2208.

(3) 1947 c. 41.

(2) Where a notification has been made under paragraph (1) and a change specified in Part II of Schedule 2 takes place, the person in control of the site shall forthwith notify that change in writing to the fire authority and the enforcing authority for this regulation.

(3) Where a change specified in paragraph 1 or 2 of Part II of Schedule 2 has been notified under paragraph (2), any resumption in the presence of a total quantity of 25 tonnes or more of dangerous substances at the site shall be subject to a fresh notification under paragraph (1).

Access marking

5.—(1) The person in control of a site shall ensure that there is not present at any one time a total quantity of 25 tonnes or more of dangerous substances at the site unless safety signs are displayed at such places as will give adequate warning to firemen before entering the site in an emergency that dangerous substances are present.

(2) The safety signs referred to in paragraph (1) shall be warning signs as defined by clause 3.6 of Part I of BS 5378 bearing the hazard warning symbol (but not the text) shown in the last entry of column 2 of Schedule 3 to these Regulations; and all such signs shall comply with that Part with respect to colours and layout.

Location marking

6.—(1) An inspector may give directions to the person in control of a site requiring him to display, at all times when a total quantity of 25 tonnes or more of dangerous substances is present at the site, safety signs at such locations within the site as are specified in the directions.

(2) Directions under paragraph (1) may only be given where the inspector is satisfied on reasonable grounds that—

- (a) there is or is liable to be present at any one time a total quantity of 25 tonnes or more of dangerous substances at the site, and
- (b) the display of safety signs at the locations to be specified in the directions is necessary in order to warn firemen in an emergency that dangerous substances are present at those locations.

(3) The safety signs referred to in paragraph (1) shall be warning signs as defined by clause 3.6 of Part 1 of BS 5378 used in conjunction with supplementary signs as defined by clause 3.9 of that Part, and all such signs shall comply with that Part with respect to colours and layout.

(4) The warning signs and supplementary signs shall bear the hazard warning symbol and hazard warning text respectively.

(5) The hazard warning symbol and hazard warning text shall be—

- (a) in the case where there is one dangerous substance or there are two or more dangerous substances with the same classification at the location where the signs are displayed, that specified in column 2 of Schedule 3 appropriate to the classification of such substance or substances specified opposite thereto in column 1 of that Schedule,
- (b) in the case where there are two or more dangerous substances with different classifications at the location where the signs are displayed, that specified in the said column 2 opposite the entry for “Mixed hazards” in the said column 1.

(6) Directions may be given by an inspector under this regulation in any such reasonable manner as he may think fit, and may be withdrawn by him at any time.

(7) The person to whom directions are given under this regulation shall, subject to regulation 10(2), comply with those directions, but safety signs need not be displayed at a location specified in the directions at a time when dangerous substances are not present at that location.

(8) Any reference in this regulation to the presence of dangerous substances at a location is a reference to the presence of dangerous substances at or within the vicinity of that location.

Signs to be kept clean, etc.

7. The person in control of the site shall, so far as is reasonably practicable, ensure that any safety signs displayed at the site pursuant to regulation 5 or 6 are kept clean and free from obstruction.

Enforcing authority

8. The enforcing authority for these Regulations shall be the fire authority except that—
- (a) the enforcing authority for regulation 4 shall be ascertained in accordance with the Health and Safety (Enforcing Authority) Regulations 1989(4); and
 - (b) the enforcing authority for regulations 5 to 7 in relation to a site occupied by a body specified in regulation 4(3) of the said 1989 Regulations shall be the Executive.

Exemption certificates

9.—(1) Subject to paragraph (2), the Executive may, by certificate in writing, exempt any person or class of persons or any activity or class of activities to which these Regulations apply from any requirement imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Executive shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption, and
- (b) any other requirements imposed by or under any enactment which apply to the case;

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced because of it.

Transitional provisions

10.—(1) Where a total quantity of 25 tonnes or more of dangerous substances is present at a site on the coming into force of these Regulations it shall be sufficient compliance with regulation 4(1) if the notifications referred to therein are made by 1st October 1990.

(2) Where a direction is given under regulation 6 before 1st March 1993, it shall be sufficient compliance with that direction if the safety signs are displayed in accordance therewith from that date.

Repeals

11. The provisions of the Acts mentioned in column 1 of Schedule 4 which are specified in column 3 of that Schedule are hereby repealed.

Signed by order of the Secretary of State.

16th February 1990

Patrick Nicholls
Parliamentary Under Secretary of State,
Department of Employment

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SCHEDULE 1

Regulation 3

EXCEPTIONS

1. These regulations shall not apply to or in relation to—
 - (a) dangerous substances which have been buried or deposited in the ground at the site as waste (whether in bulk, in drums or in other containers);
 - (b) substances which are dangerous substances by reason only that they are radioactive substances;
 - (c) substances which on classification under the Classification and Labelling of Explosives Regulations 1983⁽⁵⁾ have been assigned to Class 1 within the meaning of those Regulations;
 - (d) aerosol dispensers unless they are labelled in accordance with the 1984 Regulations, or would be required to be so labelled if they were being supplied or conveyed by road.
2. Regulation 4 (which relates to notification) shall not apply to—
 - (a) sites which are notifiable to the Executive in accordance with the Notification of Installations Handling Hazardous Substances Regulations 1982⁽⁶⁾;
 - (b) sites at which there is an industrial activity to which regulation 7 of the Control of Industrial Major Accident Hazards Regulations 1984 applies⁽⁷⁾;
 - (c) sites in respect of which a licence is in force for the keeping of substances under the Petroleum (Consolidation) Act 1928⁽⁸⁾;
 - (d) sites within the area of a harbour authority in relation to which regulation 27 of the Dangerous Substances in Harbour Areas Regulations 1987 applies⁽⁹⁾;
 - (e) sites in respect of which a disposal licence is in force under section 5 of the Control of Pollution Act 1974⁽¹⁰⁾ or operated by a disposal authority in accordance with section 11 of that Act;
 - (f) sites in respect of which a nuclear site licence is in force under the Nuclear Installations Act 1965⁽¹¹⁾.
3. Regulation 4 (in so far as it requires notification to be made to the fire authority) shall not apply to a site being premises to which section 3 of the Greater London Council (General Powers) Act 1975⁽¹²⁾ applies if a notice under section 3(3)(b) of that Act has been given to the occupier of the premises at any time before 1st September 1990.
4. Regulations 5 and 6 (which relate to access and location marking respectively) shall not apply to petroleum filling stations as defined in section 23 of the Petroleum (Consolidation) Act 1928.

⁽⁵⁾ S.I. 1983/1140.

⁽⁶⁾ S.I. 1982/1357.

⁽⁷⁾ S.I. 1984/1902, the relevant amending instrument is S.I. 1988/1462.

⁽⁸⁾ 1928 c. 32.

⁽⁹⁾ S.I. 1987/37.

⁽¹⁰⁾ 1974 c. 40.

⁽¹¹⁾ 1965 c. 57.

⁽¹²⁾ 1975 c.xxx.

SCHEDULE 2

Regulation 4

MATTERS TO BE NOTIFIED

PART I

PARTICULARS TO BE NOTIFIED UNDER REGULATION 4(1)

1. The name and address of the person making the notification.
2. The full postal address of the site.
3. A general description of the nature of the business carried on or intended to be carried on at the site.
4. A list of the classifications of any dangerous substances which are, or are liable to be, present.
5. The date on which it is anticipated that a total quantity of 25 tonnes or more of dangerous substances will be present, or if they are already present, a statement to that effect.

PART II

CHANGES TO BE NOTIFIED UNDER REGULATION 4(2)

1. The cessation of the presence of dangerous substances at the site other than a temporary cessation.
2. The reduction of the total quantity of dangerous substances present at the site to below 25 tonnes at the site other than a temporary reduction.
3. Any change in the list of classifications previously notified under paragraph 4 of Part I of this Schedule, including any change in that list as previously revised pursuant to this paragraph.

SCHEDULE 3

Regulation 6(5)

TABLE OF CLASSIFICATIONS AND HAZARD WARNINGS

1 Classification	2 Hazard warning symbol and text
Non-flammable compressed gas	COMPRESSED GAS
Toxic gas	TOXIC GAS
Flammable gas	FLAMMABLE GAS
Flammable liquid	FLAMMABLE LIQUID
Flammable solid	FLAMMABLE SOLID
Spontaneously combustible substance	SPONTANEOUSLY COMBUSTIBLE
Substance which in contact with water emits flammable gas	DANGEROUS WHEN WET
Oxidizing substance	OXIDIZING AGENT

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1	2
Classification	Hazard warning symbol and text
Organic peroxide	ORGANIC PEROXIDE
Toxic substance	TOXIC
Corrosive substance	CORROSIVE
Harmful substance Other dangerous substance Mixed hazards	DANGEROUS SUBSTANCE

SCHEDULE 4

Regulation 11

REPEALS AND ENABLING POWERS

(1) Acts	(2) Chapter	(3) Provisions repealed	(4) Enabling powers
The West Midlands County Council Act 1980	c.xi	section 48	section 119(1)(b)
The Cheshire County Council Act 1980	c.xiii	section 57	section 110(1)(b)
The South Yorkshire Act 1980	c.xxxvii	section 56	section 107(1)(b)
The Tyne and Wear Act 1980	c.xliii	section 23	section 56(1)(b)
The County of Kent Act 1981	c.xviii	section 55	section 130(1)(b)
The Derbyshire Act 1981	c.xxxiv	section 27	section 64(1)
The Cumbria Act 1982	c.xv	section 30	section 66(1)(b)
The Hampshire Act 1983	c.v	section 15	section 84(1)(b)
The County of Lancashire Act 1984	c.xxi	section 33	section 141(1)(b)
The Leicestershire Act 1985	c.xvii	section 46	section 109(1)
The Clwyd County Council Act 1985	c.xliv	section 22	section 69(1)
The Berkshire Act 1986	c.ii	section 34	section 75(1)
The County of Cleveland Act 1987	c.ix	section 4	section 42(1)
The Dyfed Act 1987	c.xxiv	section 52	section 76(1)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations require the notification and marking of sites where there is a total quantity of 25 tonnes or more of dangerous substances present at the site.

For the purposes of the Regulations “dangerous substance” means any substance which is dangerous for conveyance within the meaning of the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984 (regulation 2(1)), that is to say, a substance specified in Part 1A of the list approved by the Health and Safety Commission on 9 February 1988 entitled “Information Approved for the Classification, Packaging and Labelling of Dangerous Substances (2nd Edition)” as revised or a substance which has characteristic properties described in Schedule 2 to those Regulations. These Regulations do not apply to radioactive substances, Class I explosives, substances in specified aerosol dispensers, or substances which have been buried or deposited in the ground as waste (regulation 3 and Schedule 1).

The Regulations require the notification to be made to both the fire authority and the enforcing authority, and to contain specified information. A further notification is required where a specified change takes place at the site (regulation 4). These notification requirements do not apply where the site is required to be notified or licensed under other statutory provisions specified in the regulations, and notification to the fire authority is not required in respect of sites which are subject to the provisions of section 3(3) of the Greater London Council (General Powers) Act 1975 at the date of coming into force of the Regulations (regulation 3 and Schedule 1).

The Regulations require signs bearing the exclamation mark symbol to be displayed at such places as will give adequate warning to firemen before entering the site in an emergency that dangerous substances are present (regulation 5). Also signs are required to be displayed at such locations within the site as an inspector may direct: these signs must bear the hazard warning symbol and text (shown in Schedule 3 to the Regulations) appropriate to the classification of the dangerous substances concerned, or, in the case of substances with mixed classifications, the exclamation mark symbol and the text “DANGEROUS SUBSTANCE” (regulation 6). The Regulations require all signs to conform to specified provisions of British Standard 5378 (regulations 5 and 6) and to be kept clean and free from obstruction (regulation 7).

The Regulations make the fire authority the enforcing authority for the marking requirements, except in specified circumstances when it is the Health and Safety Executive. The Regulations provide that the enforcing authority for the notification requirements is to be ascertained in accordance with the Health and Safety (Enforcing Authority) Regulations 1989 (regulation 8). The Regulations provide for the issue of certificates of exemption by the Executive (regulation 9).

There are transitional provisions in the Regulations specifying the 1st October 1990 as the date by which a notification of an existing site must be made, and the 1st March 1993 as the date from which directions for location marking must be complied with (regulation 10).

The Regulations repeal provisions of local Acts which empower marking schemes to be established (regulation 11 and Schedule 4).

Copies of British Standard 5378 are obtainable from the British Standards Institution, Linford Wood, Milton Keynes, MK14 6LE, and copies of the approved list referred to in the second paragraph of this note are obtainable from Her Majesty’s Stationery Office.

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