

ANWICK PARISH COUNCIL

SUPPLEMENTARY SUBMISSION

Major Accident Hazard Risk and COMAH Implications in respect of the proposed Biogas Plant at Anwick

Planning Application Ref: PL/0016/25

Submitted in response to the Environmental Statement Addendum provided pursuant to Regulation 25 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017

Introduction

The Control of Major Accident Hazards Regulations 2015 (“COMAH”) constitute the UK’s principal statutory regime for the prevention and control of major industrial accidents involving dangerous substances, including flammable and toxic gases such as methane-rich biogas and hydrogen sulphide (H₂S), both of which are intrinsic to large-scale anaerobic digestion operations. The Regulations apply where such substances are present on a site above defined threshold quantities and require operators to take all necessary measures to prevent major accidents and to limit their consequences for human health and the environment, with particular emphasis on off-site impacts, proximity to residential populations, and the interaction of neighbouring installations, including the potential for domino effects. While COMAH compliance is secured through separate regulatory processes overseen jointly by the Health and Safety Executive and the Environment Agency, the potential applicability of COMAH is a material planning consideration where a proposed development may constitute, or approach, a major accident hazard installation, because it goes directly to the appropriateness of the site and the acceptability of locating hazardous gas-generating infrastructure in close proximity to sensitive receptors.

As demonstrated in the Parish Council’s Regulation 25 Rebuttal, the Environmental Statement fails to define the true operational envelope of the proposed facility, including its maximum processing capacity, gas generation potential and hazardous substance inventories, and therefore fails to establish a reasonable worst-case scenario. It is that evidential deficiency, already identified and substantiated by the Parish Council, which gives rise to the present consideration of COMAH (see **Appendix 1**). **The scope, operation and planning relevance of the COMAH regime, including its threshold-based application to biogas and associated hazardous gases, are explained in further detail in this submission.**

The application fails to clearly establish whether the proposed development would fall under the Control of Major Accident Hazards Regulations 2015. Given the scale of feedstock (**120,000 tonnes per annum as stated by the applicant**), the proximity of approximately 400 residents within 450 metres, and the presence of Pilgrim’s poultry slaughterhouse and Anglian Water sewage treatment works within approximately 250 metres of the site, the risk of a major accident and associated domino effects is a material planning consideration that has not been adequately assessed within the Environmental Statement or the Environmental Statement Addendum.

Failure to Establish COMAH Status as a Material Planning Harm

Once COMAH is acknowledged, or cannot reasonably be ruled out, the determining question becomes whether this site given its proximity to housing and neighbouring industrial installations is an appropriate location for development with major accident hazard potential, a question that must be answered at the planning stage and cannot be deferred to operational controls or post-consent regulation.

1. Purpose and Status of this Submission

1.1

This document constitutes a supplementary submission by Anwick Parish Council (“the Parish Council”) in its capacity as a statutory consultee, arising directly from the material reviewed and submitted in the Parish Council’s Regulation 25 Rebuttal dated 11 January 2026.

1.2

This submission does not introduce a new objection in principle. It identifies a material regulatory and environmental issue which arises unavoidably from the applicant’s continued failure to define the operational envelope, true processing capacity, and hazardous substance inventory of the proposed development.

1.3

The issue addressed is the potential applicability of the Control of Major Accident Hazards Regulations 2015 (COMAH) and the implications of that potential applicability for site suitability, Environmental Impact Assessment compliance, and the lawfulness of any planning determination.

1.4

This is material environmental information relevant to the requirements of Regulation 18 and Schedule 4 of the EIA Regulations. It is submitted to assist the Local Planning Authority (“the Authority”) in discharging its duty to take reasonable steps to inform itself prior to determination.

2. COMAH: Relevance to the Proposed Development

2.1

The COMAH Regulations apply where dangerous substances are present on a site above defined threshold quantities. For anaerobic digestion facilities, the principal relevant hazardous substances include:

- biogas containing methane (highly flammable/explosive); and
- associated toxic gases, including hydrogen sulphide (H₂S).

2.2

COMAH applicability is determined not by annual throughput, but by the maximum instantaneous inventory of hazardous substances that may be present on site under normal or upset operating conditions.

2.3

Where a development may constitute, or approach, a major accident hazard installation, the location of the site relative to residential populations and neighbouring installations is a fundamental planning consideration, distinct from post-consent operational regulation.

2A.

Planning Policy Framework (Lincolnshire Minerals and Waste Local Plan and National Policy)

2A.1

The adopted Lincolnshire Minerals and Waste Local Plan (Core Strategy and Development Management Policies) provide the development plan policy framework for determining application PL/0016/25. The matters raised in this submission engage, in particular:

- Policy DM3 (Quality of Life and Amenity): minerals and waste development must not generate unacceptable adverse impacts to nearby dwellings or other sensitive receptors.
- Policy DM17 (Cumulative Impacts): permission will be granted only where cumulative impacts would not result in significant adverse impacts on the environment of an area or on the amenity of a local community, including from multiple developments occurring concurrently or successively.
- Policy DM14 (Transport by Road): arrangements for site access and the traffic generated must not have an unacceptable impact on highway safety, free flow of traffic, residential amenity or the environment.

2A.2

National policy reinforces the requirement to treat major accident hazards as a material planning consideration. The National Planning Policy Framework requires local planning authorities to consult appropriate bodies when considering applications for the siting of, or changes to, major hazard sites, installations or pipelines, or for development around them (NPPF paragraph 46).

2A.3

National waste planning policy also requires waste planning authorities, when determining applications, to consider likely impacts on the local environment and amenity against locational criteria which expressly include air emissions and odours (National Planning Policy for Waste, Appendix B (g) and (h)) and to bear in mind the envisaged facility in terms of type and scale.

2A.4

Accordingly, where COMAH cannot reasonably be excluded on the evidence, it is not open to the Authority to treat major accident potential as solely a 'permit matter'. The development plan and national policy require the Authority to be satisfied, on a defined worst-case envelope, that the proposal would not give rise to unacceptable risks to amenity and public safety (including through cumulative and domino effects) and that the site is appropriate for the hazard profile of the development.

2A.5

Emerging Lincolnshire Minerals and Waste Local Plan update (material consideration)

The County Council is in the process of updating the Lincolnshire Minerals and Waste Local Plan (Preferred Approach stage). The published Schedule of Policy Amendments (May 2024) confirms that the update is intended to ensure the plan's policies remain relevant and effective, including by introducing a new strategic policy to secure sustainable development and address climate change (replacing existing DM1/DM2/DM13) and by retaining a clear focus on impacts on communities and the environment. In determining PL/0016/25

the adopted plan remains the primary basis for decision-making, but the Authority may give appropriate weight to emerging minerals and waste policies in line with the NPPF approach to emerging plans. The Parish Council's position is that, whether assessed against adopted or emerging policy, the application cannot be determined lawfully without first defining the maximum hazardous substances inventory and assessing major accident and domino effects on sensitive receptors.

3. Failure to Define the Hazard Inventory Envelope

3.1

As set out in detail in the Parish Council's Regulation 25 Rebuttal, the Environmental Statement Addendum does not define the operational or physical limits of the proposed facility, including:

- working liquid volumes of digestion tanks;
- hydraulic retention times and organic loading rates;
- the functional role and concurrent operation of the eight digestion tanks;
- the maximum achievable throughput of the installed plant; or
- the maximum instantaneous volume or mass of biogas capable of being stored on site.

3.2

Independent comparator analysis submitted by the Parish Council demonstrates that, on the basis of disclosed tank dimensions alone, the installed infrastructure is physically capable of materially greater throughput than the stated 120,000 tonnes per annum, and therefore capable of generating and storing materially greater quantities of biogas than have been assessed.

3.3

In the absence of a defined maximum gas inventory, it is not possible to determine whether COMAH lower-tier or upper-tier thresholds for flammable gases could be exceeded or approached. This uncertainty is not theoretical; it is a direct consequence of the applicant's non-disclosure of standard process design parameters.

3.4

The Environmental Statement therefore fails to define a reasonable worst-case hazardous substances scenario, contrary to the requirements of the EIA Regulations.

4. Proximity to Sensitive Receptors and Domino Risk

4.1

The Parish Council has already evidenced that the proposed site is located:

- immediately adjacent to residential dwellings, with the core of Anwick village approximately 130 metres away;
- within close proximity of vulnerable populations; and
- within approximately 250 metres of both an operational poultry slaughterhouse and a wastewater treatment work.

4.2

This configuration represents a cluster of industrial installations and sensitive receptors in close proximity. COMAH specifically requires consideration of off-site consequences and potential domino effects, whereby an incident at one installation could escalate risks at another.

4.3

No assessment of such domino effects has been undertaken or presented within the Environmental Statement Addendum.

5. Regulatory Non-Engagement and Unlawful Deferral

5.1

The Environment Agency has confirmed in correspondence submitted by the Parish Council that it has not assessed hazardous substances risk, cumulative odour impacts, or regulatory feasibility at the planning stage, and has deliberately limited its involvement on the basis that these matters fall within post-consent permitting.

5.2

Where the potential for major accident hazard exists, and where site suitability relative to residential populations is in issue, it is not lawful for the planning authority to assume that later regulatory regimes will cure deficiencies in site selection or environmental assessment.

5.3

Determining this application without clarity on COMAH applicability would therefore represent an unlawful deferral of material environmental considerations, contrary to established public law principles requiring decision-makers to be properly informed before granting consent.

5.4

Selective Reliance on DSEAR and Omission of COMAH

The Environmental Statement makes reference to compliance with the Dangerous Substances and Explosive Atmospheres Regulations (DSEAR), which relate primarily to routine workplace safety and the control of explosive atmospheres within an operational site. **DSEAR addresses risks to workers and on-site processes; it does not address off-site consequences, land-use compatibility, proximity to residential populations, or the interaction of neighbouring industrial installations.**

By contrast, the Control of Major Accident Hazards Regulations 2015 are specifically concerned with major accident risk, off-site impacts, and the suitability of locations where dangerous substances may be present above defined thresholds. In public and regulatory terms, DSEAR is commonly associated with routine operational safety, whereas COMAH is concerned with the prevention and mitigation of major industrial accidents with potential consequences beyond the site boundary.

The applicant has chosen to reference DSEAR but has not addressed COMAH, despite the scale of the proposal and its proximity to residential and industrial receptors. This selective approach fails to provide decision-makers with a complete understanding of major accident risk. In particular, COMAH has not been addressed because it raises questions about off-site risk, proximity to housing, domino effects, and whether this is an appropriate location for a potential major accident hazard facility—questions which DSEAR does not address and cannot resolve.

6. Planning Consequences

Key Planning Issue: Major Accident Hazard Status and Site Appropriateness

The application fails to clearly establish whether the proposed development would fall under the Control of Major Accident Hazards Regulations 2015. Given the scale of feedstock proposed (120,000 tonnes per annum), the proximity of approximately 400 residential properties within 450 metres, and the presence of Pilgrim's poultry slaughterhouse and Anglian Water sewage treatment works within approximately 250 metres of the site, the risk of a major accident and associated domino effects is a material planning consideration that has not been adequately assessed within the Environmental Statement or the Environmental Statement Addendum.

Once COMAH is engaged, or cannot reasonably be excluded, the question for the decision-maker is not simply how the facility would be operated, but whether this is an appropriate location for a potential major accident hazard installation. That is a planning judgement, not merely an operational or permitting matter, and it goes directly to site suitability in a residential and cumulatively constrained environment.

6.0A Policy tests engaged by the evidence

For the avoidance of doubt, the Parish Council considers that the current evidence base is incapable of demonstrating compliance with the following development plan and national policy tests:

- LMWLP Policy DM3 (Quality of Life and Amenity): absence of a defined worst-case hazardous gas and odour envelope prevents any robust conclusion that impacts on nearby dwellings and other sensitive receptors would be acceptable.
- LMWLP Policy DM17 (Cumulative Impacts): the Environmental Statement Addendum does not assess cumulative and domino effects in a cluster of industrial installations and sensitive receptors.
- LMWLP Policy DM14 (Transport by Road): if the operational envelope/throughput is understated, associated HGV movements and abnormal loads cannot be relied upon as assessed, and the Authority cannot conclude that residual impacts on highway safety, free flow, and residential amenity would be acceptable.
- NPPF paragraph 46: where a proposal may constitute, or be development around, a major hazard installation, the Authority should consult the appropriate bodies; that step cannot be meaningfully undertaken without a defined hazardous substance inventory envelope.

- National Planning Policy for Waste, Appendix B (g) and (h): air emissions (including dust) and odours must be assessed having regard to sensitive receptors and the extent to which adverse emissions/odours can be controlled through appropriate and well-managed equipment.

6.1

Taken together, the evidence demonstrates that:

- the applicant has not defined the maximum hazardous substances inventory of the proposed development;
- the Authority cannot exclude the possibility that COMAH thresholds may be met or exceeded;
- the site is located in immediate proximity to residential and industrial receptors relevant to off-site risk; and
- no competent authority has assessed major accident or domino risks at the planning stage.

6.2

In these circumstances, the Authority cannot lawfully conclude that the proposed development represents an appropriate or acceptable use of this site, nor that the Environmental Statement provides a lawful basis for determination.

6.3

At a minimum, further environmental information would be required to establish COMAH status, define maximum hazardous inventories, and assess off-site consequences. In the absence of such information, refusal of planning permission would be evidence-led, precautionary and legally defensible.

7. Conclusion

7.1

This supplementary submission does not assert that the proposed development is definitively a COMAH installation. It demonstrates that, on the evidence provided, the Authority cannot lawfully determine that it is not, and cannot lawfully disregard the planning implications of that uncertainty.

7.2

The Parish Council therefore requests that this submission be treated as material environmental information, read alongside the Regulation 25 Rebuttal, and expressly addressed in any officer report or decision.

7.3

This application raises unresolved major accident hazard concerns due to its scale, proximity to housing, and neighbouring industrial uses. While the applicant refers to DSEAR, this is a workplace safety regime and does not address off-site risk or land-use compatibility. The failure to clearly establish whether the proposal falls within the Control of Major Accident Hazards Regulations leaves the County Council unable to conclude that the site is appropriate or that risks have been adequately addressed, contrary to national planning policy.



Cllr Mervyn Head

Vice Chairman Anwick Parish Council

National Planning Policy Framework – Summary of Policy Conflicts

For ease of reference, the table below summarises the conflicts (**Table1**) between the unresolved COMAH position and key National Planning Policy Framework requirements. This table is intended to assist the decision-maker and does not replace the detailed policy analysis set out earlier in this submission.

NPPF Paragraph	Policy Requirement	Conflict with Proposal
Paragraph 8	Sustainable development (social objective: safe communities)	Unquantified major accident risk to approximately 400 residents undermine the social objective.
Paragraph 96	Healthy and safe places	Safety cannot be confirmed where COMAH relevance and worst-case hazards remain unresolved.
Paragraph 101	Prevent unacceptable risk from hazards	Major accident hazards (explosion, gas release) have not been assessed.
Paragraph 174	Pollution and risk	Major accident hazard represents pollution risk; no major accident assessment provided.
Paragraph 183	Decision-making – risks understood and addressed	COMAH status is neither understood nor addressed within the ES or Addendum.

Table 1

APPENDIX 1

2015 N o.483

HEALTH AND SAFETY

The Control of Major Accident Hazards Regulations 2015

Made - - - - 2nd March 2015
Laid before Parliament 9th March 2015
Coming into force - - 1st June 2015

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to measures relating to the prevention and limitation of the effects of accidents involving dangerous substances(b).

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 15(1), (2), (3)(a), (3)(c), (4)(a), (5)(a), (6)(d) and, (8), 43(2), (3), (4), (6), (80)(1) and 82(3)(a) of, and paragraphs 1(1), (2), 15, 16 and 20 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(c) (“the 1974 Act”) and, section 2(2) of the 1972 Act.

Apart from the modifications referred to in the next paragraph, the Secretary of State makes these Regulations for the purpose of giving effect to proposals submitted—

- (a) by the Health and Safety Executive under section 11(3) of the 1974 Act(d) after consulting in accordance with section 50(3)(e) of that Act; and
- (b) by the Office for Nuclear Regulation under section 81(1)(a)(iv) of the Energy Act 2013(f) after consulting in accordance with section 81(3) of that Act.

It appears to the Secretary of State that—

- (a) the amendments to secondary legislation referred to in Schedule 6; and
- (b) the revocations in relation to the instruments referred to in regulation 31,

are expedient as set out in section 80(1) of the 1974 Act.

(a) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The power of Ministers of the Crown to make regulations in relation to matters as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c.46).

(b) S.I. 1998/1750.

(c) 1974 c.37; section 15(1) was substituted by paragraph 6 of Schedule 15 to the Employment Protection Act 1975 (c.71) (“the 1975 Act”) and amended by S.I. 2002/794. Section 15(2) and (3)(c) was amended by paragraph 5 of Schedule 12 to the Energy Act 2013 (c.32) (“the 2013 Act”). Section 15(4)(a) was amended by S.I. 2008/960. Section 43 was amended by paragraph 12 of Schedule 15 and Schedule 18 to the 1975 Act and by S.I. 2002/794 and 2008/960.

(d) Section 11 was substituted by S.I. 2008/960.

(e) Section 50(3) was amended by paragraph 16 of Schedule 15 to the 1975 Act, paragraph 6 of Schedule 7 to the Health and Social Care Act 2012 (c.7), paragraph 11(4) of Schedule 12 to the 2013 Act, and by S.I. 2008/960.

(f) 2013 c. 32.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for the references in these Regulations to Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16th December 2008(a) on classification, labelling and packaging of substances and mixtures amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No. 1907/2006, to be construed as including references to Annex I, Part 1.0, 1.1, Parts 2 to 4 and, Annex VI, Part 3 Table 3.1 of that instrument as those provisions are amended from time to time.

PART 1 INTRODUCTION

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Control of Major Accident Hazards Regulations 2015 and come into force on 1st June 2015.

(2) These Regulations extend to Great Britain.

Interpretation

2.—(1) In these Regulations—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“the 1999 Regulations” means the Control of Major Accident Hazards Regulations 1999(b);

“the 2010 Regulations” means the Environmental Permitting (England and Wales) Regulations 2010(c);

“the 2012 Regulations” means the Pollution Prevention and Control (Scotland) Regulations 2012(d);

“the appropriate agency” in relation to an establishment in—

(a) England, means the Environment Agency;

(b) Scotland, means the Scottish Environment Protection Agency; and

(c) Wales, means the Natural Resources Body for Wales;

“authorised person” means a person authorised by the appropriate agency under section 108 of the Environment Act 1995(e);

“CAS number” is the number assigned to a substance by the Chemical Abstracts Service(f);

“the CLP Regulation” means Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No. 1907/2006, of which Annex I, Part 1.0 and 1.1, Parts 2 to 4 and, Annex VI, Part 3 Table 3.1 are to be read as amended from time to time;

“competent authority” has the meaning given in regulation 4;

“dangerous substance” means (subject to regulation 3(2)(b) and (c)) a substance or mixture—

(a) listed in column 1 of Part 2 of Schedule 1; or

(b) in a category listed in column 1 of Part 1 of Schedule 1,

(a) O.J. No. L353, 31.12.08, p.1.

(b) S.I. 1999/743, amended by S.I. 2005/1088, 2008/1087, 2009/1595, 2013/766, 2014/162.

(c) S.I. 2010/675, to which there are amendments not relevant to these Regulations.

(d) S.S.I. 2012/360, amended by S.I. 2014/469.

(e) 1995 c.25; relevant amending instruments to section 108 are S.I. 2013/755 (W.90) and, section 46(2)(a)(i), (2)(a)(ii), (2)(b), (2)(c)(i), (2)(c)(ii), (2)(c)(iii), (2)(c)(iv) of the Regulatory Reform (Scotland) Act 2014 (asp 3).

(f) Chemical Abstracts Service (www.cas.org), is a division of the American Chemical Society.

including in the form of a raw material, product, by-product, residue or intermediate;

“designated authorities” means—

(a) in England and Wales, those persons or bodies specified in Part 1 of Schedule 1 to the Civil Contingencies Act 2004(a);

(b) in Scotland, those persons or bodies specified in Part 2 of Schedule 1 to that Act(b);

“the Directive” means Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/98/EC(c);

“domino effects” is to be construed in accordance with regulation 24(2);

“domino groups” is to be construed in accordance with regulation 24(1) and a reference to “domino group” is to be read accordingly;

“emergency services” means—

(a) those police, fire and rescue, and ambulance services who are liable to be required to respond to an emergency at an establishment; and

(b) where appropriate, Her Majesty’s Coastguard;

“establishment” means the whole location under the control of an operator where a dangerous substance is present in one or more installations, including common or related infrastructures or activities, in a quantity equal to or in excess of the quantity listed in the entry for that substance in column 2 of Part 1 or in column 2 of Part 2 of Schedule 1, where applicable using the rule laid down in note 4 in Part 3 of that Schedule;

“the Executive” means the Health and Safety Executive; “existing establishment” has the meaning given in paragraph (2);

“external emergency plan” is to be construed in accordance with regulation 13(1);

“full address” means the full postal address (including postcode) and an address for contact by electronic means;

“hazard” means the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health or the environment;

“health authority” means—

(a) in relation to England, a clinical commissioning group established under section 14D of the National Health Service Act 2006(d);

(b) in relation to Wales, a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006(e); and

(c) in relation to Scotland, a Health Board established under section 2 of the National Health Service (Scotland) Act 1978(f);

“inspection” means all actions, including—

(a) site visits;

(b) checks of internal measures, systems and reports and follow up documents; and

(c) any necessary follow up,

(a) 2004 c.36; Schedule 1, Part 1 was amended by the National Health Service (Consequential Provisions) Act 2006 (c. 43) Schedule 1, paragraph 271(a) to (d); the Health and Social Care Act 2012 (c.7) Schedule 5, paragraph 132(2)(a) and (b), and Schedule 7, paragraph 16; and by S.I. 2008/3012, 2011/1223, and 2013/755 (W.90).

(b) 2004 c.36; Schedule 1, Part 2 was amended by S.S.I. 2013/119.

(c) O.J. No. L 197, 24.7.2012, p. 1.

(d) 2006 c.41; section 14D was inserted by the Health and Social Care Act 2012 (c.7), section 25.

(e) 2006 c.42.

(f) 1978 c.29; section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 1, the National Health Service and Community Care Act 1990 (c.19), section 28, Schedule 9, paragraph 19(1), and Schedule 10, the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 1, paragraph 1(2)(a) and (b), the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), Schedule 2, paragraph 2(2), and the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5), section 2(1), and S.S.I. 2009/242.

undertaken by or on behalf of the competent authority to check and promote compliance of establishments with the requirements of these Regulations;

“inspector” means a person appointed under section 19 of the 1974 Act by or on behalf of—

- (a) the Executive; or
- (b) the ONR;

“installation” means a technical unit within an establishment, whether at or below ground level, in which dangerous substances are produced, used, handled or stored and includes all the equipment, structures, pipelines, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of that installation;

“internal emergency plan” is to be construed in accordance with regulation 12(1);

“local authority” means—

- (a) for the purposes of regulation 18 and regulation 26, in relation to—
 - (i) the City of London, the Common Council of the City of London;
 - (ii) an area in the rest of London, the London borough council for that area;
 - (iii) the Isles of Scilly, the Council of the Isles of Scilly;
 - (iv) an area in the rest of England, the district council for that area or where there is no district council for that area, the county council for that area;
 - (v) an area in Scotland, the council for the local government area;
 - (vi) an area in Wales, the county council or the county borough council for that area;
- (b) otherwise, in relation to—
 - (i) London, the London Fire and Emergency Planning Authority;
 - (ii) an area where there is a fire and civil defence authority, that authority;
 - (iii) the Isles of Scilly, the Council of the Isles of Scilly;
 - (iv) an area in the rest of England, the county council for that area, or where there is no county council for that area, the district council for that area;
 - (v) an area in Scotland, the Scottish Fire and Rescue Service established under section 1A of the Fire (Scotland) Act 2005(a);
 - (vi) an area in Wales, the county council or the county borough council;

“lower tier establishment” means an establishment where a dangerous substance is present in a quantity equal to or in excess of the quantity listed in the entry for that substance in column 2 of Part 1 or in column 2 of Part 2 of Schedule 1, but less than that listed in the entry for that substance in column 3 of Part 1 or in column 3 of Part 2 of Schedule 1, where applicable using the rule laid down in note 4 of Part 3 of that Schedule;

“major accident” means an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment to which these Regulations apply, and leading to serious danger to human health or the environment (whether immediate or delayed) inside or outside the establishment, and involving one or more dangerous substances;

“major accident prevention policy” is to be construed in accordance with regulation 7;

“mixture” means a mixture or solution composed of two or more substances;

“neighbouring establishment” means an establishment that is located in such proximity to another establishment so as to increase the risk or consequences of a major accident;

“new establishment” means—

- (a) an establishment that is constructed or enters into operation on or after 1st June 2015;

(a) 2005 (asp 5); section 1A was inserted by the Police and Fire Reform (Scotland) Act 2012 (asp 8), section 101(1).

- (b) a site of operation which becomes an establishment to which these Regulations apply on or after 1st June 2015 due to an increase or other change in its inventory of dangerous substances;
- (c) a lower tier establishment that becomes an upper tier establishment, or vice versa, on or after that date due to any modification to any of its installations or activities which results in a change in its inventory of dangerous substances;

“nuclear establishment” means an establishment which is or is wholly or partly within—

- (a) a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013(a)); or
- (b) a new nuclear build site (within the meaning given in regulation 2A of the Health and Safety (Enforcing Authority) Regulations 1998(b));

“the ONR” means the Office for Nuclear Regulation;

“operator” means the person who is in control of the operation of an establishment, or in relation to an establishment which is to be constructed or operated the person who proposes to control its operation, or if that person is not known, the person who in the course of a trade, business or other undertaking carried on by that person has commissioned its design and construction;

“other establishment” means—

- (a) a site of operation that becomes an establishment to which these Regulations apply on or after 1st June 2015; or
- (b) a lower tier establishment that becomes an upper tier establishment, or vice versa, on or after that date,

for reasons other than those mentioned in paragraph (b) or (c) (as the case may be) of the definition of “new establishment”;

“pipelines” means pipelines to which the Pipelines Safety Regulations 1996(c) apply;

“the public” means one or more persons and, includes their associations, organisations or groups;

“presence of a dangerous substance” means the actual or anticipated presence of a dangerous substance in an establishment, or of a dangerous substance which it is reasonable to foresee may be generated during loss of control of the processes, including storage activities, in any installation within the establishment, in a quantity equal to or in excess of the qualifying quantity listed in the entry for that substance in column 2 of Part 1 or in column 2 of Part 2 of Schedule 1, and “where a dangerous substance is present” is to be construed accordingly;

“risk” means the likelihood of a specific effect occurring within a specified period or in specified circumstances;

“safety report” is to be construed in accordance with regulation 8;

“storage” means the presence of a quantity of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock;

“upper tier establishment” means an establishment where a dangerous substance is present in a quantity equal to or in excess of the quantity listed in the entry for that substance in column 3 of Part 1 or in column 3 of Part 2 of Schedule 1, where applicable using the rule laid down in note 4 of Part 3 of that Schedule.

(2) For the purposes of these Regulations “existing establishment” means an establishment—

- (a) where on 31st May 2015 a dangerous substance or category of substance listed in column 1 of Parts 2 or 3 of Schedule 1 to the 1999 Regulations was present in a quantity equal to or in excess of the quantity listed in the entry for that substance in column 2 of those Parts, but less than that listed in the entry for that substance in column 3 of those Parts,

(a) 2013 c.32

(b) S.I. 1998/494, amended by S.I. 2014/469; there are other amending instruments but none is relevant.

(c) S.I. 1996/825, to which there are amendments not relevant to these Regulations.

where applicable using the rule laid down in note 4 of Part 3 of that Schedule, and which on 1st June 2015 was a lower tier establishment; or

- (b) where on 31st May 2015 a dangerous substance or category of substance listed in column 1 of Parts 2 or 3 of Schedule 1 to the 1999 Regulations was present in a quantity equal to or in excess of the quantity listed in the entry for that substance in column 3 of those Parts, where applicable using the rule laid down in note 4 of Part 3 of that Schedule, and which on 1st June 2015 was an upper tier establishment,

other than one which has ceased to be an existing establishment.

(3) For the purposes of paragraph (2) an establishment ceases to be an existing establishment—

- (a) within paragraph (a) of the definition of that term if, on or after 1st June 2015, the establishment becomes an upper tier establishment;
- (b) within paragraph (b) of the definition of that term if, on or after 1st June 2015, the establishment becomes a lower tier establishment.

(4) Where a new establishment becomes subject to these Regulations due to an increase, decrease or other change in its inventory of dangerous substances, any reference in these Regulations to the start of operation of the establishment, is a reference to the time when the establishment first becomes subject to the Regulations by reason of that increase, decrease or change.

(5) The columns in Parts 1 and 2 of Schedule 1 are to be applied subject to the notes in Part 3 of that Schedule.

(6) Where a substance listed in column 1 of Part 2 of Schedule 1 is also covered by a category in column 1 of Part 1 of that Schedule, the quantities set out in columns 2 and 3 of Part 2 must be used.

(7) A reference in these Regulations to “writing” includes writing which is communicated or kept in electronic form and which can be printed.

A pplication and exceptions

3.—(1) These Regulations apply to any establishment which is either a lower tier establishment or an upper tier establishment.

(2) These Regulations do not apply to any of the following—

- (a) an establishment which is under the control of—
 - (i) the Secretary of State for the purposes of the Ministry of Defence;
 - (ii) a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(a) or the service authorities of a visiting force within the meaning of any of the provisions of Part 1 of the Visiting Forces Act 1952(b);
- (b) hazards created by ionising radiation originating from substances;
- (c) substances which create a hazard from ionising radiation if present on a nuclear establishment;
- (d) the exploitation, namely the exploration, extraction and processing, of minerals in mines and quarries, including by means of boreholes, except any of the following which involve dangerous substances—
 - (i) onshore underground gas storage in natural strata, aquifers, salt cavities and disused mines;
 - (ii) chemical and thermal processing operations and storage related to those operations;
 - (iii) operational tailings disposal facilities, including tailing ponds or dams;

(a) 1964 c.5.

(b) 1952 c.67.

- (e) the offshore exploration and exploitation of minerals, including hydrocarbons;
- (f) the storage of gas at underground offshore sites including dedicated storage sites and sites where exploration and exploitation of minerals, including hydrocarbons, are also carried out;
- (g) waste landfill sites, including underground waste storage, except—
 - (i) any of the following that involve dangerous substances—
 - (aa) chemical and thermal processing operations and storage related to those operations; or
 - (bb) operational tailings disposal facilities, including tailing ponds or dams;
 - (ii) sites 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 compounds and mixtures and the safe storage of metallic mercury^(a).

The competent authority

4. For the purposes of these Regulations the competent authority is—

- (a) in relation to a nuclear establishment, the ONR and the appropriate agency acting jointly;
- (b) otherwise, the Executive and the appropriate agency acting jointly.

PART 2

GENERAL DUTIES OF OPERATORS OF ALL ESTABLISHMENTS

General duties of operators

5.—(1) Every operator must take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment.

(2) Every operator must demonstrate to the competent authority that it has taken all measures necessary as specified in these Regulations.

(3) Every operator must provide the competent authority with such assistance as is necessary to enable the competent authority to perform its functions under these Regulations.

(4) Without prejudice to the generality of paragraph (3), every operator must in particular provide such assistance as is necessary to the competent authority to enable it to—

- (a) carry out inspections and investigations; and
- (b) gather any necessary information,

in connection with the performance of its functions under these Regulations.

Notifications

6.—(1) Within a reasonable period of time prior to the start of construction of a new establishment the operator must send to the competent authority a notification containing the following information—

- (a) the name of the operator and the full address of the establishment;
- (b) the registered place of business of the operator, with the full address;
- (c) the name and position of the person in charge of the establishment;

^(a) O.J. No. L304, 14.11.2008, p.75

(ffffffffffffffff) sufficient information to identify the dangerous substances and category of substances involved or likely to be present;

(gggggggggggggggggggg) the quantity and physical form of the dangerous substance or substances referred to in sub-paragraph (d);

(hhhhhhhhhhhhhhhhhh) the activities or proposed activities of the installations or storage facilities;

(iiiiiiiiiiiiiiii) a description of the immediate environment of the establishment, and factors likely to cause a major accident or to aggravate the consequences of a major accident including, where available, details of—

- (i) neighbouring establishments;
- (ii) sites of operation that fall outside the scope of these Regulations; and
- (iii) areas and developments that could be the source of or increase the risk or consequences of a major accident and of domino effects.

(2) Subject to paragraph (3), within a reasonable period of time prior to the start of operation of a new establishment the operator must send to the competent authority a notification containing the information specified in paragraph (1).

(3) The operator is not required to include in a notification under paragraph (2) any information included in a notification sent under paragraph (1), if that information is still valid.

(4) The operator of an existing establishment must send to the competent authority a notification containing the information specified in paragraph (1) by 1st June 2016.

(5) The operator of an other establishment must send to the competent authority a notification containing the information specified in paragraph (1) within one year beginning on the date on which the establishment, or site of operation, first becomes an other establishment.

(6) The operator of any establishment to which these Regulations apply must notify the competent authority in advance of—

- (a) a significant increase or decrease in the quantity of dangerous substances notified under this regulation;
- (b) a significant change in—
 - (i) the nature or physical form of the dangerous substances notified under this regulation; or
 - (ii) the processes employing them;
- (c) any modification of the establishment or an installation which could have significant consequences in terms of major accident hazards;

(ffffffffffffffff) permanent closure of the establishment or its decommissioning; or

(gggggggggggggggggggg) any change in the information referred to in paragraph (1)(a) to (c). (7) The competent authority must specify, in writing—

- (a) the form of notifications under this regulation; and
- (b) the means by which operators must send them to the competent authority.

Major accident prevention policies

7.—(1) Subject to paragraph (4), every operator must prepare and retain a written major accident prevention policy.

(2) A major accident prevention policy must—

- (a) be designed to ensure a high level of protection of human health and the environment;
- (b) be proportionate to the major accident hazards;
- (c) set out the operator's overall aims and principles of action; and
- (d) set out the role and responsibility of management, and its commitment towards continuously improving the control of major accident hazards.

- (3) A major accident prevention policy must be prepared by the operator—
- (a) of a new establishment, within—
 - (i) a reasonable period of time prior to construction or operation of the establishment; or
 - (ii) a reasonable period of time prior to modifications leading to a change in the inventory of dangerous substances at the establishment;
 - (b) of an existing establishment, by 1st June 2016;
 - (c) of an other establishment, within one year beginning on the date on which the establishment, or site of operation, first becomes an other establishment.

(4) Where—

- (a) the operator of an existing establishment had, immediately before 1st June 2015, prepared and retained a major accident prevention policy under regulation 5 of the 1999 Regulations;
- (b) the information contained within that policy remains materially unchanged; and
- (c) that policy complies with the requirements of these Regulations,

the operator is not required to prepare a further major accident prevention policy under paragraph (1).

(5) Where an operator of an existing establishment is not required to prepare a major accident prevention policy by virtue of paragraph (4)—

- (a) the major accident prevention policy prepared by that operator under regulation 5 of the 1999 Regulations is to be treated as a major accident prevention policy prepared under this regulation; and
- (b) the policy must be retained by the operator in accordance with this regulation.

(6) An operator must review its major accident prevention policy—

- (a) in the event of—
 - (i) a significant increase or decrease in the quantity of dangerous substances notified under regulation 6; or
 - (ii) a significant change in—
 - (aa) the nature or physical form of the dangerous substances notified under regulation 6; or
 - (bb) the processes employing them,
which could have significant consequences in terms of major accident hazards; and
- (b) in any event no later than five years after the date on which the policy was last reviewed, and where necessary it must revise and retain the revised policy.

(7) An operator must implement its major accident prevention policy by a safety management system.

(8) A safety management system must—

- (a) satisfy the requirements in paragraph 1 of Schedule 2; and
- (b) address the matters specified in paragraph 2 of that Schedule.

PART 3

SAFETY REPORTS FOR UPPER TIER ESTABLISHMENTS

Purposes of safety reports

8. Every operator of an upper tier establishment must prepare a safety report for the purposes of—

- (a) demonstrating that a major accident prevention policy and a safety management system for implementing it have been put into effect in accordance with the information set out in Schedule 3;
- (b) demonstrating that the major accident hazards and possible major accident scenarios in relation to the establishment have been identified and that the necessary measures have been taken to prevent such accidents and to limit their consequences for human health and the environment;
- (c) demonstrating that adequate safety and reliability have been taken into account in the design, construction, operation and maintenance of any installation, storage facility, equipment and infrastructure connected with the establishment's operation which are linked to major accident hazards inside the establishment;
- (#####) demonstrating that an internal emergency plan has been prepared in accordance with regulation 12, which includes sufficient information to enable an external emergency plan to be prepared;
- (#####) providing sufficient information to the competent authority to enable decisions to be made regarding the siting of new activities or developments around establishments.

R requirements relating to the preparation of safety reports

- 9.—(1) A safety report prepared by an operator must—
- (a) contain as a minimum the data and information specified in Schedule 3; and
 - (b) identify the organisations involved in preparing it.
- (2) An operator must send a safety report to the competent authority—
- (a) where the establishment is a new establishment, within a reasonable period of time prior to—
 - (i) the start of construction of the establishment;
 - (ii) the start of operation of the establishment;
 - (iii) any modifications leading to a change in the inventory of dangerous substances at the establishment;
 - (b) where the establishment is an existing establishment—
 - (i) in any case where a review of the safety report (within the meaning of regulation 2(1) of the 1999 Regulations) would, had those Regulations not been revoked by these Regulations, have been required to be carried out by the operator before 1st June 2016, no later than five years after the relevant date;
 - (ii) in any other case, on or before 1st June 2016;
 - (c) where the establishment is an other establishment, within two years beginning on the date on which the establishment, or site of operation, first becomes an other establishment.
- (3) An operator is not required to include in a safety report any information previously sent to the competent authority under paragraph (2), if that information remains valid.
- (4) Where an operator had, immediately before 1st June 2015, sent to the competent authority a safety report in relation to an establishment under regulation 7 or 8 of the 1999 Regulations (“the original report”), that operator may comply with paragraph (2)(b) by sending to the competent authority only those parts of the original report that are revised to ensure compliance with regulation 8, this regulation and Schedule 3, and the original report (and its revised parts) is to be treated as a safety report sent under paragraph (2)(b).
- (5) The competent authority may specify in writing the format of revisions to be provided under paragraph (4).
- (6) Where—
- (a) an operator had, immediately before 1st June 2015, sent to the competent authority a safety report in relation to an establishment under regulation 7 or 8 of the 1999 Regulations;

(b) the information contained within that report remains materially unchanged; and
(c) it complies with the requirements of regulation 8, this regulation and Schedule 3,
the operator is not required to send to the competent authority a further safety report under paragraph (2)(b).

(7) Subject to regulation 23 (prohibition of operation), an operator must not—

- (a) where paragraph (2)(a)(i) applies, start construction of an establishment;
- (b) where paragraph (2)(a)(ii) applies, start operation of an establishment;
- (c) where paragraph (2)(a)(iii) applies, make any modifications leading to a change in the inventory of dangerous substances at an establishment,

until it has received from the competent authority the conclusions of the competent authority's examination of the safety report under regulation 22.

(8) For the purposes of paragraph (2)(b) "relevant date", in relation to a safety report within the meaning of regulation 2(1) of the 1999 Regulations, means—

- (a) the date on which the safety report was last sent to the competent authority under regulation 7, or, 8(1) of those Regulations; or
- (b) the date on which it was last notified under regulation 8(2) or (4) of those Regulations,

whichever is later.

R review of safety reports

10.—(1) A safety report must be reviewed and, where it is necessary, revised by the operator—

- (a) in any case where regulation 9(6) does not apply, no later than five years after the date on which—
 - (i) it was last sent to the competent authority; or
 - (ii) where it was not required to be sent to the competent authority, it was last reviewed by the operator; or
- (b) in any case where regulation 9(6) applies, no later than five years after the date on which the safety report was last sent to the competent authority under regulation 7 or 8 of the 1999 Regulations.

(2) Despite paragraph (1), a safety report must be reviewed and, where necessary, revised by the operator—

- (a) following a major accident at the establishment;
- (b) where a review is justified by new facts or by technological knowledge about safety matters, including knowledge arising from analysis of accidents or near misses;
- (c) where a review is justified by developments in knowledge concerning the assessment of hazards;

(ffffffffffffffff) before making any modifications to the establishment, process or the nature or physical form or quantity of dangerous substances which could have significant consequences for major accident hazards;

(gggggggggggggggggggggg) following any change to the safety management system (referred to in paragraph 2 of Schedule 3) which could have significant consequences for the prevention of major accidents or the limitation of the consequences of major accidents to human health and the environment.

(3) In carrying out a review of a safety report the operator must take into account the purposes specified in regulation 8 and the data and information specified in Schedule 3.

(4) Except where paragraph (5) applies, a revised safety report, or revised parts of a report, must be sent by the operator to the competent authority without delay.

(5) Where paragraph (2)(d) applies, a revised safety report, or revised parts of it, must be sent by the operator to the competent authority in advance of the proposed modification.

(6) Where a safety report has been reviewed under this regulation, but not revised, the operator must inform the competent authority in writing without delay.

PART 4

EMERGENCY PLANS FOR UPPER TIER ESTABLISHMENTS

Objectives of emergency plans

11. Every internal emergency plan and external emergency plan prepared for the purposes of these Regulations must have the following objectives—

- (a) containing and controlling incidents so as to minimise the consequences, and to limit damage to human health, the environment and property;
- (b) implementing the necessary measures to protect human health and the environment from the consequences of major accidents;
- (c) communicating the necessary information to the public and to the services or authorities concerned in the area; and
- (d) providing for the restoration and clean up of the environment following a major accident.

Preparation, review and testing of internal emergency plans

12.—(1) Every operator of an upper tier establishment must prepare an internal emergency plan, specifying the measures to be taken inside the establishment.

(2) An internal emergency plan must be prepared by the operator—

- (a) where the establishment is a new establishment, within a reasonable period of time prior to the start of operation of the establishment or any modifications leading to a change in the inventory of dangerous substances at the establishment;
- (b) where the establishment is an existing establishment, by 1st June 2016; or
- (c) where the establishment is an other establishment, within two years beginning on the date on which the establishment, or site of operation, first becomes an other establishment.

(3) Despite paragraph (1), the operator of an existing establishment is not required to prepare an internal emergency plan if—

- (a) the on-site emergency plan prepared under regulation 9 of the 1999 Regulations, immediately before 1st June 2015, remains materially unchanged; and
- (b) it complies with the requirements of regulation 11 of these Regulations and this regulation,

in which case it is to be treated as an internal emergency plan prepared under this regulation. (4)

An internal emergency plan must contain the information specified in Part 1 of Schedule 4. (5) In preparing an internal emergency plan the operator must consult—

- (a) persons working in the establishment;
- (b) the appropriate agency;
- (c) the emergency services;
- (d) the health authority for the area where the establishment is situated;

- (e) if the establishment is situated in England, the National Health Service Commissioning Board^(a) and Public Health England, an executive agency of the Department of Health; and
- (f) the local authority in whose administrative area the establishment is situated, unless the local authority has been exempted under regulation 15 from the requirement to prepare an external emergency plan in respect of the establishment.

(6) An operator must at suitable intervals not exceeding three years—

- (a) review and, where necessary, revise the internal emergency plan; and
- (b) test the plan.

(7) Where paragraph (3) applies, the operator must first comply with paragraph (6) before the expiry of three years after the on-site emergency plan was prepared or last reviewed under the 1999 Regulations.

(8) In carrying out a review of an internal emergency plan, the operator must take into account—

- (a) any changes at the establishment or within the emergency services concerned;
- (b) any relevant new technical knowledge; and
- (c) any relevant new knowledge concerning the response to major accidents.

Preparation of external emergency plans

13.—(1) Subject to regulation 15, a local authority in whose administrative area an upper tier establishment is situated must prepare an external emergency plan specifying the measures to be taken outside the establishment.

(2) An external emergency plan must be prepared by the local authority no later than six months (or such longer period not exceeding nine months agreed by the competent authority in writing) after the receipt of the necessary information from the operator.

(3) The operator must provide the local authority with the information necessary to enable it to prepare an external emergency plan.

(4) The information in paragraph (3) must be provided to the relevant local authority before the date on which the internal emergency plan is required to be prepared for the establishment under regulation 12(2).

(5) Despite paragraph (1), the local authority is not required to prepare an external emergency plan if—

- (a) the off-site emergency plan prepared under regulation 10 of the 1999 Regulations, immediately before 1st June 2015, remains materially unchanged; and
- (b) it complies with the requirements of regulation 11 of these Regulations and this regulation,

in which case it is to be treated as an external emergency plan prepared under this regulation. (6)

An external emergency plan must contain the information specified in Part 2 of Schedule 4. (7)

In preparing an external emergency plan the local authority must consult—

- (a) the operator;
- (b) the appropriate agency;
- (c) the designated authorities who are liable to be required to respond to an emergency at the establishment;
- (d) if the establishment is situated in England, the National Health Service Commissioning Board and Public Health England, an executive agency of the Department of Health; and

(a) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c.41) as inserted by section 9(1) of the Health and Social Care Act 2012 (c.7).

- (e) such members of the public and other persons as it considers appropriate.

Review and testing of external emergency plans

14.—(1) A local authority which has prepared an external emergency plan must at suitable intervals not exceeding three years—

- (a) review and, where necessary, revise the plan; and
- (b) test the plan.

(2) Where regulation 13(5) applies, the local authority must first comply with paragraph (1) before the expiry of three years after the off-site emergency plan was prepared or last reviewed under the 1999 Regulations.

(3) In carrying out a review of an external emergency plan, the local authority must take into account—

- (a) any changes, at the establishment, within the designated authorities concerned or, if the establishment is situated in England, the National Health Service Commissioning Board and Public Health England, an executive agency of the Department of Health;
- (b) any relevant new technical knowledge; and
- (c) any relevant new knowledge concerning the response to major accidents.

(4) Where a local authority is of the opinion that an external emergency plan requires substantial revision, it must consult the persons referred to in regulation 13(7) before making those revisions.

(5) Where a local authority is of the opinion that in order to test adequately an external emergency plan the co-operation of one or more designated authorities is necessary, it may in writing request such co-operation from those authorities.

(6) Where a designated authority has received a request in accordance with paragraph (5), it must co-operate in the testing of the external emergency plan.

Exemption of local authority from preparing an external emergency plan

15.—(1) The competent authority may exempt a local authority from the requirement to prepare an external emergency plan under regulation 13(1) where, taking into account the information contained in the safety report for the relevant establishment, the competent authority is of the opinion that the establishment is incapable of creating a major accident hazard outside the establishment.

(2) An exemption granted by the competent authority under paragraph (1) must be in writing and state the reasons for granting it.

(3) The competent authority may withdraw an exemption granted under paragraph (1) by specifying, in writing, the date on which the exemption will cease to apply and the date by which an external emergency plan must be prepared.

Implementing emergency plans

16. An operator or local authority which has prepared an internal emergency plan or external emergency plan must take reasonable steps to ensure that it is put into effect without delay if—

- (a) a major accident occurs; or
- (b) an uncontrolled event occurs which by its nature could reasonably be expected to lead to a major accident.

PART 5

INFORMATION

Provision of information to the public

17.—(1) The competent authority must make the following information available to the public, including by electronic means, in relation to every establishment—

- (a) the name of the operator and the address of the establishment;
- (b) confirmation that these Regulations apply to the establishment and that the notification required by regulation 6, and the safety report required by regulation 9, has been sent to the competent authority;
- (c) an explanation in simple terms of the activity or activities undertaken at the establishment;
- (d) the hazard classification of the relevant dangerous substances involved at the establishment which could give rise to a major accident, with an indication of their principal dangerous characteristics in simple terms;
- (e) general information about how the public will be warned, if necessary, and adequate information about the appropriate behaviour in the event of a major accident or an indication of where that information can be accessed electronically;
- (f) the date of the last site visit carried out further to a programme for routine inspections under regulation 25(5), and where more detailed information about the inspection and the related inspection plan can be obtained upon request;
- (g) details of where further relevant information can be obtained.

(2) In addition to the information in paragraph (1), the competent authority must make the following information available to the public, including by electronic means, in relation to every upper tier establishment—

- (a) general information relating to the nature of the major accident hazards, including their potential consequences on human health and the environment, summary details of the main types of major accident scenarios and the control measures to address them;
- (b) confirmation that the operator is required to make adequate arrangements within the establishment, in particular liaison with the emergency services, to deal with major accidents and to minimise their consequences;
- (c) appropriate information from the external emergency plan in relation to dealing with any consequences outside the establishment from a major accident, which must include advice about co-operating with any instructions or requests from the emergency services at the time of an accident;
- (d) where applicable, an indication as to whether the establishment is close to the territory of another Member State with the possibility of a major accident with trans-boundary consequences under the Convention on the Transboundary Effects of Industrial Accidents(a).

(3) The competent authority must ensure that the information in paragraph (1)—

- (a) is made available to the public within a reasonable period of time from the date on which the establishment becomes subject to these Regulations; and
- (b) is kept updated.

(4) The competent authority must ensure that the information in paragraph (2)—

- (a) is made available to the public within a reasonable period of time from the date on which the establishment becomes an upper tier establishment; and

(a) O.J. No. L326, 3.12.1998, p. 1.

- (b) is kept updated.
- (5) The operator of an establishment must—
 - (a) provide the competent authority with—
 - (i) the information specified at paragraph (1)(a) to (e) and, in the case of an upper tier establishment, the information specified at paragraph (2); and
 - (ii) revisions to that information when it becomes necessary to update it;
 - (b) comply with any reasonable request for information from the competent authority, within such period specified in the request, in connection with the preparation of information by the competent authority under paragraph (1) or (2).
- (6) The competent authority must specify in advance in writing—
 - (a) the means by which operators must provide information under paragraph (5); and
 - (b) the format in which it must be provided.
- (7) The Environment and Safety Information Act 1988(a) applies to a notice served under—
 - (a) regulation 23 (prohibition of operation) as it applies to a notice served under section 22 of the 1974 Act; or
 - (b) section 21 of the 1974 Act in respect of a contravention of these Regulations,
 as if the reference in the third column of the Schedule to the 1988 Act to an enforcing authority as defined in section 18(7)(a) of the 1974 Act were a reference to the competent authority.

Provision of information to persons likely to be affected by a major accident at an upper tier establishment

- 18.**—(1) An operator of an upper tier establishment must ensure that—
- (a) every person who is likely to be in the area referred to in paragraph (2); and
 - (b) every school, hospital or other area of public use which is in the area referred to in paragraph (2),
- is sent in the most appropriate form, without having to request it, clear and intelligible information on safety measures and requisite behaviour in the event of a major accident at the establishment.
- (2) The area referred to in paragraph (1) is the area notified to the operator by the competent authority as being the area within which, in the opinion of the competent authority, persons are liable to be affected by a major accident occurring at the establishment.
- (3) The information sent under paragraph (1) must include at least the information required to be made available to the public under regulation 17(1) and (2).
- (4) In preparing the information under paragraph (1), the operator must consult with the local authority in whose administrative area the establishment is situated.
- (5) The operator must review and, where necessary revise, the information sent under paragraph (1)—
- (a) at intervals not exceeding 3 years; or
 - (b) in the event of any modification of the establishment or an installation which could have significant consequences in terms of major accident hazards.
- (6) The information required under paragraph (1) must be sent to every person and every school, hospital or other area of public use referred to in that paragraph—
- (a) if it is revised following a review under paragraph (5); or
 - (b) otherwise, at intervals not exceeding 5 years.

(a) 1988 c.30.

Provision of information pursuant to a request

19.—(1) Where an operator is of the opinion that environmental information which it sends to the competent authority under these Regulations should not be made available on request by reason of—

- (a) in the case of the Executive, ONR, Environment Agency or Natural Resources Body for Wales, an exception in regulation 12 or 13 of the 2004 Regulations,
- (b) in the case of the Scottish Environment Protection Agency, an exception in regulation 10 or 11 of the 2004 (Scotland) Regulations,

the operator must, when it sends that information to the competent authority, inform the competent authority in writing of its opinion and the reasons for it.

(2) Where it receives a request for environmental information under the 2004 Regulations or 2004 (Scotland) Regulations, as the case may be, the competent authority must, in dealing with that request, take into account any opinion and reasons provided by the operator in accordance with paragraph (1) in relation to that information.

(3) In this regulation—

- (a) “the 2004 Regulations” means the Environmental Information Regulations 2004(a); or
- (b) “the 2004 (Scotland) Regulations” means the Environmental Information (Scotland) Regulations 2004(b);
- (c) “environmental information” has the meaning—
 - (i) in the case of information sent to the Executive, ONR, Environment Agency or Natural Resources Body for Wales, given in regulation 2(1) of the 2004 Regulations;
 - (ii) in the case of information sent to the Scottish Environment Protection Agency, given in regulation 2(1) of the 2004 (Scotland) Regulations.

Trans-boundary consequences

20.—(1) Where an upper tier establishment presents a major accident hazard with possible trans-boundary consequences the competent authority must provide sufficient information to the potentially affected Member State so that the Member State can take this into account in preparing emergency plans and in preparing land use planning policies, or in making land use planning decisions in respect of applications.

(2) Where the competent authority has decided that an upper tier establishment close to the territory of another Member State is incapable of creating a major accident hazard beyond the boundary of the establishment and exempts the relevant local authority under regulation 15 from the requirement to produce an external emergency plan, the competent authority must notify that Member State of its decision and its reasons.

Power of the competent authority to accept information in another document

21.—(1) Where the competent authority considers it to be expedient, it may permit an operator to provide all or part of the information that the operator is required to include in—

- (a) a notification under regulation 6;
- (b) a major accident prevention policy;
- (c) a safety report;
- (d) an internal emergency plan; or
- (e) the details of action to be taken following a major accident under regulation 26(1),

(a) S.I. 2004/3391, to which there are amendments not relevant to these Regulations.
(b) S.S.I. 2004/520, to which there are amendments not relevant to these Regulations.

by reference to information contained in another document sent to the appropriate agency, pursuant to a requirement imposed, in England and Wales, under the 2010 Regulations, or, in Scotland under the 2012 Regulations (“the relevant document”).

(2) Where the competent authority grants permission under paragraph (1) the operator must, at the time of sending the information contained in the relevant document inform the competent authority in writing, if it is seeking to rely on paragraph (1) and the extent of that reliance by reference to the relevant sub-paragraphs of that paragraph.

(3) The competent authority must assess whether the information contained in the relevant document satisfies the requirements of the relevant provisions of these Regulations and inform the operator of its decision in writing.

(4) If the competent authority is of the opinion that the information contained in the relevant document does not satisfy the requirements of the relevant provisions of these Regulations, the operator may not rely on that document as satisfying the requirements of those provisions.

PART 6

FUNCTIONS OF THE COMPETENT AUTHORITY

Examination of safety reports by the competent authority

22. The competent authority must within a reasonable period of time following receipt of a safety report—

- (a) communicate the conclusions of its examination of that safety report to the operator of the establishment; or
- (b) if necessary prohibit the bringing into operation, or continued operation, of the establishment, or any part of it, in accordance with regulation 23.

Prohibition of operation

23.—(1) The competent authority must prohibit, by serving a notice on the operator, the operation or bringing into operation of any establishment, installation or storage facility, or any part of any establishment, installation or storage facility where the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient.

(2) The competent authority may prohibit, by serving a notice on the operator, the operation or bringing into operation of any establishment, installation or storage facility, or any part of any establishment, installation or storage facility if the operator has not submitted any notification, report or other information required by these Regulations within the specified time.

(3) A notice served under paragraph (1) or (2)—

- (a) must give reasons;
- (b) must specify the date when it is to take effect; and
- (c) may be withdrawn in writing by the competent authority.

(4) In considering whether, under paragraph (1), the measures taken by the operator for the prevention and mitigation of major accidents are seriously deficient, the competent authority must, amongst other matters, take into account any serious failures by the operator to take the necessary actions identified by the competent authority in a communication sent to the operator under regulation 25(9)(a).

(5) The operator must comply with any notice served under paragraph (1) or (2).

(6) Section 24 of the 1974 Act (appeal against improvement or prohibition notice) and, regulation 13(1) of, and Schedule 1 to, the Employment Tribunals (Constitution and Rules of

Procedure) Regulations 2013(a) apply in relation to a notice served under this regulation as they apply in relation to a prohibition notice served under section 22 of that Act.

D omino effects and domino groups

24.—(1) The competent authority must identify groups of establishments (“domino groups”) where the risk or consequences of a major accident may be increased because of the—

- (a) geographical position of establishments;
- (b) proximity of establishments to each other; or
- (c) inventories of dangerous substances held by establishments.

(2) In these Regulations “domino effects” means the increase in the risk or consequences of a major accident because of one or more of the factors referred to in paragraph (1)(a) to (c).

(3) In identifying domino groups the competent authority may use the following sources of information—

- (a) notifications sent under regulation 6;
- (b) safety reports;
- (c) information it holds pursuant to any of its functions, in England and Wales, under the Planning (Hazardous Substances) Act 1990(b) or, in Scotland, the Planning (Hazardous Substances)(Scotland) Act 1997(c);
- (d) information from inspections and investigations at establishments.

(4) The competent authority may request such additional information from any operator as is necessary for the purposes of this regulation.

(5) Where the competent authority has information in addition to that provided by any operator of an establishment which is part of a domino group about the immediate environment of the establishment, or factors which are likely to cause a major accident or to aggravate the consequences of a major accident, including—

- (a) details of neighbouring establishments;
- (b) sites of operation that fall outside the scope of these Regulations; or
- (c) areas and developments that could be the source of or increase the risk or consequences of a major accident and of domino effects,

the competent authority must provide that information to each operator of an establishment in that group.

(6) Where the competent authority identifies a domino group, it must notify each operator of an establishment in that group of the name of the operator and full address of each of the establishments within the group.

(7) Where an operator is notified under paragraph (6), it must, using any information received under paragraph (5), co-operate with the operators of each establishment within the domino group in—

- (a) putting in place arrangements for the exchange of suitable information with each other so as to enable them to take into account the nature and extent of the major accident hazards in the case of—
 - (i) each operator, in its—
 - (aa) major accident prevention policy; and
 - (bb) safety management system; and
 - (ii) each operator of an upper tier establishment, in—

(a) S.I. 2013/1237, to which there are amendments not relevant to these Regulations.

(b) 1990 c.10; sections 7(3), 9(2)(e) and 39(1) were amended by S.I. 2014/469.

(c) 1997 c.10; sections 5(2), 7(2)(e) and 38(1) were amended by S.I. 2014/469.

- (aa) its safety report;
 - (bb) its internal emergency plan; and
 - (cc) the provision of information to persons likely to be affected by a major accident under regulation 18;
- (b) informing neighbouring sites to which these Regulations do not apply of their proximity to a domino group and in appropriate cases to provide suitable information to those sites;
 - (c) preparing information for the purposes of regulation 17(1)(e); and
 - (d) supplying the local authority with information relevant for the purposes of preparing an external emergency plan, where one is required under regulation 13.
- (8) The Executive, the ONR and the appropriate agency must, in appropriate cases, co-operate in—
- (a) identifying domino groups under paragraph (1);
 - (b) providing information to an operator under paragraph (5); and
 - (c) notifying each operator in a domino group under paragraph (6).

Inspections and investigations

- 25.—(1) The competent authority must organise a system of inspections of establishments appropriate to the type of establishment concerned.
- (2) An inspection—
- (a) must not be dependent on the receipt of any report submitted by an operator;
 - (b) must be sufficient for a planned and systematic examination of the technical, organisational and management systems being employed at an establishment so as to ensure, in particular, that—
 - (i) the operator can demonstrate that it has taken appropriate measures, in connection with the various activities of the establishment, to prevent major accidents;
 - (ii) the operator can demonstrate that it has provided appropriate means for limiting the consequences of major accidents;
 - (iii) the data and information contained in the safety report, or any other report submitted by the operator adequately reflects the conditions in the establishment; and
 - (iv) information is supplied to the public in accordance with regulations 17 and 18.
- (3) The system of inspections must ensure that all establishments are covered by an inspection plan that includes—
- (a) a general assessment of relevant safety issues;
 - (b) the geographical area covered by the inspection plan;
 - (c) a list of the establishments covered by the plan;
 - (ffffffffffffffff) a list of groups of establishments with possible domino effects;
 - (gggggggggggggggggggg) a list of establishments where particular external risks or hazard sources could increase the risk or consequences of a major accident;
 - (hhhhhhhhhhhhhhhhhh) procedures for routine inspections, including the programmes for such inspections under paragraph (5);
 - (iiiiiiiiiiiiiiii) procedures for non-routine investigations under paragraph (8); and
 - (jjjjjjjjjjjjjjjj) provisions on co-operation between the Executive or the ONR and the appropriate agency.
- (4) The inspection plan must be regularly reviewed and revised as appropriate.
- (5) Based on the inspection plan the competent authority must prepare programmes for routine inspections of all establishments.

(6) In preparing programmes for routine inspections of establishments the competent authority must ensure in particular that—

- (a) it has prepared a systematic appraisal of major accident hazards of the establishments;
- (b) the programmes are regularly reviewed and revised, where necessary; and
- (c) the programmes provide for the frequency of site visits for different types of establishment.

(7) In carrying out a systematic appraisal referred to in paragraph (6)(a) the competent authority must take into account—

- (a) the potential impacts of the establishments on human health and the environment;
- (b) the record of the operators of the establishments in complying with the requirements of these Regulations; and
- (c) the relevant findings, if any, of inspections carried out by the appropriate agency, in England and Wales, under the 2010 Regulations, or in Scotland, the 2012 Regulations.

(8) The competent authority must investigate, as soon as possible, when it comes to its attention in relation to any establishment that there have been—

- (a) serious complaints;
- (b) serious accidents or near misses; or
- (c) occurrences of significant non-compliance with these Regulations.

(9) Following the conclusion of an inspection or investigation under this regulation, the competent authority must—

- (a) within 4 months after the date of the inspection or investigation communicate its conclusions and all the necessary actions it requires to be taken to the operator; and
- (b) take reasonable steps to ensure that the operator takes all the necessary actions within a reasonable time after receipt of the communication containing the conclusions.

(10) Where, following the conclusion of an inspection or investigation under this regulation, the competent authority has identified an important case of non-compliance with these Regulations it must carry out an additional inspection within 6 months.

(11) Where the competent authority considers it to be expedient, inspections and investigations under this regulation may be co-ordinated with inspections and investigations carried out by the appropriate agency under—

- (a) in England and Wales, the 2010 Regulations; or
- (b) in Scotland, the 2012 Regulations.

PART 7

ACTION TO BE TAKEN FOLLOWING A MAJOR ACCIDENT

A ction to be taken follow ing a major accident

26.—(1) Following a major accident, the operator of the establishment where the accident occurred must, as soon as practicable—

- (a) inform the competent authority of the occurrence of the accident;
- (b) provide the competent authority with the following information as soon as it becomes available—
 - (i) the circumstances of the accident;
 - (ii) the dangerous substances involved;
 - (iii) the data available for assessing the consequences of the accident on human health, the environment and property; and

- (iv) the emergency measures taken;
 - (c) inform the competent authority of the steps it is envisaged are required in order to—
 - (i) mitigate the medium term and long term consequences of the accident; and
 - (ii) prevent any recurrence of such an accident;
 - (d) update the information provided under sub-paragraphs (b) and (c), if further investigation reveals additional facts which alter that information or the conclusions drawn.
- (2) Following a major accident the competent authority must—
- (a) ensure that any urgent, medium term and long term measures which may prove necessary, are taken;
 - (b) collect by inspection, investigation or other appropriate means the information necessary for a full analysis of the technical, organisational and managerial aspects of the accident;
 - (c) take appropriate action to ensure that the operator takes any necessary remedial measures; and
 - (d) make recommendations on future preventive measures.
- (3) Subject to paragraph (4), where a major accident occurs which meets the criteria set out in Schedule 5, the competent authority must as soon as it is practicable, and in any event within one year of the date of the accident, provide the European Commission with the following information—
- (a) confirmation that the accident occurred in Great Britain and the name and address of the competent authority;
 - (b) the date, time and place of the accident, including the full name of the operator and the address of the establishment concerned;
 - (c) a brief description of the circumstances of the accident, including the dangerous substances involved and the immediate consequences on human health and the environment;
 - (~~ffffff~~) a brief description of the emergency measures taken and immediate precautions necessary to prevent recurrence; and
 - (~~gggggggggggggggggggggg~~) the results of the competent authority's analysis and recommendations.
- (4) In relation to the information referred to in paragraph (3)(e)—
- (a) where the competent authority is able only to provide preliminary information within the time limit in paragraph (3), it must provide updated information to the European Commission when the results of further analysis and recommendations are available; and
 - (b) the provision of information to the European Commission may be delayed where in the opinion of the competent authority to report such information risks prejudicing the conduct of existing or future legal proceedings.
- (5) Following a major accident the local authority in whose administrative area the accident has occurred must inform the persons likely to be affected of—
- (a) the accident which has occurred; and
 - (b) where relevant, of the measures undertaken to mitigate its consequences.

PART 8

ENFORCEMENT AND PENALTIES

Enforcement and penalties

27.—(1) Subject to paragraph (2), to the extent they would not otherwise do so, the following provisions of the 1974 Act apply to these Regulations as if they were health and safety regulations for the purposes of that Act and any function of the Executive under any other

provision of the 1974 Act under or in respect of health and safety regulations (including their enforcement) is exercisable as if these Regulations were, to the extent they would not otherwise be so, health and safety regulations for the purposes of that Act—

- (a) sections 16 to 21 (approval of codes of practice and enforcement);
- (b) section 23 (provisions supplementary to sections 21 and 22) and section 24 (appeal against improvement or prohibition notice), so far as they relate to an improvement notice;
- (c) section 26 (power to indemnify inspectors); and
- (d) subject to paragraph (6), sections 33 to 42 (provisions as to offences).

(2) In relation to the enforcement of these Regulations—

- (a) on or in relation to an establishment which is or is wholly or partly within a GB nuclear site (within the meaning given in section 68 of the Energy Act 2013), section 18(3B) of the 1974 Act applies as if the reference to the ONR included a reference to the appropriate agency; and
- (b) otherwise, section 18(1) of that Act applies as if the reference to the Executive included a reference to the appropriate agency,

but nothing in this paragraph has the effect of making the appropriate agency an enforcing authority for the purposes of the 1974 Act.

(3) Without prejudice to the—

- (a) provisions of the 1974 Act referred to in paragraph (1), section 108(1) of the Environment Act 1995 has effect in relation to a person authorised by the appropriate agency as if the reference in that section to a pollution control enactment included a reference to these Regulations and as if the reference to a pollution control function included a reference to any function conferred or imposed on the appropriate agency by or under these Regulations; and
- (b) functions of an inspector appointed under section 19 of the 1974 Act, a person referred to in sub-paragraph (a) may, despite the person not being an inspector so appointed, serve an improvement notice under section 21 of that Act in respect of a contravention of these Regulations, and the reference to an inspector in section 23(4) of that Act is to have effect accordingly.

(4) A failure to discharge a function placed on the competent authority by these Regulations is not an offence, and section 33(1)(c) of the 1974 Act has effect accordingly.

(5) Subject to section 18(1A) of the 1974 Act(a) but despite the Health and Safety (Enforcing Authority) Regulations 1998(b), the enforcing authority for the relevant statutory provisions—

- (a) at an establishment which is a nuclear establishment, is the ONR;
- (b) at any other establishment, is the Executive.

(6) The maximum penalty for an offence consisting of a contravention of a requirement or prohibition imposed by or under these Regulations is—

- (a) on summary conviction—
 - (i) in England and Wales, imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both;
 - (ii) in Scotland, imprisonment for a term not exceeding twelve months or a fine not exceeding the statutory maximum, or both; and
- (b) on conviction on indictment, imprisonment for a term not exceeding two years, or a fine or both.

(a) ~~Section 18(1A) of the Health and Safety at Work etc. Act 1974 was inserted by the Energy Act 2013 (c.32), Schedule 12, paragraph 6(2).~~

(b) S.I. 1998/494, amended by S.I. 2014/469; there are other amending instruments but none is relevant.

PART 9

FEES

Fees payable by operators to the competent authority

28.—(1) A fee is payable by the operator of an establishment to the competent authority for the performance by, or on behalf of, the competent authority of any function conferred on the competent authority by these Regulations.

(2) A fee is payable by the operator of an upper tier establishment to the competent authority for the performance by or on behalf of the Executive or of the ONR (as the case may be), or by an inspector appointed by or on behalf of them, of any function conferred on the Executive or the ONR, or the inspector, by the 1974 Act (as the case may be) which relates to the enforcement of any of the relevant statutory provisions against one or more of the following—

- (a) the operator of the establishment; or
- (b) a contractor in relation to any work carried out by the contractor on or in connection with that establishment,

except in the case of an establishment where the presence of the dangerous substance at the establishment is, in the opinion of the competent authority, for a purpose ancillary to the main activity at the establishment.

(3) A fee under this regulation may not exceed the sum of the costs reasonably incurred by the competent authority, the Executive or the ONR (as the case may be) in the performance of their functions in relation to the establishment concerned.

(4) A fee is payable within 30 days from the date of the invoice sent by or on behalf of the competent authority to the operator.

(5) An invoice must include a statement of the work done and the costs incurred by or on behalf of the competent authority, the Executive or the ONR, including the period to which the statement relates.

(6) Where a fee has been paid under paragraph (1) to the Executive or the ONR, as the case may be, it must pay to the appropriate agency any fee or part of any fee it recovers as is attributable to work done by or on behalf of the appropriate agency or by an authorised person in performing the agency's functions.

(7) Where a fee has been paid under paragraph (1) or (2) to the appropriate agency, it must pay to the Executive or the ONR, as the case may be, any fee or part of any fee it recovers as is attributable to work done by or on behalf of the Executive or the ONR or by an inspector in performing the Executive's or the ONR's functions.

(8) A fee payable under this regulation is recoverable only as a civil debt.

(9) A fee payable under this regulation may not include any costs connected with—

- (a) in England and Wales, any criminal investigation or prosecution incurred, in either case, from the date any summons is obtained from a Magistrates Court;
- (b) in Scotland, any criminal investigation or prosecution incurred, in either case, after—
 - (i) the inspector or authorised person undertaking the investigation submits a report to the Procurator Fiscal for a decision as to whether a prosecution should be brought; or
 - (ii) the Procurator Fiscal intervenes in the investigation,whichever is the sooner;
- (c) any appeal under section 24 of the 1974 Act incurred from the date a claim is presented pursuant to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013;
- (d) functions of the competent authority related to regulation 13.

(10) In this regulation any reference to work carried out by a contractor is a reference to work carried out by the contractor or by the contractor's employees for the benefit of the person by

whom the fees are payable under this regulation, whether under an agreement or an arrangement made with that person or with another person.

Fees payable to local authorities for the preparation, review and testing of external emergency plans

29.—(1) A local authority may charge the operator a fee for performing its functions under regulation 13 or 14.

(2) A fee under paragraph (1) may not exceed the sum of the costs reasonably incurred by the local authority in the performance of its functions referred to in that paragraph in relation to the establishment concerned.

(3) A fee may include any costs reasonably incurred by the local authority in arranging for the designated authorities to participate in the testing of the external emergency plan.

(4) A fee is payable within 30 days from the date of the invoice sent by or on behalf of the local authority to the operator.

(5) An invoice must include a statement of the work done and the costs incurred by or on behalf of the local authority, including the period to which the statement relates.

(6) A fee payable under this regulation is recoverable only as a civil debt.

PART 10

CONSEQUENTIAL AMENDMENTS, REVOCATIONS, SAVING AND TRANSITIONAL PROVISIONS

A amendments

30. Schedule 6, which makes consequential amendments to secondary legislation, has effect.

R evocations

31. The 1999 Regulations, the Control of Major Accident Hazards (Amendment) Regulations 2005(a), the Control of Major Accident Hazards (Amendment) Regulations 2008(b), the Control of Major Accident Hazards (Amendment) Regulations 2009(c), regulation 3 of the Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2013(d) and, the Heavy Fuel Oil (Amendment) Regulations 2014(e) are revoked.

Saving provisions

32.—(1) A notification sent by an operator to the competent authority under regulation 6 of the 1999 Regulations (including where regulation 6(3) of the 1999 Regulations applied and a report was sent to the Executive under regulation 7 of the Control of Industrial Major Accident Hazards Regulations 1984(f)) having effect immediately before 1st June 2015 continues to have effect during the relevant period as a notification sent under regulation 6 of these Regulations.

(2) For the purposes of paragraph (1) “relevant period” means the period beginning on 1st June 2015 and ending on the date on which the operator sends a notification to the competent authority under regulation 6 of these Regulations.

(a) S.I. 2005/1088.

(b) S.I. 2008/1087.

(c) S.I. 2009/1595.

(d) S.I. 2013/766.

(e) S.I. 2014/162.

(f) S.I. 1984/1902. The 1984 Regulations were revoked by S.I. 1999/743.

(3) In relation to an existing establishment, except where regulation 7(5) applies, regulation 5 of the 1999 Regulations continues to apply in relation to a major accident prevention policy prepared under regulation 5 of those Regulations immediately before 1st June 2015 as if the 1999 Regulations had not been revoked until such time as the operator has prepared a major accident prevention policy under regulation 7 of these Regulations.

(4) In relation to an upper tier establishment—

- (a) except where regulation 9(4) applies, regulation 8 of the 1999 Regulations continues to apply in relation to a safety report prepared under regulation 7 or 8 of those Regulations before 1st June 2015 as if the 1999 Regulations had not been revoked until such time as a safety report is sent by the operator to the competent authority under regulation 9(2)(b) of these Regulations;
- (b) except where regulation 12(3) applies, an on-site emergency plan prepared under regulation 9 of the 1999 Regulations must be reviewed, tested and put into effect in accordance with regulations 11 and 12 of the 1999 Regulations as if those Regulations had not been revoked until such time as an internal emergency plan is prepared by the operator under regulation 12 of these Regulations;
- (c) except where regulation 13(5) applies, an off-site emergency plan prepared by a local authority under regulation 10 of the 1999 Regulations must be reviewed, tested and put into effect by that local authority in accordance with regulations 11 and 12 of the 1999 Regulations as if those Regulations had not been revoked until such time as an external emergency plan is prepared by the local authority under regulation 13 of these Regulations;
- (d) where immediately before the revocation of the 1999 Regulations by these Regulations regulation 14 of the 1999 Regulations applied to the operator of an establishment—
 - (i) information supplied by the operator under regulation 14(1) of the 1999 Regulations having effect immediately before 1st June 2015 continues to have effect during the relevant period as information sent under regulation 18(1) of these Regulations;
 - (ii) where an area was notified to the operator by the competent authority under regulation 14(2) of the 1999 Regulations before 1st June 2015 and that notification remained in effect immediately before that date, the notification continues to have effect as a notification under regulation 18(2) of these Regulations;
 - (iii) regulation 18(5)(a) of these Regulations, in relation to information sent under regulation 14(1) of the 1999 Regulations, has effect as if the first interval at which the operator of the establishment must review and, where necessary revise, the information started on the date that information—
 - (aa) was supplied by the operator under regulation 14(1) of the 1999 Regulations; or
 - (bb) was last reviewed and, where necessary revised, by the operator under regulation 14(6) of those Regulations,whichever is later;
 - (iv) regulation 18(6)(b) of these Regulations has effect, in relation to information sent under regulation 14(1) of the 1999 Regulations, as if the first interval at which information must be sent under regulation 18(6) started on the date that information—
 - (aa) was supplied by the operator under regulation 14(1) of the 1999 Regulations; or
 - (bb) was last supplied by the operator under regulation 14(7) of those Regulations,whichever is later.

(5) Nothing in paragraph (4)(d)(iii) or (iv) affects the obligations of an operator to review and, where necessary, revise the information mentioned in those paragraphs in accordance with regulation 18(5)(b) or 18(6)(a) (as the case may be).

(6) For the purposes of paragraph (4)(d)(i) “relevant period” means the period beginning with 1st June 2015 and ending on the date on which the operator sends information under regulation 18(1) of these Regulations.

(7) Where the competent authority had designated a group of establishments under regulation 16 of the 1999 Regulations immediately before 1st June 2015 and that designation remained in effect immediately before that date, the designation continues to have effect as an identification of a domino group for the purposes of regulation 24.

(8) A notice served under regulation 18(1) of the 1999 Regulations which is in force or effective immediately before 1st June 2015 continues to have effect as a notice served under regulation 23(1) of these Regulations.

(9) A notice served under regulation 18(2) of the 1999 Regulations which is in force or effective immediately before 1st June 2015 continues to have effect as a notice served under regulation 23(2) of these Regulations.

(10) A fee payable to the competent authority under regulation 22 of the 1999 Regulations immediately before 1st June 2015 remains payable to the competent authority under regulation 28 of these Regulations.

(11) A fee payable to a local authority under regulation 13 of the 1999 Regulations immediately before 1st June 2015 remains payable to the local authority under regulation 29 of these Regulations.

Transitional provisions

33.—(1) Where regulation 32(1) applies, the reference in regulation 17(1)(b), to a notification required by regulation 6, must be construed accordingly.

(2) Where regulation 32(4)(a) applies, the reference in regulation 17(1)(b), to a safety report required by regulation 9, must be construed accordingly.

PART 11 REVIEW

R eview

34.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directive is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the Directive and by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation must afterwards be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Work and Pensions

2nd March 2015

Freud
Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE 1 Regulations 2(1) and 3(1)
Dangerous substances

PART 1

Categories of Dangerous Substances

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Hazard categories in accordance with the CLP Regulation	Qualifying quantity in tonnes of dangerous substances for the application of:	
	Lower tier requirements	Upper tier requirements
Section 'H' – HEALTH HAZARDS		
H1 ACUTE TOXIC Category 1, all exposure routes	520	H2 ACUTE TOXIC
TOXIC — Category 2, all exposure routes — Category 3, inhalation exposure route (see note 7)	50	200
H3 STOT SPECIFIC TARGET ORGAN TOXICITY – SINGLE EXPOSURE STOT SE Category 1	50	200
Section 'P' – PHYSICAL HAZARDS		
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 which have explosive properties according to method A.14 of 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 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (see note 9) and do not belong to the hazard classes Organic peroxides or Self-reactive substances and mixtures	10	50
P1b EXPLOSIVES (see note 8) Explosives, Division 1.4 (see note 10)	50	200
P2 FLAMMABLE GASES Flammable gases, Category 1 or 2	10	50
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)	500 (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)	50,000 (net)
P4 OXIDISING GASES Oxidising gases, Category 1	50	200
P5a FLAMMABLE LIQUIDS — Flammable liquids, Category 1, or — Flammable liquids Category 2 or 3 maintained at a	10	50

temperature above their boiling point, or — Other liquids with a flash point $\leq 60^{\circ}\text{C}$, maintained at a temperature above their boiling point (see note 12)		
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 $\leq 60^{\circ}\text{C}$ where particular processing conditions, such as high pressure or high temperature, may create major accident hazards (see note 12)	50	200
P5c FLAMMABLE LIQUIDS Flammable liquids, Categories 2 or 3 not covered by P5a and P5b	5,000	50,000
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	50
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	200
P7 PYROPHORIC LIQUIDS AND SOLIDS Pyrophoric liquids, Category 1 Pyrophoric solids, Category 1	50	200
P8 OXIDISING LIQUIDS AND SOLIDS Oxidising Liquids, Category 1, 2 or 3, or Oxidising Solids, Category 1, 2 or 3	50	200
Section 'E' – ENVIRONMENTAL HAZARDS		
E1 Hazardous to the Aquatic Environment in Category Acute 1 or Chronic 1	100	200
E2 Hazardous to the Aquatic Environment in Category Chronic 2	200	
500 Section 'O' – OTHER HAZARDS		
O1 Substances or mixtures with hazard statement EUH014	100	500
O2 Substances and mixtures which in contact with water emit flammable gases, Category 1	100	500
O3 Substances or mixtures with hazard statement EUH029	50	200

PART 2

Named Dangerous Substances

Column 1	CASnumber (see note 22)	Column 2	Column 3
		Qualifying quantity in tonnes of dangerous substances for the application of:	
Dangerous substances		Lower tier requirements	Upper tier requirements
1. Ammonium nitrate (see note 13)	-	5,000	10,000
2. Ammonium nitrate (see note 14)	-	1,250	5,000
3. Ammonium nitrate (see note 15)	-	350	2,500
4. Ammonium nitrate (see note 16)	-	10	50
5. Potassium nitrate (see note 17)	-	5,000	10,000
6. Potassium nitrate (see note 18)	-	1,250	5,000

7. Arsenic pentoxide, arsenic (V) acid and/or salts	1303-28-2	1	2
8. Arsenic trioxide, arsenious (III) acid and/or salts	1327-53-3		0.1
9. Bromine	7726-95-6	20	
100			
10. Chlorine	7782-50-5	10	25
11. Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide			
12. Ethyleneimine	151-56-4	10	20
13. Fluorine	7782-41-4	10	20
14. Formaldehyde (concentration \geq 90 %)	50-00-0	5	50
15. Hydrogen	1333-74-0	5	50
16. Hydrogen chloride (liquefied gas)	7647-01-0	25	
250			
17. Lead alkyls	=	50	500
18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (see note 19)			
19. Acetylene	74-86-2	5	50
20. Ethylene oxide	75-21-8	5	50
21. Propylene oxide	75-56-9	5	50
22. Methanol	67-56-1	500	5,000
23. 4, 4' -Methylene bis (2-chloraniline) and/or salts, 10 powder form			0.01
24. Methylisocyanate	624-83-9		0.15
25. Oxygen	7782-44-7	200	
2,000	584-84-9	10	100
26. 2,4 -Toluene diisocyanate 2,6 -Toluene diisocyanate	91-08-7		
27. Carbonyl dichloride (phosgene)	75-44-5	0.3	0.75
28. Arsine (arsenic trihydride)	7784-42-1	0.2	1
29. Phosphine (phosphorus trihydride)	7803-51-2	0.2	1
30. Sulphur dichloride	10545-99-0		1
31. Sulphur trioxide	7446-11-9	15	75
32. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see note 20)	-		0.001
33. The following CARCINOGENS or the mixtures containing the following carcinogens at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl 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	2
34. Petroleum products and alternative fuels (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating	-	2,500	25,000

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)			
35. Anhydrous ammonia	7664-41-7	50	200
36. Boron trifluoride	7637-07-2	5	20
37. Hydrogen sulphide	7783-06-4	5	20
38. Piperidine	110-89-4	50	
200			
39. Bis(2-dimethylaminoethyl) (methyl)amine	3030-47-5	50	
200			
40. 3-(2-Ethylhexyloxy)propylamine	5397-31-9	50	
200			
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 this Schedule, provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute Category 1 [H400].	-	200	500
42. Propylamine (see note 21)	107-10-8	500	2,000
43. Tert-butyl acrylate (see note 21)	1663-39-4	200	500
44. 2-Methyl-3-butenitrile (see note 21)	16529-56-9	500	2,000
45. Tetrahydro-3,5-dimethyl-1,3,5-thiadiazine-2-thione (Diazomet) (see note 21)	503-04-2	500	200
46. Methyl acrylate (see note 21)	96-33-3	500	2,000
47. 3-Methylpyridine (see note 21)	108-99-6	500	2,000
48. 1-Bromo-3-chloropropane (see note 21)	109-70-6	500	2,000

PART 3

Notes to Parts 1 and 2

1. Substances and mixtures are classified in accordance with the CLP Regulation.

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, unless a percentage composition or other description is specifically given.

3. The qualifying quantities set out in Parts 1 and 2 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. Dangerous substances present at an establishment only in quantities equal to or less than 2% of the relevant qualifying quantity must be ignored for the purposes of calculating the total quantity present if their location within an establishment is such that it cannot act as an initiator of a major accident elsewhere at that establishment.

4. The following rules governing the addition of dangerous substances, or categories of dangerous substances, apply where appropriate.

In the case of an establishment where no individual dangerous substance is present in a quantity above or equal to the relevant qualifying quantity, the following rule must be applied to determine whether these Regulations apply to the establishment.

An establishment is an upper tier establishment if the sum:

$q_1/Q_{U1} + q_2/Q_{U2} + q_3/Q_{U3} + q_4/Q_{U4} + q_5/Q_{U5} + \dots$ 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_{UX} = the relevant qualifying quantity of dangerous substance or category x from Column 3 of Part 1 or from Column 3 of Part 2 of this Schedule.

An establishment is a lower tier establishment if the sum:

$q_1/Q_{L1} + q_2/Q_{L2} + q_3/Q_{L3} + q_4/Q_{L4} + q_5/Q_{L5} + \dots$ 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 qualifying quantity for dangerous substance or category x from Column 2 of Part 1 or from Column 2 of Part 2 of this Schedule.

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

- (a) for the addition of dangerous substances listed in Part 2 that fall within acute toxicity category 1, 2 or 3 (inhalation route) or STOT SE category 1, together with dangerous substances falling within section H, entries H1 to H3 of Part 1;
- (b) for the addition of dangerous 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 dangerous substances falling within section P, entries P1 to P8 of Part 1;
- (c) for the addition of dangerous 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 dangerous substances falling within section E, entries E1 and E2 of Part 1.

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 dangerous 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 dangerous substance falling within the scope of these Regulations.

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

7. Dangerous 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 (“the UN Manual of Tests and Criteria”)(a) 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 Council Directive 75/324/EEC of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers(b). “Extremely flammable” and “Flammable” aerosols of that Directive correspond to Flammable Aerosols Category 1 and 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 (the 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%(c) and 24.5%(d) by weight, and either with not more than 0.4% total combustible/organic materials or which fulfil the requirements of Annex III-2 to Regulation (EC) No. 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (“Regulation (EC) No. 2003/2003”)(e); or
- (b) equal to or less than 15.75% by weight 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; or
- (c) more than 28%(f) 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) More guidance on waiving of the test can be found in the A.14 (explosive properties) method description in the Annex to Council 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 on the Registration Evaluation, Authorisation and Restriction of Chemicals (REACH) (O.J. L142, 31.5.2008, p. 1).
- (b) O.J. L147, 9.6.1975, p. 40.
- (c) 15.75% nitrogen content by weight as a result of ammonium nitrate corresponds to 45% ammonium nitrate.
- (d) 24.5% nitrogen content by weight as a result of ammonium nitrate corresponds to 70% ammonium nitrate.
- (e) O.J. L304, 21.11.2003, p. 1.
- (f) 28% nitrogen content by weight as a result of ammonium nitrate corresponds to 80% ammonium nitrate.

- (a) between 24.5% and 28% by weight, and which contain not more than 0.4% combustible substances; or
- (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 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 any composite potassium nitrate based fertiliser (in prilled/granular form) which has the same hazardous properties as pure potassium nitrate.

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

This applies to any composite potassium nitrate based fertiliser (in crystalline form) which has the same hazardous properties as pure potassium nitrate.

19. Upgraded biogas.

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

W HO 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
		1,2,3,4,6,7,8-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, Pe = penta, Hx = hexa, Hp = hepta, O = octa			

(*) 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 dangerous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of these Regulations the lowest qualifying quantity applies.

22. The CAS number is shown only for indication.

SCHEDULE 2

Regulation 7

Requirements and matters to be addressed by safety management systems

1. A safety management system must—

- (a) be proportionate to the hazards, industrial activities and complexity of the organisation in the establishment;
- (b) be based on assessment of the risks;
- (c) include within its scope the general management system, including the organisational structure, responsibilities, practices, procedures, processes and resources for determining and implementing the major accident prevention policy.

2. The following matters must be addressed by the safety management system—

- (a) in relation to the organisation and personnel—
 - (i) the roles and responsibilities of personnel involved in the management of major hazards at all levels in the organisation, together with the measures taken to raise awareness of the need for continuous improvement;
 - (ii) the identification of the training needs of such personnel and the provision of the training;
 - (iii) the involvement of employees and of subcontracted personnel working in the establishment, who are important from the point of view of safety;
- (b) the identification and evaluation of major hazards: the adoption and implementation of procedures for systematically identifying major hazards arising from normal and abnormal operation, including subcontracted activities where applicable, and the assessment of their likelihood and severity;
- (c) in relation to operational control—
 - (i) the adoption and implementation of procedures and instructions for safe operation, including maintenance, of plant, processes and equipment, and for alarm management and temporary stoppages;
 - (ii) the taking into account of available information on best practices for monitoring and control, with a view to reducing the risk of system failure;
 - (iii) the management and control of the risks associated with ageing equipment installed in the establishment and its corrosion;
 - (iv) the inventory of the establishment's equipment, and the strategy and methodology for the monitoring and control of the condition of the equipment;
 - (v) appropriate follow up actions and any necessary counter-measures;
- (ffffffffffffffff) the management of change: the adoption and implementation of procedures for planning modifications to, or the design of new installations, processes or storage facilities;
- (gggggggggggggggggggg) in relation to planning for emergencies—

- (i) the adoption and implementation of procedures to identify foreseeable emergencies by systematic analysis;
 - (ii) the preparation, testing and review of emergency plans to respond to emergencies and the provision of specific training for staff, such training to be given to all personnel working in the establishment, including relevant subcontracted personnel;
- (f) in relation to monitoring performance—
- (i) the adoption and implementation of procedures for the ongoing assessment of compliance with the objectives set by the operator's major accident prevention policy and safety management system, and the mechanisms for investigation and taking corrective action in case of non-compliance;
 - (ii) the procedures must cover the operator's system for reporting major accidents or 'near misses', particularly those involving failure of protective measures, and their investigation and follow-up on the basis of lessons learned;
 - (iii) the procedures could also include performance indicators such as safety performance indicators (SPIs) and/or other relevant indicators;
- (g) in relation to audit and review—
- (i) the adoption and implementation of procedures for periodic systematic assessment of the major accident prevention policy and the effectiveness and suitability of the safety management system;
 - (ii) the documented review of performance of the policy and safety management system and its updating by senior management, including consideration and incorporation of necessary changes indicated by the audit and review.

SCHEDULE 3

Regulations 9 and 10

Minimum data and information to be included in a safety report

1. The data and information to be included in a safety report is specified in paragraphs 2 to 6.

2. Information on the management system and on the organisation of the establishment with a view to major accident prevention, including the matters set out in Schedule 2 in relation to the safety management system.

3. The environment of the establishment—

- (a) a description of the establishment and its environment including the geographical location, meteorological, geological, hydrographic conditions and, if necessary, its history;
- (b) identification of installations and other activities of the establishment which could present a major accident hazard;
- (c) on the basis of available information, identification of neighbouring establishments, as well as sites that fall outside the scope of these Regulations, areas and developments that could be the source of, or increase the risk or consequences of a major accident and of domino effects; and
- (d) a description of areas where a major accident may occur.

4. The establishment—

- (a) a description of the main activities and products of the parts of the establishment which are important from the point of view of safety, sources of major accident risks and conditions under which a major accident could happen, together with a description of proposed preventive measures;
- (b) a description of processes, in particular the operating methods, where applicable, taking into account available information on best practices;

(c) a description of dangerous substances, including their classification under the CLP Regulation and—

- (i) an inventory of dangerous substances including—
 - (aa) the identification of dangerous substances: the chemical name, CAS number and name according to IUPAC(a) nomenclature;
 - (bb) the maximum quantity of dangerous substances present or likely to be present;
- (ii) the physical, chemical, toxicological characteristics and indication of the hazards, both immediate and delayed for human health and the environment;
- (iii) the physical and chemical behaviour under normal conditions of use or under foreseeable accidental conditions.

5. Identification and accidental risks analysis and prevention methods—

- (a) a detailed description of the possible major accident scenarios and their probability or the conditions under which they might occur including a summary of the events which may play a role in triggering each of these scenarios, the causes being internal or external to the installation; including in particular—
 - (i) operational causes;
 - (ii) external causes, such as those related to domino effects, sites that fall outside the scope of these Regulations, areas and developments that could be the source of, or increase the risk or consequences of a major accident;
 - (iii) natural causes, for example earthquakes or floods;
- (b) an assessment of the extent and severity of the consequences of identified major accidents including maps, images or, as appropriate, equivalent descriptions, showing areas which are likely to be affected by such accidents arising from the establishment;
- (c) a review of past accidents and incidents with the same substances and processes used, consideration of lessons learned from these, and explicit reference to specific measures taken to prevent such accidents;
- (d) a description of technical parameters and equipment used for the safety of installations.

6. Measures of protection and intervention to limit the consequences of a major accident—

- (a) a description of the equipment installed in the plant to limit the consequences of major accidents for human health and the environment, including for example detection/protection systems, technical devices for limiting the size of accidental releases, including water spray; vapour screens; emergency catch pots or collection vessels; shut-off valves; inerting systems; and fire water retention;
- (b) the organisation of alert and intervention;
- (c) a description of mobilisable resources, internal or external; and
- (d) a description of any technical and non-technical measures relevant for the reduction of the impact of a major accident.

(a) International Union of Pure and Applied Chemistry (www.iupac.org).

SCHEDULE 4

Regulations 12 and 13

Information to be included in internal and external emergency plans

PART 1

Internal emergency plans

An internal emergency plan must include the following information—

- (a) the name or position of—
 - (i) any person authorised to set emergency procedures in motion; and
 - (ii) the person in charge of and co-ordinating the mitigatory action within the establishment;
- (b) the name or position of the person with responsibility for liaising with the local authority responsible for the external emergency plan;
- (c) for foreseeable conditions or events which could be significant in bringing about a major accident, a description of the action which should be taken to control the conditions or events and to limit their consequences, including a description of the safety equipment and the resources available;
- (f) the arrangements for limiting the risks to persons within the establishment including how warnings are to be given and the actions persons are expected to take on receipt of a warning;
- (g) the arrangements for providing early warning of an incident to the local authority responsible for setting the external emergency plan in motion, the type of information which should be contained in an initial warning and the arrangements for the provision of more detailed information as it becomes available;
- (h) where necessary, the arrangements for training staff in the duties they will be expected to perform and, as appropriate, co-ordinating this with the emergency services;
- (i) the arrangements for providing assistance with mitigatory action outside the establishment.

PART 2

External emergency plans

An external emergency plan must include the following information—

- (a) the name or position of—
 - (i) any person authorised to set emergency procedures in motion; and
 - (ii) any person authorised to take charge of and co-ordinate action outside the establishment;
- (b) the arrangements for receiving early warning of incidents, and alert and call-out procedures;
- (c) the arrangements for co-ordinating resources necessary to implement the external emergency plan;
- (f) the arrangements for providing assistance with mitigatory action within the establishment;
- (g) the arrangements for mitigatory action outside the establishment, including responses to major accident scenarios as set out in the safety report and considering possible domino effects, including those having an impact on the environment;

- (f) the arrangements for providing the public and any neighbouring establishments or sites that fall outside the scope of these Regulations in accordance with regulation 24 (domino effects and domino groups) with specific information relating to an accident and the behaviour which should be adopted;
- (g) the arrangements for the provision of information to the emergency services of other Member States in the event of a major accident with possible trans-boundary consequences.

SCHEDULE 5

Regulation 26

Criteria for the notification of a major accident to the European Commission

1. A major accident meets the criteria in this Schedule if it meets the criteria in paragraph 2 or 3.

2. A major accident falling within paragraph (a), or having at least one of the consequences described in paragraphs (b) to (e)—

- (a) any fire or explosion or accidental discharge of a dangerous substance involving a quantity of at least 5% of the quantity in Column 3 of Part 1 or in Column 3 of Part 2 of Schedule 1;
- (b) injury to persons and damage to property—
 - (i) a death;
 - (ii) six persons injured within the establishment and hospitalised for at least 24 hours;
 - (iii) one person outside the establishment hospitalised for at least 24 hours;
 - (iv) a dwelling outside the establishment damaged and unusable as a result of the accident;
 - (v) the evacuation or confinement of persons for more than 2 hours where the value (persons × hours) is at least 500; or
 - (vi) the interruption of drinking water, electricity, gas or telephone services for more than 2 hours where the value (persons × hours) is at least 1,000;
- (c) immediate damage to the environment—
 - (i) permanent or long term damage to terrestrial habitats—
 - (aa) 0.5 hectares or more of a habitat of environmental or conservation importance protected by legislation; or
 - (bb) 10 or more hectares of more widespread habitat, including agricultural land;
 - (ii) significant or long-term damage to freshwater and marine habitats—
 - (aa) 10 km or more of river or canal;
 - (bb) 1 hectare or more of a lake or pond;
 - (cc) 2 hectares or more of delta; or
 - (dd) 2 hectares or more of a coastline or open sea; or
 - (iii) significant damage to an aquifer or underground water: 1 hectare or more;
- (d) damage to property—
 - (i) damage to property in the establishment, to the value of at least EUR 2,000,000; or
 - (ii) damage to property outside the establishment, to the value of at least EUR 500,000;
- (e) cross-border damage: any major accident directly involving a dangerous substance giving rise to consequences outside the territory of the Member State concerned.

3. Any accidents or 'near misses' which the Member State regards as being of particular technical interest for preventing major accidents and limiting their consequences and which do not meet the quantitative criteria in paragraph 2.

SCHEDULE 6

Regulation 30

Amendments to secondary legislation

1. In the Civil Contingencies Act 2004 (Contingency Planning)(Scotland) Regulations 2005(a), in regulation 9(a), for "1999" substitute "2015".

2. In the Regulatory Reform (Fire Safety) Order 2005(b), in article 47(2)(b), for "1999" substitute "2015".

3. In the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005(c), in regulation 12(a), for "1999" substitute "2015".

4. In the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006(d), in regulation 4(3)(c), for "1999" substitute "2015".

5. In the Fire (Scotland) Act 2005 (Commencement No. 3 and Savings) Order 2006(e), in article 3, for "1999", substitute "2015".

6. In the Waste (England and Wales) Regulations 2011(f), in regulation 29(5A)(j), for "1999" substitute "2015".

7.—(1) Schedule 4 to the 2012 Regulations is amended as follows.

(2) In paragraph 1(1)(o), for "regulation 7 of the Control of Major Accident Hazards Regulations 1999" substitute "Part 3 of the Control of Major Accident Hazards Regulations 2015".

(3) In paragraph 13—

(a) in paragraph (d)(ii)(aa), for "regulation 5 of the Control of Major Accident Hazards Regulations 1999 ("the 1999 Regulations")" substitute "regulation 7 of the Control of Major Accident Hazards Regulations 2015 ("the 2015 Regulations)";

(b) in paragraph (d)(ii)(bb), for "regulation 7 of the 1999 Regulations" substitute "Part 3 of the 2015 Regulations";

(c) in paragraph (da)(i), for "regulation 5 of the 1999 Regulations" substitute "regulation 7 of the 2015 Regulations";

(d) in paragraph (da)(ii), for "regulation 7 of the 1999 Regulations" substitute "Part 3 of the 2015 Regulations".

(4) In paragraph 18(a)(ii), for "regulation 7 of the Control of Major Accident Hazards Regulations 1999" substitute "Part 3 of the Control of Major Accident Hazards Regulations 2015".

8.—(1) Schedule 7 to the Natural Resources Body for Wales (Functions) Order 2013(g) is amended as follows.

(2) In paragraph 9—

(a) for sub-paragraph (1), substitute—

(a) S.S.I. 2005/494, to which there are amendments not relevant to these Regulations.

(b) S.I. 2005/1541, to which there are amendments not relevant to these Regulations.

(c) S.I. 2005/2042, to which there are amendments not relevant to these Regulations.

(d) S.I. 2006/557, to which there are amendments not relevant to these Regulations.

(e) S.S.I. 2006/458.

(f) S.I. 2011/988, amended by S.I. 2013/755 and 2014/656; there are other amending instruments but none is relevant.

(g) S.I. 2013/755.

“(1) This paragraph applies for the purposes of regulation 21(1)(c) of the Control of Major Accident Hazards Regulations 2015.”;

(b) for sub-paragraph (3), substitute—

“(3) In this paragraph, “appropriate agency”, “establishment” and “safety report” have the meanings given by regulation 2(1) of the Control of Major Accident Hazards Regulations 2015.”.

9. In Schedule 2 to the Employment Tribunals and the Employment Appeal Tribunals Fees Order 2013(a)—

(a) in table 1, for “Control of Major Accident Hazards Regulations 1999” substitute “Control of Major Accident Hazards Regulations 2015”;

(b) in table 2 in row 47, in columns 3 and 4 of that entry, for “Regulation 18 COMAH” substitute “Regulation 23 COMAH” in both places in which it appears.

10. In the Petroleum (Consolidation) Regulations 2014(b), in regulation 3(1)(b), for “1999” substitute “2015”.

11. In the Health and Safety and Nuclear (Fees) Regulations 2015(c)—

(a) in regulation 20(3), for “1999” substitute “2015”;

(b) in regulation 23(16)(a), for “1999” substitute “2015”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements with respect to the control of major accident hazards involving dangerous substances. The expressions “major accident” and “dangerous substances” are defined in regulation 2(1). The Regulations implement Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/98/EC (O.J. No. L 197, 24.7.2012, p.1) (the “Seveso III Directive”), except for Articles 13 and 15, which relate to land use planning, and Article 30, which was implemented by the Heavy Fuel Oil (Amendment) Regulations 2014 (S.I. 2014/162).

The Regulations apply to establishments, as defined in regulation 2(1), where dangerous substances are present or are likely to be present in quantities equal to or exceeding the quantities specified in column 2 of Part 1 or in column 2 of Part 2 of Schedule 1. Establishments may be either a “lower tier establishment” or an “upper tier establishment”, as defined in regulation 2(1). The Regulations do not apply in the circumstances specified in regulation 3(2).

Except for a nuclear establishment, which is defined in regulation 2(1), the competent authority for the purposes of the Regulations is—

(a) in England, the Health and Safety Executive (“the Executive”) and the Environment Agency acting jointly;

(b) in Wales, the Executive and the Natural Resources Body for Wales acting jointly; and

(c) in Scotland, the Executive and the Scottish Environment Protection Agency acting jointly (regulation 4(b)).

In relation to a nuclear establishment, the competent authority is—

(a) in England, the Office for Nuclear Regulation (“the ONR”) and the Environment Agency acting jointly;

(b) in Wales, the ONR and the Natural Resources Body for Wales acting jointly; and

(a) S.I. 2013/1893, amended by S.I. 2014/590; there are other amending instruments but none is relevant.

(b) S.I. 2014/1637.

(c) S.I. 2015/363.

- (c) in Scotland, the ONR and the Scottish Environment Protection Agency acting jointly (regulation 4(a)).

The Regulations—

- (a) impose a duty on an operator (as defined in regulation 2(1)) to take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment (regulation 5(1));
- (b) impose a duty on an operator to demonstrate to the competent authority that it has taken all measures necessary as specified in the Regulations (regulation 5(2));
- (c) impose a duty on an operator to provide the competent authority with all assistance necessary to enable the competent authority to perform its functions under the Regulations (regulation 5(3));
- (~~iiiiiiiiiiiiiiii~~) impose a duty on an operator to provide assistance as necessary to the competent authority to enable the carrying out of inspections and investigations and to gather any necessary information to enable the competent authority to perform its functions under the Regulations (regulation 5(4));
- (gggggggggggggggggggg) impose a duty on an operator to send the competent authority a notification containing specified information—
 - (i) within a reasonable period of time prior to the start of construction of a new establishment (regulation 6(1))(the expression “new establishment” is defined in regulation 2(1));
 - (ii) within a reasonable period of time prior to the start of operation of a new establishment (regulation 6(2)), except that this does not need to contain information already contained in a notification sent under regulation 6(1) if that information is still valid;
 - (iii) by 1st June 2016 in the case of an existing establishment (regulation 6(4))(the expression “existing establishment” is defined in regulation 2(2));
 - (iv) in the case of an other establishment, within one year from the date when the establishment first becomes an other establishment (regulation 6(5))(the expression “other establishment” is defined in regulation 2(1)); and
 - (v) in advance, in the case of specified events (regulation 6(6));
- (f) impose a duty on an operator to prepare and retain in writing a major accident prevention policy containing specified information and to revise it in specified circumstances (regulation 7 and Schedule 2);
- (g) require the operator of an upper tier establishment to send at specified times a safety report to the competent authority (for the purposes specified in regulation 8) containing specified information, and not to start construction or operation of the establishment or to permit modifications to the establishment leading to a change in the inventory of dangerous substances, until it has received the competent authority’s conclusions of its examination of the safety report (regulation 9 and Schedule 3);
- (h) require the operator of an upper tier establishment to review and revise the safety report in specified circumstances (regulation 10);
- (i) require the operator of an upper tier establishment to prepare an internal emergency plan with specified objectives (specified in regulation 11), containing specified information and to review and test the plan (regulation 12 and Schedule 4);
- (j) require a local authority (as defined in regulation 2(1)) in whose area there is an upper tier establishment to prepare an external emergency plan with specified objectives (set out in regulation 11) and containing specified information (regulation 13 and Schedule 4), subject to any exemption that may be granted by the competent authority under regulation 15;
- (k) require a local authority to review and to test the external emergency plan (regulation 14);

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