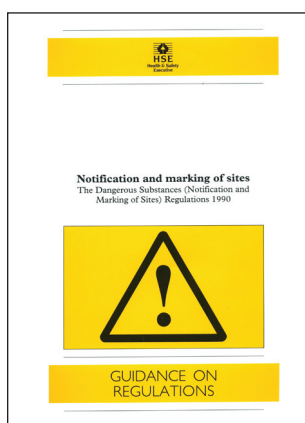


Notification and marking of sites

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

Guidance on Regulations



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This guidebook provides practical guidance on compliance with the Dangerous Substances (Notification and Marking of Sites) Regulations 1990. These regulations require the notification to the local fire authority and the enforcing authority under the Health and Safety at Work etc Act for any site which houses a total quantity of 25 tonnes or more of dangerous substances as well as giving guidance as to the displaying of signs warning of the presence or possible presence of such substances.

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Contents

Introduction	4
Regulation 1	Citation and commencement 5
Regulation 2	Interpretation 5
Regulation 3	Exceptions 8
Regulation 4	Notification 8
Regulation 5	Access marking 10
Regulation 6	Location marking 12
Regulation 7	Signs to be kept clean, etc 15
Regulation 8	Enforcing authority 15
Regulation 9	Exemption certificates 16
Regulation 10	Transitional provisions 16
Regulation 11	Repeals 16
Schedule 1	Exceptions 17
Schedule 2	Matters to be notified 18
Schedule 3	Table of classifications and hazard warnings 20
Schedule 4	Repeals and enabling powers 24
Appendices	
1	HSE Area Offices and HM Inspectorate of Mines District Offices 25
2	Suggested layout of notifications for sites with dangerous substances 27
Further information	28

Introduction

1 This booklet provides practical guidance on compliance with the Dangerous Substances (Notification and Marking of Sites) Regulations 1990 (NMS). The NMS Regulations are made under the Health and Safety at Work etc Act 1974 (HSW Act).

2 Subject to certain exceptions, the NMS Regulations require the notification to the local fire authority and the enforcing authority for the HSW Act for any site with a total quantity of 25 tonnes or more of dangerous substances. They also require the display of signs warning of the presence or possible presence of dangerous substances at the access points to any site with a total quantity of 25 tonnes or more of dangerous substances, whether or not the site is exempted from the notification requirements; and allow an inspector to direct the display of signs at locations of dangerous substances at such a site, if necessary.

3 The principal aims of the NMS Regulations reflect the needs of fire authorities with functions under the Fire Services Act 1947 and enforcing authorities for the HSW Act identified through a series of incidents involving dangerous substances in recent years. They are to ensure that:

- (a) fire authorities and enforcing authorities are in possession of information which will help them in defining priorities for carrying out inspection programmes for their separate purposes;
- (b) firefighters arriving at an incident are warned of the presence of dangerous substances and of the need to make use of the information previously gathered for firefighting purposes.

4 The NMS Regulations complement, in a simpler form, the notification requirements of the Notification of Installations Handling Hazardous Substances Regulations 1982 and introduce specific sign marking requirements on a national basis for the first time. They will be reviewed when 3 years' experience of their operation has been established.

5 The NMS Regulations do not require that a list of the dangerous substances and quantities which cause a site to be notified and/or marked in accordance with regulations 4 to 6 must be maintained. This is because the general duties of the HSW Act have the effect of ensuring, so far as is reasonably practicable, the availability of adequate information about dangerous substances at workplaces. HSE Guidance Booklet HS(G)27(rev) *Substances for use at work: the provision of information* explains those duties and gives guidance on how they should be interpreted in a practical way. Among other things, it points out that employees and others, such as emergency services, need to be aware of the health, fire or other hazards connected with dangerous substances, where those hazards may be present and how they may be exposed to them; and it advises that information about the action necessary in the event of an emergency should be readily available to the emergency services at the time of their arrival at the workplace.

Regulation

1

Regulation 1 Citation and commencement

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

Guidance

1

6 The date of coming into force of the NMS Regulations is affected by the transitional provisions in regulation 10 in two ways. First, the final date for notifying any site at which there is present a total quantity of 25 tonnes or more of dangerous substances on 1 September 1990 is 1 October 1990 (see regulation 10(1)). This one month period of grace for notifiable sites in existence on 1 September 1990 avoids the difficulties there would otherwise be in complying with regulation 4(1).

7 Secondly, there is a phasing in period before any directions given by inspectors under regulation 6 for the display of signs for marking locations of dangerous substances must be complied with. The date for compliance with any such directions is 1 March 1993 (see regulation 10(2)). The reason for this is explained in paragraph 39.

Regulation

2

Regulation 2 - Interpretation

(1) *In these Regulations unless the context otherwise requires -*

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

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

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

“the Executive” means the Health and Safety Executive;

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

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

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

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

Regulation

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

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

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

(a) S.I. 1984/1244, amended by S.I. 1986/1922, S.I. 1988/766, and S.I. 1989/2208.
(b) 1947 c.41.

2

Guidance

8 For ease of identification of dangerous substances in practice, the definitions of 'classification' and 'dangerous substance' are linked to the definitions in the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984 (the CPL Regulations) for substances which are dangerous for conveyance. Substances, including preparations or other mixtures, which are within the scope of the NMS Regulations are therefore in one of the following categories:

- (a) substances listed with their classifications as dangerous for conveyance by road in Part 1A2 of the Approved List associated with the CPL Regulations. The Approved List is revised or reissued from time to time. At the time of publication of this booklet, it is available in two HSC booklets *Information approved for the classification, packaging and labelling of dangerous substances for supply and conveyance by road (Second Edition)* and *Revision No 1 to the Second Edition of the CPL Approved List*;
- (b) any other substance not so listed which is classified in accordance with regulation 6(4) of the CPL Regulations as a substance with the characteristic properties set out in Schedule 2, Part 1, of the CPL Regulations.

In each category, the classification of a substance corresponds to the most hazardous of the characteristic properties of the substance.

9 The words in brackets at the end of the definition of 'classification' (ie '(whether or not the substance is required to be classified for the purpose of those Regulations)') in the NMS Regulations indicate that the exclusion of certain substances from the provisions of the CPL Regulations for particular reasons does not apply to the NMS Regulations. Therefore, subject to Part 1 of Schedule 1 of the NMS Regulations (see paragraph 18), the substances referred to in regulation 3 of the CPL Regulations are within the scope of the NMS Regulations provided that those substances are dangerous substances as defined.

10 Information of assistance in identifying dangerous substances and their classifications for the purposes of the NMS Regulations is readily available from a number of sources. These include:

- (a) labels applied to receptacles or other packages as required mainly by the CPL Regulations. Labels applied for particular purposes (eg for the purposes of

2

Guidance

supply under the CPL Regulations or in compliance with a pesticide approval under the Control of Pesticides Regulations 1986) do not necessarily bear symbols and information identical to the symbols and classifications set out in Schedule 2, Part 1, of the CPL Regulations but useful information on the correlation between symbols and other information displayed on various labels is available in HSE Guidance Note CS 17 *Storage of packaged dangerous substances*;

- (b) hazard warning signs applied to road vehicles carrying dangerous substances as required by the Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1981;
- (c) data sheets or other information provided by the manufacturer, importer or supplier of a dangerous substance in accordance with his duties under section 6 of the HSW Act;
- (d) information previously gathered in order to comply with the general duties placed on persons by sections 2, 3, 4 and 6 of the HSW Act.

11 In cases where this information is not available or in cases of doubt, advice about establishing characteristic properties, including the most hazardous of the characteristic properties, of a substance, and classifications, is available in Approved Code of Practice *Classification and labelling of dangerous substances for conveyance by road in tankers, tank containers and packages (Revision 1)*.

12 The definition of 'site' reflects the general application of the NMS Regulations to the land mass of Great Britain and inland waters, including all land above the low-water mark and most estuaries, natural harbours and certain bays. It is given in two parts. First, in paragraph (a), it relates to a land site and means any place under the control of a person, including any building, open ground, structure, pier, jetty or similar structure, whether floating or not.

13 Secondly, in paragraph (b), it relates to a structure under the control of a person in inland waters including, for example, any stationary ship, platform or similar structure which is used for storage, process or handling purposes. It should be noted that the NMS Regulations do not apply to offshore installations in or beyond territorial waters or pipelines not within a site as defined.

14. Regulation 2(2) clarifies the meaning of 'person in control of a site', Its effect is to ensure that the legal duties under the Regulations to make written notifications or to display warning signs fall on the person (which, by virtue of the Interpretation Act 1978, may be more than one or may be a corporate body, company etc) conducting a trade, business or other undertaking at any site rather than on an employee. However, it is recognised that, in practice in many cases, those duties will be met through the actions of a person with managerial responsibilities at a site.

15 Regulation 2(2) also helps to clarify the way in which the NMS Regulations are intended to apply at places sometimes described as multi-occupancy sites. Typically, such a place would be an area of land owned by one company or body on which there are individual units leased or rented or otherwise occupied by separate companies or bodies. In such a case, the requirements of the NMS Regulations would fall on the separate companies or bodies in control of the trade, business or other activities at the individual units.

16 Regulation 2(3) sets the criteria for deciding whether or not the NMS Regulations apply to dangerous substances in any vehicle, vessel, aircraft or hovercraft at a site. The intention is for the NMS Regulations to apply to any dangerous substances held at a site but to exclude dangerous substances in or on any vehicle etc transporting them to or from a site. Dangerous substances in or on vehicles being used for storage prior to being taken into use, handled for any other purpose such as repacking or transfer to other storage facilities on a site will

Guidance

2

therefore be covered by the NMS Regulations. On the other hand, dangerous substances in vehicles waiting for a short time before unloading at or despatch from a site, or in vehicles parked safely for a few hours, overnight or at weekends (eg at lorry parks, transport depots, railway transit terminals) will not be covered. If there is doubt about any particular case, advice should be sought from the local office of the authority responsible for enforcing Regulation 4 at the site (see paragraph 48).

Regulation

3

Regulation 3 - Exceptions

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

Guidance

3

17 Schedule 1 sets out substances and sites to which the NMS Regulations do not apply either in whole or in part.

18 Paragraph 1 of the Schedule lists two sets of circumstances where dangerous substances could be present (paragraphs 1(a) and 1(d) and two groups of substances (paragraphs 1(b) and 1(c) to which none of the requirements of the NMS Regulations apply. Consequently, any substances covered by the paragraph should not be taken into account when deciding whether or not a site should be notified or marked.

19 Paragraph 2 of the Schedule lists six categories of sites which do not need to be notified under any of the requirements of regulation 4. Any sites within these categories are already known to the relevant authorities directly or indirectly through the legislative requirements referred to in paragraph 2. It should be noted that the marking requirements of regulations 5 and 6 still apply to any site which is excluded from the notification requirements because of paragraph 2 of the Schedule.

20 Paragraph 3 of the Schedule affects only sites which, at any time before the date of coming into force of the Regulations, have been given a notice by the London Fire and Civil Defence Authority, or its predecessors, requiring the erection of signs in accordance with the scheme which has been operating in Greater London since 1978. Such sites do not need to be notified to the London Fire Brigade under regulation 4. However, the requirements to notify the authority responsible for enforcing the HSW Act at such sites still apply.

21 Paragraph 4 of the Schedule specifies the only type of site which is excepted from the marking requirements of regulations 5 and 6 (ie petrol filling stations).

Regulation

4

Regulation 4 - Notification

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

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

Regulation

4

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

Guidance

22 Subject to certain exceptions, regulation 4(1) requires that, with effect from 1 September 1990, the specified site notifications must be made before a total quantity of 25 tonnes or more of dangerous substances is present at a site. The exceptions are:

- (a) any site at which there is present a total quantity of 25 tonnes or more of dangerous substances when the NMS Regulations come into force on 1 September 1990. The final date for notifying such a site is 1 October 1990 (see also paragraph 6);
- (b) any site which is excepted from the notification requirements as a result of paragraphs 2 and 3 of Schedule 1 of the NMS Regulations (see also paragraphs 19 and 20).

Thus, at sites not subject to the exceptions, persons in control need to anticipate the quantities of dangerous substances which may be present at any one time (see paragraph 26 for guidance on this aspect).

23 The notifications should be sent to the local fire authority for the area in which the site is situated and to the local office of the enforcing authority for the site (see paragraph 48). Where the enforcing authority is HSE, the notification should be sent to the appropriate HSE Area Office or, in the case of a mine, to the District Office of HM Inspectorate of Mines. A list of addresses is given at Appendix 1.

24 The particulars to be notified are specified in Part I of Schedule 2 (see paragraph 53). A suggested layout for notifications is set out in Appendix 2. Copies of the Appendix may be used as a pro-forma for notification purposes if convenient.

25 The particulars to be notified include the classifications of any dangerous substances which are or are liable to be present but do not include an estimate of the total quantity of dangerous substances. Nevertheless, a person in control needs to make an estimate in order to decide whether or not the site should be notified. In making an estimate, account should be taken of the aggregate quantity of all dangerous substances at the site. That quantity may arise from quantities of dangerous substances in, for example, any one or more of the following:

- (a) storage, manufacture, use or processing. For example, in a chemical plant, any quantities present in reaction vessels, mixing or purification plant as well as raw materials and finished product in storage should be taken into account;
- (b) tanks, containers, drums, packages etc held on site after unloading from road vehicles, ships or railway wagons;
- (c) vehicles or vessels used for storage purposes at a site (see para 16);
- (d) vehicles used exclusively for on-site transportation purposes. Any quantity such a vehicle is carrying is simply being moved from process to process or storage to storage on the site and should not be forgotten;
- (e) stores of substances used for cleaning, maintenance, manufacturing, construction, etc.

26 It is important to recognise that, except in the case of a site which has a notifiable quantity at the date of coming into force of the NMS Regulations (see paragraph 6), notifications to the local fire authority and enforcing authority must be made before a total quantity of 25 tonnes or more of dangerous substances is present at the site. This means that, in order to ensure that the requirements of

4

Guidance

regulation 4(1) are not breached inadvertently, any estimate should take into account not only the aggregate quantity of all dangerous substances actually present but also any quantity which foreseeably will be present at any one time. Examples of sites to which this advice is particularly relevant include:

- (a) any site where the quantity of dangerous substances varies over a period because of seasonal fluctuations or because the site is complex and has a number of processes or storage areas each of which has a quantity of dangerous substances which varies from time to time. In any such case, the estimate for deciding whether or not the site should be notified should be based on the anticipated maximum quantity;
- (b) any site where activities involve handling a range of products and may, at short notice, involve the arrival at the site of a quantity of dangerous substances which would render the site notifiable. A person in control who expects to handle dangerous substances in this way should anticipate this in the estimate, even though there may be periods of time when no dangerous substances, or less than 25 tonnes of dangerous substances, are present.

27 Regulation 4(2) requires additional notifications to be made in writing to the local fire authority and enforcing authority if, at any time after notifications have been made under regulation 4(1), there are changes at the site which affect the previously notified particulars in specific ways. The specific changes to be notified are set out in Part II of Schedule 2 (see paragraph 53). Short letters detailing the specific changes would meet the requirement.

28 Regulation 4(3) takes into account the possibility that the circumstances at a site which caused notifications of certain changes to be made under regulation 4(2) may change again. It requires full notifications to be made if any site, previously notified as having ceased to contain dangerous substances or as having a total quantity of dangerous substances of below 25 tonnes (other than temporarily), is being returned to a notifiable status. Such notifications must be in accordance with regulation 4(1) (see paragraphs 22 to 26).

4

Regulation

Regulation 5 - Access marking

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

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

5

Guidance

29 With effect from 1 September 1990, warning signs as illustrated in paragraph 31 must be displayed at points of access to any site with a total quantity of 25 tonnes or more of dangerous substances. This includes any site with that quantity which is excepted from the notification requirements because of paragraph 2 of Schedule 1 (see paragraph 19) but does not include any petrol filling station as defined in paragraph 4 of Schedule 1.

5

Guidance

30 Guidance in paragraph 25 about estimating the total quantity of dangerous substances at a site and in paragraph 26 about taking into account any quantities of dangerous substances which foreseeably will be present at any one time should be referred to for assistance in deciding whether or not the specified warning signs should be displayed.



31 In accordance with regulation 5(2), the warning signs to be displayed for access marking purposes should be of the form and colour illustrated below:

No supplementary text is required. Signs may be made of any appropriate material (eg rigid aluminium, rigid plastic, PVC (self-adhesive)) and may be illuminated or reflective according to choice and the circumstances at the site. Sizes of signs can be calculated from a formula recommended by the European Commission for calculating the dimensions of safety signs in relation to distances up to about 50 m, viz:

$$A > \frac{L^2}{2000}$$

Where A is the area of the sign in square metres and L the greatest distance in metres from which the sign must be understood.

32 The requirement that the signs must be in the form and colour of the warning signs defined in BS 5378: Part 1 (1980) (ie triangular in shape, edged in black with a yellow background and containing a symbol) ensures that the display of the signs at workplaces will not breach the Safety Signs Regulations 1980 or the European Council Directive 77/576/EEC which those Regulations implemented.

33 Because of the diversity of types and sizes of sites subject to the NMS Regulations, regulation 5 places the responsibility for deciding on the number and positioning of signs at any particular site on the person in control of that site. The decision should be aimed to achieve the objective of the regulation (ie the display of signs sufficient to give adequate warning to firefighters before they enter a site in an emergency that dangerous substances are present somewhere at the site).

34 Signs should therefore be placed in conspicuous positions at or in the vicinity of any site entrances which can reasonably be expected to be used by firefighters if they are called to an incident, including any access points specifically designed for emergency use (eg drive-through gates). They may be free standing or fixed to fences, faces of buildings, doors or gates. However, doors or gates which usually remain open during business hours, thus obscuring any signs for long periods, should be avoided.

35 The NMS Regulations do not include a requirement to remove signs which have been put on display according to the requirements in regulation 5. Consequently, a person in control of a site does not need to remove the access marking signs when the total quantity of dangerous substances at the site falls

Guidance

5

below 25 tonnes at any time (eg in the circumstances referred to in paragraphs 26(a) and 26(b)).

36 Regulation 5 applies to any site in the Greater London area which has a total quantity of 25 tonnes or more of dangerous substances, even though such a site may already be displaying signs at access points in accordance with the marking scheme introduced under Section 3 of the Greater London Council (General Powers) Act 1975. This means that such a site must display the warning sign as described in paragraphs 31 to 35 above with effect from 1 September 1990. This will not create duplication or confusion because the Secretary of State, using the powers given to him in Section 3(4) of the 1975 Act, has directed the London Fire and Civil Defence Authority that its prescribed warning signs must be the same as those required under regulation 5 of the NMS Regulations in relation to any site in the Greater London area with a total quantity of 25 tonnes or more of dangerous substances.

Regulation

6

Regulation 6 - Location marking

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

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

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

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

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

(5) *The hazard warning symbol and hazard warning text shall be -*

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

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

Regulation

6

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

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

Guidance

6

37 With effect from 1 September 1990, regulation 6 provides a power for an inspector to direct a person in control of a site to display signs at locations of dangerous substances on the site, subject to certain conditions. The term 'inspector' is defined in the HSW Act and means, for the purposes of regulation 6, an inspector appointed by the enforcing authority for the regulation (see regulation 8 and paragraphs 47(b) and 47(c))

38 Regulation 6 does not require a person in control of a site to take any action about location marking unless an inspector has given directions. Even when directions have been given, it does not require a person in control to comply with the directions until 1 March 1993 (see regulation 10(2) and paragraph 7). Equally, the regulation does not prevent a person in control from displaying signs in accordance with any directions at any time before 1 March 1993 if that person wishes to do so.

39 The provisions in the NMS Regulations for the power for an inspector to make directions about location marking and for a phasing in period implement specific recommendations of the Health and Safety Commission's Advisory Committee on Dangerous Substances. The objectives of the provisions are to allow, first, for more specific warning signs than those required by regulation 5 where locations of dangerous substances on a site are widely dispersed or particularly difficult to identify; and, secondly, for the equitable introduction of location signs taking into account the period of time which may be needed by inspectors to visit all relevant sites.

40 Directions, and the withdrawal of directions, do not have to be given in writing although it is anticipated that they will be except in simple cases. Before giving any directions, an inspector will consider a number of matters. First, the inspector must consider whether he/she is satisfied on reasonable grounds that there is, or there will be at a future time, a total quantity of 25 tonnes or more of dangerous substances at the site. Therefore, the inspector will need to take into account matters already considered by the person in control of the site according to the advice in paragraphs 25 and 26. If the inspector finds that the site is one where a qualifying quantity of dangerous substances is not present at the time of his/her visit but is liable to be present at another time, the regulation empowers the inspector to give directions at that visit. In such a case, the signs required by the directions would not need to be displayed until a total quantity of 25 tonnes or more of dangerous substances is present at the site and dangerous substances are present at the location or locations specified in the directions.

41 Secondly, the inspector must be satisfied on reasonable grounds that location marking signs are necessary in order to warn firefighters in an emergency that dangerous substances are present at those locations. Therefore, the inspector will need to consider whether the locations are so widely dispersed on the site or are so difficult to identify that the access warning signs already in place in accordance with regulation 5, together with information gathered for firefighting purposes and any associated retrieval systems, are not sufficient in themselves for alerting firefighters about locations. The inspector will also need to consider whether signs or other markings already in place at certain locations (eg notices required by other

Guidance

legislation such as the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 or safety signs which comply with the Safety Signs Regulations 1980 and have been erected in the interests of maintaining safety awareness at the site) make any further warnings for firefighters unnecessary.

42 Thirdly, the inspector will consider which of the signs specified in regulations 6(3) to 6(5) is appropriate for any location to be marked. The signs must be in the form of the warning signs and supplementary signs defined in BS 5378: Part 1 (1980) (ie triangular safety signs edged in black with a yellow background and containing a symbol, and oblong or square supplementary signs containing text). They must bear the hazard warning symbol and text appropriate to the classification of the dangerous substances at a location or, in the case of a location with mixed classifications of dangerous substances, an exclamation mark and the text 'DANGEROUS SUBSTANCE' (see Schedule 3 of the Regulations for full illustrations of the requirements).

43 For example, in the case of a location dedicated to the storage of chlorine, the classification of the substance being stored (ie 'toxic gas') means that the location marking, if considered to be necessary, would be:



However, if the location is a general storage area containing, for example, ammonium sulphide solution and sulphur (classified respectively as 'corrosive substance' and 'flammable solid'), the location marking would be:



44 Finally, the inspector will consider the places at which any signs should be displayed. Regulation 6(8) ensures that signs do not necessarily have to be placed at the precise locations of the dangerous substances for which warnings are necessary but may be placed in the vicinity of the locations (ie somewhere in the surrounding area, provided that any sign is clearly in a position to give warning of a particular location).

45 For guidance about the removal of signs, see paragraph 35.

46 Unlike the situation for access marking in the Greater London area as described in para 36, the Secretary of State has not directed the London Fire and Civil Defence Authority about location marking. Consequently, the Authority may

Guidance

6

continue its existing arrangements for location marking under Section 3 of the Greater London Council (General Powers) Act 1975 without recourse to the use of powers in regulation 6 of the NMS Regulations. Consequently, any site in the Greater London area with a total quantity of 25 tonnes or more of dangerous substances will not need to change any location marking currently prescribed by the Authority.

Regulation

7

Regulation 7 - Signs to be kept clean, etc

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

Guidance

7

47 Regulation 7 applies to both access marking and location marking signs. The signs should be maintained in a condition which will ensure that firefighters can see them and recognise the symbols and texts on them on arrival at a site or location. Obstruction of the signs (eg by stacks of materials, parked vehicles, scaffolding) should be avoided.

Regulation

8

Regulation 8 - Enforcing authority

The enforcing authority for these Regulations shall be the fire authority except that—

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

(a) S.I. 1989/1903

Guidance

8

48 The effect of regulation 8 is to distribute the responsibilities for enforcing the Regulations as follows:

- (a) for regulation 4 (notification), the enforcing authority is either HSE or the local authority (eg the district or borough council in England and Wales, the islands or district council in Scotland) as allocated for the enforcement of the HSW Act at a site by the Health and Safety (Enforcing Authority) Regulations 1989. Persons in control of sites may know which authority enforces the HSW Act at their sites from previous enforcement activity. In cases of doubt, enquiries should be made at the local HSE Area Office (see Appendix 1);
- (b) for regulations 5 (access marking), 6 (location marking) and 7 (signs to be kept clean, etc), the enforcing authority is the local fire authority except in the cases described in subparagraph (c) below;
- (c) HSE is the enforcing authority for regulations 5 to 7 at sites occupied by the following bodies:
 - (i) any local authority, fire authority or police authority;
 - (ii) the Crown (except where the body is HSE);
 - (iii) the United Kingdom Atomic Energy Authority;
 - (iv) a headquarters or an organisation designated for the purposes of the International Headquarters and Defence Organisation Act 1964 or a service authority of a visiting force within the meaning of section 12 of the Visiting Forces Act 1952.

Regulation

9

Regulation 9 - Exemption certificates

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

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

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

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

Guidance

9

49 Regulation 9 gives HSE the power to issue general or special exemptions and to impose conditions and time limits on them. It is a standard power given to allow the variation of legal duties where, in circumstances unforeseen by those drafting the legislation, they are unnecessary or inappropriate. Exemptions would be granted only in exceptional circumstances. Before granting any exemption, HSE would consider the circumstances of the case in accordance with regulation 9(2) and would consult any bodies likely to be affected.

Regulation

10

Regulation 10 - Transitional provisions

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

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

Guidance 10

50 The transitional provisions are explained in paragraphs 6 and 7.

Regulation

11

Regulation 11 - Repeals

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

Guidance

11

51 Regulation 11 has the effect of repealing the parts of 14 local Acts which enabled fire authorities in 14 counties to take steps to introduce their own marking schemes in relation to dangerous substances. The regulation does not affect the Greater London marking scheme which was introduced in 1978 under the powers in the Greater London Council (General Powers) Act 1975. Different arrangements apply to the Greater London scheme (see paragraph 36).

Regulation

1

Schedule 1 - Exceptions

1 These Regulations shall not apply to or in relation to -

Schedule

- (a) dangerous substances which have been buried or deposited in the ground at the site as waste (whether in bulk, in drums or in other containers);
- (b) substances which are dangerous substances by reason only that they are radioactive substances;
- (c) substances which on classification under the Classification and Labelling of Explosives Regulations 1982^(a) have been assigned to Class 1 within the meaning of those Regulations;
- (d) aerosol dispensers unless they are labelled in accordance with the 1984 Regulations, or would be required to be so labelled if they were being supplied or conveyed by road.

2 Regulation 4 (which relates to notification) shall not apply to -

- (a) sites which are notifiable to the Executive in accordance with the Notification of Installations Handling Hazardous Substances Regulations 1982^(b);
- (b) sites at which there is an industrial activity to which regulation 7 of the Control of Industrial Major Accident Hazards Regulations 1984 applies^(c) ;
- (c) sites in respect of which a licence is in force for the keeping of substances under the Petroleum (Consolidation) Act 1928^(d);
- (d) sites within the area of a harbour authority in relation to which regulation 27 of the Dangerous Substances in Harbour Areas Regulations 1987 applies^(e);
- (e) sites in respect of which a disposal licence is in force under section S of the Control of Pollution Act 1974^(f) or operated by a disposal authority in accordance with section 11 of that Act;
- (f) sites in respect of which a nuclear site licence is in force under the Nuclear Installations Act 1965^(g).

3 Regulation 4 (in so far as it requires notification to be made to the fire authority) shall not apply to a site being premises to which section 3 of the Greater London Council (General Powers) Act 1975^(h) applies if a notice under section 3 (3) (b) of that Act has been given to the occupier of the premises at any time before 1 September 1990.

4 Regulations 5 and 6 (which relate to access and location marking respectively) shall not apply to petroleum filling stations as defined in section 23 of the Petroleum (Consolidation) Act 1928.

- (a) S.I. 1983/1140.
- (b) S.I. 1982/1357.
- (c) S.I. 1984/1902, the relevant amending instrument is S.I. 1988/1462.
- (d) 1928 C.32.
- (e) S.I. 1987/37.
- (f) 1974 c.40.
- (g) 1965 c.57.
- (h) 1975 c.xxx.

1

**Guidance
Schedule 1**

52 Explanations of the exceptions to the requirements of the NMS Regulations listed in this Schedule are set out in paragraphs 17 to 21.

Schedule

Schedule 2 - Matters to be notified

Part I Particulars to be notified under Regulation 4(1)

- 1 The name and address of the person making the notification.
- 2 The full postal address of the site.

2

Schedule

- 3 *A general description of the nature of the business carried on or intended to be carried on at the site.*
- 4 *A list of the classifications of any dangerous substances which are, or are liable to be, present.*
- 5 *The date on which it is anticipated that a total quantity of 25 tonnes or more of dangerous substances will be present, or if they are already present, a statement to that effect.*

Part II Changes to be notified under Regulation 4(2)

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

2

Guidance

53 A suggested layout for making the notifications of the particulars specified in Part I of Schedule 2 in accordance with regulation 4(1) is set out in Appendix 2 (see also paragraph 24). Explanations of the particulars specified are as follows:

- (a) *Paragraph 1 of Part I:* As pointed out in para 14, the person who makes the notifications may be one who has managerial responsibilities at a site. Nevertheless the duty in regulation 4(1) falls on the 'person in control' as defined in regulation 2(2). In cases where someone with managerial responsibilities makes the notifications, the reply to paragraph 1 should indicate who that person is (for subsequent contact purposes) as well as the name of the 'person in control';
- (b) *Paragraph 2 of Part I:* The address given should be sufficient to enable the recipients of the notifications to identify the whereabouts of the site;
- (c) *Paragraph 3 of Part I:* Simple details of the business at or planned for the site are sufficient;
- (d) *Paragraph 4 of Part I:* Persons in control should pass on information about the classifications of dangerous substances at the site gathered when assessing whether or not the NMS Regulations apply (see paragraph 25). This should include classifications which foreseeably will be present at the site at any one time (see paragraph 26);
- (e) *Paragraph 5 of Part I:* With any site at which there is present a total quantity of 25 tonnes or more of dangerous substances on 1 September 1990, an indication such as 'already present' is sufficient. For new sites or existing sites which will have a total quantity of 25 tonnes or more of dangerous substances for the first time after 1 September 1990, the planned or estimated date such a quantity will be present should be given.

54 Part II of Schedule 2 specifies the changes which should be notified in accordance with regulation 4(2) (see also paragraph 27). Explanations of the specified changes are as follows:

- (a) *Paragraph 1 of Part II:* This refers to the permanent ending of the potential presence of dangerous substances (eg where a business is closing down and the site is to be vacated, or where a change in the business of the site results in the presence of dangerous substances being no longer required). As

Schedule 2

Guidance




indicated by the phrase 'other than a temporary cessation', notifications of change are not required when the cessation of dangerous substances at a site results from temporary factors such as seasonal or other business fluctuations and the return of such substances to the site is foreseeable;

- (b) *Paragraph 2 of Part II:* This is intended to cater for a specific decision of a person in control to permanently reduce the total quantity of dangerous substances at a site to below 25 tonnes or for a permanent change in business activities which has the same effect. As with paragraph 1 of Part II, it does not require notifications where a reduction below the 25 tonne level occurs because of temporary factors;
- (c) *Paragraph 3 of Part II:* Persons in control will have ensured as far as possible that the classifications of dangerous substances liable to be present at a site were covered in their original notifications. Nevertheless, changes in patterns of business after the original notifications have been made could result in unforeseen classifications being brought onto a site or in the permanent exclusion of particular classifications. Any changes of this sort, but not merely temporary changes, should be notified.

Schedule 2

Schedule




Schedule 3 - Table of classifications and hazard warnings

1 Classification	2 Hazard warning symbol and text
Non-flammable compressed gas	 <p>COMPRESSED GAS</p>
Toxic gas	 <p>TOXIC GAS</p>
Flammable gas	 <p>FLAMMABLE GAS</p>




3

Schedule

3




1 Classification	2 Hazard warning symbol and text
Flammable liquid	 <p>FLAMMABLE LIQUID</p>
Flammable solid	 <p>FLAMMABLE SOLID</p>
Spontaneously combustible substance	 <p>SPONTANEOUSLY COMBUSTIBLE</p>

Schedule

1 Classification	2 Hazard warning symbol and text
Substance which in contact with water emits flammable gas	 <p>DANGEROUS WHEN WET</p>
Oxidizing substance	 <p>OXIDIZING AGENT</p>
Organic peroxide	 <p>ORGANIC PEROXIDE</p>

3

Schedule

1 Classification	2 Hazard warning symbol and text
Toxic substance	 <p>TOXIC</p>
Corrosive substance	 <p>CORROSIVE</p>
Harmful substance Other dangerous substance Mixed hazards	 <p>DANGEROUS SUBSTANCE</p>

3

Schedule

3

55 Schedule 3 should be read in conjunction with regulations 5(2) and 6(3) to 6(5). The last entry in the second column represents the sign which should be used (without text) for marking access points to any site with a total quantity of 25 tonnes or more of dangerous substances in accordance with regulation 5 (see also paragraph 31).

56 In so far as location marking is concerned, the entries in the second columns represent the signs, and the texts to be used to supplement those signs, which are for display at or in the vicinity of locations containing dangerous substances with the classifications listed in the first columns. These are the signs and supplementary texts which inspectors may require to be displayed in accordance with their powers in regulation 6 (see paragraphs 42 and 43).

Schedule

4

Schedule 4 - Repeals and enabling powers

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

57 A brief explanation of the reason for these repeals is included in para 51.

Appendix 1- HSE Area Offices

<i>Area</i>	<i>Address</i>	<i>Telephone number</i>
1 SOUTHWEST	Inter City House, Mitchell Lane, Victoria Street, Bristol BS1 6AN	0272-290681
2 SOUTH	Priestley House, Priestley Road, Basingstoke RG24 9NW	0256-473181
3 SOUTHEAST	3 East Grinstead House, London Road East Grinstead, West Sussex RH19 1RR	0342-326922
5 LONDON NORTH	Maritime House, 1 Linton Road, Barking, Essex IG11 8HF	081-594-5522
6 LONDON SOUTH	1 Long Lane, London SE1 4PG	071-407-8911
7 EAST ANGLIA	39 Baddow Road, Chelmsford, Essex CM2 OHL	0245-284661
8 NORTHERN HOME COUNTRIES	14 Cardiff Road, Luton, Beds LU1 LPP	0582-34121
9 EAST MIDLANDS	Belgrave House, 1 Greyfriars, Northampton NN1 2BS	0604-21233
10 WEST MIDLANDS	McLaren Bldg, 2 Masshouse Circus, Queensway, Birmingham B4 7NP	021-200-2299
11 WALES	Brunel House, 2 Fitzalan Road, Cardiff CF2 1 SH	0222-473777
12 MARCHES	The Marches House, Midway, Newcastle-under-Lyme, Staffs ST5 1DT	0782-717181
13 NORTH MIDLANDS	Birkbeck House, Trinity Square, Nottingham NG1 4AU	0602-470712
14 SOUTH YORKS & HUMBERSIDE	Sovereign House, 40 Silver Street, Sheffield S1 2ES	0742-739081
15 W & N YORKS	8 St Pauls Street, Leeds LS1 2LE	0532-446191
16 GREATER MANCHESTER	Quay House, Quay Street, Manchester M3 3JB	061-831 7111
17 MERSEYSIDE	The Triad, Stanley Road, Bootle L20 3PG	051-922 7211
18 NORTHWEST	Victoria House, Ormskirk Road, Preston PR1 1HH	0772-21807
19 NORTH EAST	Arden House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JN	091-2848448
20 SCOTLAND EAST	Belford House, Belford Road, Edinburgh EH4 3UE	031 225 1313
21 SCOTLAND WEST	314 St Vincent Street, Glasgow C3 8XG	041-2042646

HM Inspectorate of Mines District Offices

<i>District</i>	<i>Address</i>	<i>Telephone number</i>
Scottish and North Eastern	Arden House, Regent Centre, Gosforth, Newcastle-upon-Tyne NE3 3JN	091-284 8448
North Yorkshire	Grosvenor House, Union Street, Wakefield, W Yorks WF1 3FH	0924-387111
South Yorkshire	Silver House, Silver Street, Doncaster, S Yorks DN1 9HR	0302-368165/ 342267
North Midlands	Copthall House, 7 Potter Street, Worksop, Notts S80 2AB	0909-475295
Western and South Eastern	Marches House, The Midway, Newcastle-under-Lyme, Staffs ST5 1DT	0782-717181
South Western	Brunel House, 2 Fitzalan Road, Cardiff CF2 1SH	0222-473030

Appendix 2 - Suggested layout of notification for sites with dangerous substances

To comply with Regulation 4(1) of the Dangerous Substances (Notification and Marking of Sites) Regulations 1990 the following particulars are to be sent to the relevant enforcing authority and the local fire authority.

- 1 Name and address of notifier
(block capitals, please)
- 2 Full postal address of site where
25 tonnes or more of dangerous
substances are present at any one
time (block capitals, please)
- 3 General description of business
carried on or to be carried on
at the site
- 4 Classification of dangerous substances
which are or are liable to be present

(please tick relevant box)

- | | |
|--|--------------------------|
| Non flammable compressed gas | <input type="checkbox"/> |
| Toxic gas | <input type="checkbox"/> |
| Flammable gas | <input type="checkbox"/> |
| Flammable liquid | <input type="checkbox"/> |
| Flammable solid | <input type="checkbox"/> |
| Spontaneously combustible
substance | <input type="checkbox"/> |
| Substance which in contact
with water emits flammable gas | <input type="checkbox"/> |
| Oxidizing substance | <input type="checkbox"/> |
| Organic peroxide | <input type="checkbox"/> |
| Toxic substance | <input type="checkbox"/> |
| Corrosive substance | <input type="checkbox"/> |
| Harmful substance | <input type="checkbox"/> |
| Other dangerous substance | <input type="checkbox"/> |

- 5 Whether dangerous substances already
present or, if not, anticipated date
when they will be

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.