# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

**No. 5120 GIBRALTAR Monday 15th January 2024**

**B. 1/24**

## CONTROL OF MAJOR ACCIDENT HAZARDS BILL 2024

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# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

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**B. 1/24**

# BILL

**FOR**

**AN ACT** to repeal and restate the law on the control and prevention of major accidents involving dangerous substances, the limitation of their consequences for human health and the environment; and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

## PART 1
## INTRODUCTORY

**Short title.**

1. This Act may be cited as the Control of Major Accident Hazards Act 2024.

**Commencement.**

2. This Act comes into operation on the day of publication.

**Interpretation.**

3. In this Act-

"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 as amended, as it applied in the European Union immediately prior 1 January 2021;

"competent authority" means the person appointed under section 5;

"dangerous substance" means a substance or mixture covered by Part 1 or listed in Part 2 of Schedule 1, including in the form of a raw material, product, by-product, residue or intermediate;

"designated authorities" means a person or body listed in Schedule 1 to the Civil Contingencies Act 2007;

"establishment" means the whole location under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities; establishments are either lower-tier establishments or upper-tier establishments;

"existing establishment" means an establishment that immediately prior to the commencement of this Act fell within the scope of Part IIA of the repealed Act and that as from the commencement of this Act falls within the scope of this Act without changing its classification as a lower-tier establishment or upper-tier establishment;

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

"inspection" means all actions, including site visits, checks of internal measures, systems and reports and follow-up documents, and any necessary follow-up, undertaken by or on behalf of the competent authority to check and promote compliance of establishments with the requirements of this Act;

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

"lower-tier establishment" means an establishment where dangerous substances are present in quantities equal to or in excess of the quantities listed in Column 2 of Part 1 or in Column 2 of Part 2 of Schedule 1, but less than the quantities listed in Column 3 of Part 1 or in Column 3 of Part 2 of Schedule 1, where applicable using the summation rule laid down in note 4 to Schedule 1;

"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 this Act applies, 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;

"Minister" means the Minister with responsibility for the Environment;

"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 enters into operation or is constructed, on or after the commencement of this Act;

(b) a lower-tier establishment that becomes an upper-tier establishment or vice versa, after the commencement of this Act due to modifications to its installations or activities resulting in a change in its inventory of dangerous substances;

"operator" means any natural or legal person who operates or controls an establishment or installation or to whom the decisive economic or decision-making power over the technical functioning of the establishment or installation has been delegated;

"other establishment" means a site of operation that falls within the scope of this Act, or a lower-tier establishment that becomes an upper-tier establishment or vice versa, on or after the commencement of this Act for reasons other than those referred to in paragraph (b) in the definition "new establishment";

"Part IIA of the Public Health Act" means that Part of that Act as it had effect prior to it being repealed by this Act;

"presence of dangerous substances" means the actual or anticipated presence of dangerous substances in the establishment, or of dangerous substances 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 quantities equal to or exceeding the qualifying quantities set out in Part 1 or Part 2 of Schedule 1;

"the public" means one or more natural or legal persons and their associations, organisations or groups;

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

"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 dangerous substances are present in quantities equal to or in excess of the quantities listed in Column 3 of Part 1 or in Column 3 of Part 2 of Schedule 1, where applicable using the summation rule laid down in note 4 to Schedule 1.

**Scope.**

4. This Act does not apply to-

(a) military establishments, installations or storage facilities;

(b) hazards created by ionising radiation originating from substances;

(c) the transport of dangerous substances and directly related intermediate temporary storage by road, sea or air, outside the establishments covered by this Act,

including loading and unloading and transport to and from another means of transport at docks or wharves;

(e) the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by this Act;

(f) waste land-fill sites, including underground waste storage.

**Competent Authority.**

5.(1) For the purposes of this Act the competent authority is the Environmental Agency Limited.

(2) The Minister may by notice in the Gazette appoint a person to be the competent authority in place of the body described in subsection (1).

## PART 2
## GENERAL DUTIES OF OPERATORS OF ALL ESTABLISHMENTS

**General duties of operators.**

6.(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 this Act.

(3) Every operator must provide the competent authority with such assistance as is necessary to enable the competent authority to perform its functions under this Act and in particular provide such assistance as is necessary 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 this Act.

**Notifications.**

7.(1) No later than 6 months 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;

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

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

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

(g) 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 this Act; 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 subsection (3), no later than 6 months 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 subsection (1).

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

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

(5) The operator of any establishment to which this Act applies must notify the competent authority in advance of-

(a) a significant increase or decrease in the quantity of dangerous substances notified under this section;

(b) a significant change in-

(i) the nature or physical form of the dangerous substances notified under this section; 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;

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

(e) any change in the information referred to in subsection (1)(a) to (c).

(6) The competent authority must specify, in writing-

(a) the form of notifications under this section; and

(b) the means by which operators must send them to the competent authority.

**Major-accident prevention policy.**

8.(1) Subject to subsection (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 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 the commencement of this Act, prepared and retained a major accident prevention policy under Part IIA of the Public Health Act;

(b) the information contained within that policy remains materially unchanged; and

(c) that policy complies with the requirements of this Act,

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

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

(a) the major accident prevention policy prepared by that operator under Part IIA of the Public Health Act is to be treated as a major accident prevention policy prepared under this section; and

(b) the policy must be retained by the operator in accordance with this section.

(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 section 7; or

(ii) a significant change in-

(aa) the nature or physical form of the dangerous substances notified under section 7; 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.

*Safety reports for upper tier establishments*

**Purposes of safety reports.**

9. 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;

(d) demonstrating that an internal emergency plan has been prepared in accordance with section 13, which includes sufficient information to enable an external emergency plan to be prepared;

(e) providing sufficient information to the competent authority to enable decisions to be made regarding the siting of new activities or developments around establishments.

**Requirements relating to the preparation of safety reports.**

10.(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 that would have had to review its safety report had Part IIA of the Public Health Act not been repealed by this Act, no later than five years after the date that the safety report was submitted or notified under that Act;

(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 subsection (2), if that information remains valid.

(4) Where an operator had sent to the competent authority a safety report in relation to an establishment under Part IIA of the Public Health Act ("the original report"), that operator may comply with subsection (2)(b) by sending to the competent authority only those parts of the original report that are revised to ensure compliance with section 9, this section and Schedule 3, and the original report (and its revised parts) is to be treated as a safety report sent under subsection (2)(b).

(5) The competent authority may specify in writing the format of revisions to be provided under subsection (4).

(6) Where-

(a) an operator had sent to the competent authority a safety report in relation to an establishment under Part IIA of the Public Health Act;

(b) the information contained within that report remains materially unchanged; and

(c) it complies with the requirements of section 9, this section and Schedule 3,

the operator is not required to send to the competent authority a further safety report under subsection (2)(b).

(7) Subject to section 23, an operator must not-

(a) where subsection (2)(a)(i) applies, start construction of an establishment;

(b) where subsection (2)(a)(ii) applies, start operation of an establishment;

(c) where subsection (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 section 22.

**Review of safety reports.**

11.(1) A safety report must be reviewed and, where it is necessary, revised by the operator no later than five years after the date on which-

(a) it was last sent to the competent authority; or

(b) where it was not required to be sent to the competent authority, it was last reviewed by the operator.

(2) Despite subsection (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;

(d) 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;

(e) 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 section 9 and the data and information specified in Schedule 3.

(4) Except where subsection (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 subsection (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 section, but not revised, the operator must inform the competent authority in writing without delay.

*Emergency plans for upper tier establishments*

**Objectives of emergency plans.**

12. Every internal emergency plan and external emergency plan prepared for the purposes of this Act 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; and

(d) providing for the restoration and clean-up of the environment following a major accident.

**Preparation, review and testing of internal emergency plans.**

13.(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 other establishment, within two years beginning on the date on which the establishment, or site of operation, first becomes an other establishment

(c) where the establishment is an existing establishment no later than one year from the day of the commencement of this Act.

(3) Despite subsection (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 Part IIA of the Public Health Act, remains materially unchanged; and

(b) it complies with the requirements of section 12 and this section, in which case it is to be treated as an internal emergency plan prepared under this section.

(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 competent authority;

(c) the emergency services;

(d) the Gibraltar Health Authority;

(e) Director of Public Health

(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 subsection (3) applies, the operator must first comply with subsection (6) before the expiry of three years after the on-site emergency plan was prepared or last reviewed under Part IIA of the Public Health Act.

(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.**

14.(1) Subject to section 15, if an upper tier establishment is situated in Gibraltar the competent authority 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 competent authority no later than six months (or such longer period as the competent authority reasonably requires and makes publicly available) after the receipt of the necessary information from the operator.

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

(4) The information in subsection (3) must be provided to the competent authority before the date on which the internal emergency plan is required to be prepared for the establishment under section 13(2).

(5) Despite subsection (1), the competent authority is not required to prepare an external emergency plan if-

(a) the off-site emergency plan prepared under Part IIA of the Public Health Act remains materially unchanged; and

(b) it complies with the requirements of section 12 and this section, in which case it is to be treated as an external emergency plan prepared under this section.

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

(7) In preparing an external emergency plan the competent authority must consult-

(a) the operator;

(b) authorities who are liable to be required to respond to an emergency at the establishment;

(c) the Director of Public Health; and

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

**Review and testing of external emergency plans.**

15.(1) Where the competent authority has prepared an external emergency plan, it must at suitable intervals not exceeding three years-

(a) review and, where necessary, revise the plan; and

(b) test the plan.

(2) Where section 14(5) applies, the competent authority must first comply with subsection (1) before the expiry of three years after the off-site emergency plan was prepared or last reviewed under Part IIA of the Public Health Act.

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

(a) any changes, at the establishment, within the designated authorities concerned;

(b) any relevant new technical knowledge; and

(c) any relevant new knowledge concerning the response to major accidents.

(4) Where the competent authority is of the opinion that an external emergency plan requires substantial revision, it must consult the persons referred to in section 14(7) before making those revisions.

(5) Where the competent 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 subsection (5), it must co-operate in the testing of the external emergency plan.

**Exemption of competent authority from preparing an external emergency plan.**

16.(1) The competent authority is exempt from the requirement to prepare an external emergency plan under section 14(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 subsection (1) must state the reasons for granting it and made publicly available.

(3) The competent authority may withdraw an exemption.

**Implementing emergency plans.**

17. Where an operator or the competent authority has prepared an internal emergency plan or external emergency plan, each 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.

**Provision of information to the public.**

18.(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 this Act applies to the establishment and that the notification required by section 7, and the safety report required by section 10, has been sent to the competent authority;

(c) an explanation in simple terms of the activity or activities undertaken at the establishment;

(d) the common names or, in the case of dangerous substances covered by Part 1 of Schedule 1 the generic names or 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 section 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 subsection (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 there is a possibility of a major accident with trans-boundary consequences.

(3) The competent authority must ensure that the information in subsection (1)-

(a) is made available to the public within a reasonable period of time from the date on which the establishment becomes subject to the provisions of this Act; and

(b) is kept updated.

(4) The competent authority must ensure that the information in subsection (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

(b) is kept updated.

(5) The operator of an establishment must-

(a) provide the competent authority with-

(i) the information specified in subsection (1)(a) to (e) and, in the case of an upper tier establishment, the information specified subsection (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 subsection (1) or (2).

(6) The competent authority must specify in advance in writing-

(a) the means by which operators must provide information under subsection (5); and

(b) the format in which it must be provided.

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

19.(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 subsection (2); and

(b) every school, hospital or other area of public use which is in the area referred to in subsection (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 subsection (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 subsection (1) must include at least the information required to be made available to the public under section 18(1) and (2).

(4) The operator must review and, where necessary revise, the information sent under subsection (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.

(5) The information required under subsection (1) must be sent to every person and every school, hospital or other area of public use referred to in that subsection-

(a) if it is revised following a review under subsection (4); or

(b) otherwise, at intervals not exceeding 5 years.

**Provision of information pursuant to a request.**

20.(1) Where an operator is of the opinion that environmental information which it sends to the competent authority under this Act should not be made available on request by reason of an exception in regulation 12 or 13 of the 2005 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 2005 Regulations the competent authority must, in dealing with that request, take into account any opinion and reasons provided by the operator in accordance with subsection (1) in relation to that information.

(3) In this subsection-

"the 2005 Regulations" means the Freedom of Access to information on the Environment Regulations 2005

"environmental information" has the meaning given in regulation 2(1) of the 2005 Regulations.

## PART 3
## FUNCTIONS ETC. OF THE COMPETENT AUTHORITY

**Trans-boundary consequences.**

21. Where an upper tier establishment presents a major accident hazard with possible transboundary consequences the competent authority may provide information to the potentially affected country so that the country 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.

**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 section 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 this Act within the specified time.

(3) A notice served under subsection (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 subsection (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 section 25(9)(a).

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

**Improvement notices.**

24.(1) The competent authority may issue the operator of any establishment, installation or storage facility, or any part of any establishment, installation or storage facility with an improvement notice where it is found that the measures taken by the operator for the prevention and mitigation of major accidents are deficient but not seriously deficient enough to issue a prohibition notice under section 23.

(2) An improvement notice issued under subsection (1) must state-

(a) that the competent authority is of the opinion that the measures taken by the operator for the prevention and mitigation of major accidents are deficient;

(b) the reasons as to why it is of that opinion;

(c) that the competent authority requires the operator to remedy the deficiency; and

(d) the time in which the deficiency must be remedied.

(3) Where a notice has been served on an operator under subsection (1), the operator must comply with it (including any such notice as modified on appeal).

(4) Section 34 (*Appeals*) applies in relation to a notice served under this section.

**Domino effects and domino groups.**

25.(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 this Act "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 subsection (1)(a) to (c).

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

(a) notifications sent under section 7;

(b) safety reports;

(c) information it holds pursuant to any of its functions;

(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 section.

(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 this Act; 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 subsection (6), it must, using any information received under subsection (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-

(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 section 19;

(b) informing neighbouring sites to which this Act does 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 section 18(1)(e); and

(d) supplying the competent authority with information relevant for the purposes of preparing an external emergency plan, where one is required under section 14.

**Inspections and investigations.**

26.(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 sections 18 and 19.

(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;

(d) a list of groups of establishments with possible domino effects;

(e) a list of establishments where particular external risks or hazard sources could increase the risk or consequences of a major accident;

(f) procedures for routine inspections, including the programmes for such inspections under subsection (5); and

(g) procedures for non-routine investigations under subsection (8).

(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 subsection (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 this Act; and

(c) the relevant findings, if any, of inspections.

(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 this Act.

(9) Following the conclusion of an inspection or investigation under this section, 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 section, the competent authority has identified an important case of non-compliance with this Act it must carry out an additional inspection within 6 months.

**Action to be taken following a major accident.**

27.(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 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) Following a major accident, the competent authority may, where appropriate, provide neighbouring countries and international organisations with some, or all, of the following information-

(a) confirmation that the accident occurred in Gibraltar 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;

(d) a brief description of the emergency measures taken and immediate precautions necessary to prevent recurrence; and

(e) the results of the competent authority's analysis and recommendations.

(4) For the purposes of subsection (3), an organisation is an international organisation if it, and its subordinate bodies, are governed by international law or it is set up by, or on the basis of, an agreement between two or more countries.

**Access to information and confidentiality.**

28.(1) The competent authority must make any information held pursuant to this Act available to any person who so requests in accordance with the Environmental Information Regulations.

(2) Disclosure of any information required under this Act, may be refused or restricted by the competent authority where the conditions laid down in Part 4 of Environmental Information Regulations are fulfilled.

(3) Disclosure of the safety report, an amended report and an inventory of dangerous substance held by the competent authority may be refused, without prejudice to subsection (2), if the operator has requested not to disclose certain parts of the safety report or the inventory of dangerous substances for the reasons provided for in Part 4 of the Environmental Information Regulations.

(4) The competent authority may also decide for the same reasons that certain parts of the report or inventory must not be disclosed and in such cases, and on approval of that authority, the operator must supply to the competent authority an amended report or inventory excluding those parts.

(5) In this section "Environmental Information Regulations" means the Freedom of Access to Information on the Environment Regulations 2005.

**Fees payable by operators to the competent authority.**

29.(1) The competent authority may charge fees to operators in connection with the discharge of any duties or obligations imposed on the competent authority under this Act.

(2) A fee charged under subsection (1) must reflect the costs to the competent authority in fulfilling any duties or obligations.

(3) Where the competent authority relies on third parties to discharge its duties or obligation, the costs of those third parties are, for the purposes of subsection (2), costs incurred by the competent authority.

(4) A fee under this section may not exceed the sum of the costs reasonably incurred by the competent authority.

(5) A fee payable under this section is recoverable as a civil debt owed to the competent authority.

*Enforcement*

**Offences.**

30.(1) An operator who fails to fulfill any condition, requirement or prohibition under this Act is guilty of an offence and is liable-

(a) on summary conviction to a term of imprisonment not exceeding 12 months, to a fine not exceeding level 5 on the standard scale, or to both; or

(b) on conviction on indictment to a term of imprisonment not exceeding 10 years, to a fine, or to both.

(2) A failure to discharge a duty placed on the competent authority under this Act is not an offence.

**Powers of entry.**

31.(1) The competent authority may enter-

(a) an establishment that is subject to the provisions of this Act;

(b) any premises that the competent authority has reason to believe is subject to the provisions of this Act,

for the purposes of discharging its duties under this Act.

(2) A person seeking entry in accordance with subsection (1) must, if requested to do so, provide identification that shows that the person is an officer or employee of the competent authority.

**Obstruction.**

32. An operator who obstructs the competent authority from carrying out any of its duties under this Act, is guilty of an offence and is liable on summary conviction to a term of imprisonment not exceeding 12 months or to a fine not exceeding level 5 on the standard scale, or to both.

**Corporate liability.**

33. If an offence under this Act is committed by a corporate body and it is proved–

(a) to have been committed with the consent or connivance of an officer; or

(b) to be attributable to any neglect on the part of an officer, that officer as well as the corporate body commits the offence and is liable to be proceeded against and punished accordingly.

## PART 4
## APPEALS

**Appeals.**

34.(1) Where the competent authority has served an operator with a notice under this Act, the operator may, within 21 days from the date of the notice appeal to the magistrates' court.

(2) The court, upon hearing an appeal under subsection (1) may confirm, vary or quash the notice.

(3) An appeal under this section does not stay the requirement to comply with the notice.

## PART 5
## MISCELLANEOUS

**Regulations.**

35.(1) The Minister may make regulations-

(a) to amend any Schedule to this Act;

(b) for the purposes of acceding to or implementing any international convention or agreement;

(2) Regulations made under subsection (1)(b) may amend this Act.

**Repeal.**

36. Part IIA (*Control of major accident hazards involving dangerous substances*) and Schedules 6 to 11 to the Public Health Act are repealed.

**Effect of repeal.**

37. The repeal by section 36 of Part IIA and Schedules 6 to 11 to the Public Health Act does not affect anything done or not done prior to the repeal and-

(a) any proceedings instituted prior to the repeal may continue as though the relevant provisions had not been repealed;

(b) any offences committed prior to the repeal may be prosecuted as though the relevant provisions had not been repealed.

## SCHEDULE 1

*Sections 3, 18(1)*

## DANGEROUS SUBSTANCES TO WHICH ACT APPLIES

### Introduction

1. Dangerous substances covered by the hazard categories listed in Column 1 of Part 1 of this Schedule are subject to the qualifying quantities set out in Columns 2 and 3 of Part 1.

2. Where a dangerous substance is covered by Part 1 of this Schedule and is also listed in Part 2, the qualifying quantities set out in Columns 2 and 3 of Part 2 apply.

3. For the purposes of this Schedule, a gas is any substance that has an absolute vapour pressure equal to or greater than 101,3 kPa at a temperature of 20°C.

4. For the purposes of this Schedule, a liquid is any substance that is not a gas and is not in the solid state at a temperature of 20° C and at a standard pressure of 101,3 kPa.

### PART 1
### *Categories of dangerous substances*

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

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Hazard categories in accordance with the CLP Regulation | Qualifying quantity (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 | 5 | 20 |
| H2 ACUTE 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 having explosive properties according to method A.14 of Regulation (EC) No 440/2008* (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 temperature above their boiling point, or — Other liquids with a flash point ≤ 60 °C, maintained at a temperature above their boiling point (see note 12) | 10 | 50 |
| 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 ≤ 60 °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 | 5000 | 50000 |
| 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 |

*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) as amended and as it had effect in EU law immediately prior to 1 January 2021.

## PART 2

### *Named dangerous substances*

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Dangerous substances | Qualifying quantity (tonnes) for the application of | |
| | Lower-tier requirements | Upper-tier requirements |
| 1. Ammonium nitrate (see note 13) | 5000 | 10000 |
| 2. Ammonium nitrate (see note 14) | 1250 | 5000 |
| 3. Ammonium nitrate (see note 15) | 350 | 2500 |
| 4. Ammonium nitrate (see note 16) | 10 | 50 |
| 5. Potassium nitrate (see note 17) | 5000 | 10000 |
| 6. Potassium nitrate (see note 18) | 1250 | 5000 |
| 7. Arsenic pentoxide, arsenic (V) acid and/or salts | 1 | 2 |
| 8. Arsenic trioxide, arsenious (III) acid and/or salts | | 0.1 |
| 9. Bromine | 20 | 100 |
| 10. Chlorine | 10 | 25 |
| 11. Nickel compounds in inhalable powder form: nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide | | 1 |
| 12. Ethyleneimine | 10 | 20 |
| 13. Fluorine | 10 | 20 |
| 14. Formaldehyde (concentration ≥ 90 %) | 5 | 50 |
| 15. Hydrogen | 5 | 50 |
| 16. Hydrogen chloride (liquefied gas) | 25 | 250 |
| 17. Lead alkyls | 5 | 50 |
| 18. Liquefied flammable gases, Category 1 or 2 (including LPG) and natural gas (see note 19) | 50 | 200 |
| 19. Acetylene | 5 | 50 |
| 20. Ethylene oxide | 5 | 50 |
| 21. Propylene oxide | 5 | 50 |
| 22. Methanol | 500 | 5000 |
| 23. 4, 4′-Methylene bis (2-chloraniline) and/or salts, in powder form | | 0.01 |
| 24. Methylisocyanate | | 0.15 |
| 25. Oxygen | 200 | 2000 |
| 26. 2,4 -Toluene diisocyanate<br><br>2,6 -Toluene diisocyanate | 10 | 100 |
| 27. Carbonyl dichloride (phosgene) | 0.3 | 0.75 |
| 28. Arsine (arsenic trihydride) | 0.2 | 1 |
| 29. Phosphine (phosphorus trihydride) | 0.2 | 1 |
| 30. Sulphur dichloride | | 1 |
| 31. Sulphur trioxide | 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<br>(a) gasolines and naphthas,<br>(b) kerosenes (including jet fuels),<br>(c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)<br>(d) heavy fuel oils<br>(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) | 2500 | 25000 |
| 35. Anhydrous Ammonia | 50 | 200 |
| 36. Boron trifluoride | 5 | 20 |
| 37. Hydrogen sulphide | 5 | 20 |
| 38. Piperidine | 50 | 200 |
| 39.Bis(2-dimethylaminoethyl) (methyl)amin | 50 | 200 |
| 40.3-(2-Ethylhexyloxy)propylamin | 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 Annex I. | 200 | 500 |
| (*) Provided that the mixture in the absence of sodium hypochlorite would not be classified as Aquatic Acute Category 1 [H400]. | | |
| 42. Propylamine (see note 21) | 500 | 2000 |
| 43. Tert-butyl acrylate (see note 21) | 200 | 500 |
| 44. 2-Methyl-3-butenenitrile (see note 21) | 500 | 2000 |
| 45. Tetrahydro-3,5-dimethyl-1,3,5,-thiadiazine-2-thione (Dazomet) (see note 21) | 100 | 200 |
| 46. Methyl acrylate (see note 21) | 500 | 2000 |
| 47. 3-Methylpyridine (see note 21) | 500 | 2000 |
| 48. 1-Bromo-3-chloropropane (see note 21) | 500 | 2000 |

**NOTES**

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

2. Mixtures shall 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 above relate to each establishment.

   The quantities to be considered for the application of the relevant sections 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 shall 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, shall 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 quantities, the following rule shall be applied to determine whether the establishment is covered by the relevant requirements of this Act.

   This Act applies to upper-tier establishments if the sum:

   q 1 /Q U1 + q 2 /Q U2 + q 3 /Q U3 + q 4 /Q U4 + q 5 /Q U5 + … 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 for dangerous substance or category x from Column 3 of Part 1 or from Column 3 of Part 2 of this Schedule.

   This Act applies to lower-tier establishments if the sum:

   q 1 /Q L1 + q 2 /Q L2 + q 3 /Q L3 + q 4 /Q L4 + q 5 /Q L5 + … 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.

The relevant provisions of this Act 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 shall be provisionally assigned to the most analogous category or named dangerous substance falling within the scope of this Act.

6. In the case of dangerous substances with properties giving rise to more than one classification, for the purposes of this Act the lowest qualifying quantities shall 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 shall be used.

7. Dangerous substances that fall within Acute Toxic Category 3 via the oral route (H 301) shall 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 shall be considered for the purposes of this Act. If the quantity of the explosive substance or mixture contained in the

article is not known, then, for the purposes of this Act, the whole article shall be treated as explosive.

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

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

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

11.2. 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 (5000/10000): fertilisers capable of self-sustaining decomposition

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

-— between 15,75 %(1) and 24,5 %(2) 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,

— 15,75 % by weight or less and unrestricted combustible materials.

(1) 15,75 % nitrogen content by weight as a result of ammonium nitrate corresponds to 45 % ammonium nitrate

(2) 24,5 % nitrogen content by weight as a result of ammonium nitrate corresponds to 70 % ammonium nitrate.

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

— 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 %,

— more than 15,75 % by weight for mixtures of ammonium nitrate and ammonium sulphate,

— more than 28%[(4)] 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

— between 24,5 % and 28 % by weight, and which contain not more than 0,4 % combustible substances,

— 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

— 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,

(1) 28 % nitrogen content by weight as a result of ammonium nitrate corresponds to 80 % ammonium nitrate.

— fertilisers referred to in first indent of Note 13, and Note 14 to this Schedule which do not fulfil the requirements of Annex III-2 to Regulation (EC) No 2003/2003.

17. Potassium nitrate (5 000 / 10 000)

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

18. Potassium nitrate (1 250 / 5 000)

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

19. Upgraded biogas

For the purpose of the implementation of this Act, upgraded biogas may be classified under entry 18 of Part 2 of Annex I 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:

| **WHO 2005 Toxicity Equivalency Factors (TEF)** | | | |
|---|---|---|---|
| 2,3,7,8-TCDD | 1 | 2,3,7,8-TCDF | 0,1 |
| 1,2,3,7,8-PeCDD | 1 | 2,3,4,7,8-PeCDF | 0,3 |
| | | 1,2,3,7,8-PeCDF | 0,03 |
| | | | |
| 1,2,3,4,7,8-HxCDD | 0,1 | | |
| 1,2,3,6,7,8-HxCDD | 0,1 | 1,2,3,4,7,8-HxCDF | 0,1 |
| 1,2,3,7,8,9-HxCDD | 0,1 | 1,2,3,7,8,9-HxCDF | 0,1 |
| | | 1,2,3,6,7,8-HxCDF | 0,1 |
| 1,2,3,4,6,7,8-HpCDD | 0,01 | 2,3,4,6,7,8-HxCDF | 0,1 |
| | | | |
| OCDD | 0,0003 | 1,2,3,4,6,7,8-HpCDF | 0,01 |
| | | 1,2,3,4,7,8,9-HpCDF | 0,01 |
| | | | |
| | | OCDF | 0,0003 |

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

21. In cases where this dangerous substance falls within category P5a Flammable liquids or P5b Flammable liquids, then for the purposes of this Act the lowest qualifying quantities shall apply.

NOTE: In this Schedule, a reference to an EU Regulation or to an EU Directive is a reference to that EU Regulation or Directive, as the case may be, in its amended form and as it applied in the European Union immediately preceding 1 January 2021.

## SCHEDULE 2

*Section 8(8)*

## 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;

(d) the management of change: the adoption and implementation of procedures for planning modifications to, or the design of new installations, processes or storage facilities;

(e) 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), other relevant indicators or both;

(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

*Sections 9(a), 10(1)(a),(4),(6)(c), 11(2)(e),(3)*

## 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 this Act, 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[1] 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 this Act, 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.

Notes

[1] International Union of Pure and Applied Chemistry (www.iupac.org).

## SCHEDULE 4

*Sections 13(4), 14(6)*

## INFORMATION TO BE INCLUDED IN INTERNAL AND EXTERNAL EMERGENCY PLANS

### Part 1.

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 competent authority with regard to 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;

(d) 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;

(e) the arrangements for providing early warning of an incident to the competent authority regarding 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;

(f) 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;

(g) the arrangements for providing assistance with mitigatory action outside the establishment.

### Part 2.

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;

(d) the arrangements for providing assistance with mitigatory action within the establishment;

(e) 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 this Act in accordance with section 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 countries in the event of a major accident with possible trans-boundary consequences.

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**EXPLANATORY MEMORANDUM**

This Bill repeals and re-enacts that provisions of Part IIA and Schedules 6 to 11 of the Public Health Act, with amendments.

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