



Rialtas na hÉireann
Government of Ireland

Dangerous Substances Legislation 2019

Frequently Asked Questions



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Introduction

On 11th December 2019, Minister Pat Breen, TD., Minister of State at the Department of Business, Enterprise and Innovation, signed the following Regulations into law:

- The Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 (S.I. No. 630 of 2019), and
- The Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations, 2019 (S.I. No. 631 of 2019),

repealing and replacing the Dangerous Substances (Retail and Private Petroleum Stores) Regulations, 1979 (S.I. No. 311 of 1979) and the Dangerous Substances (Petroleum Bulk Stores) Regulations, 1979 (S.I. No. 313 of 1979).

These Regulations make a number of changes to the petroleum sector, to increase safety standards for employees, the public and the environment, and will come into force on 1st April, 2020.

Given the significant changes between the 1979 Regulations and the 2019 Regulations, the Department of Business, Enterprise and Innovation has prepared the following list of Frequently Asked Questions to assist stakeholders in preparing for the new regulatory regime. Local Authorities and industry are encouraged to examine both the 2019 Regulations and this document.

If there are any queries which have not been addressed here, please forward them to dangerous.substances@dbei.gov.ie.

1. Benefits

What are the benefits of the new Regulations?

The new Regulations seek to address the numerous challenges which have led to the 1979 Regulations becoming unenforceable due to their incompatibility with modern industry standards, health and safety good practice, and environmental protection considerations. In particular, the new Regulations:

- adopt a risk identification and mitigation approach which is consistent with the ‘as safe as reasonably practicable’ principle applicable across all industries to ensure the safety of workers, consumers and contractors and the prevention of potential harm or damage to the environment,
- remove outdated prescriptive specifications and identify specific industry good practice and standards which provides clarity and reference baselines for owners, operators, licensing authorities, and regulators regarding the minimum acceptable levels to be achieved,
- provide clarity to industry, and establish transparent and acceptable timeframes for the processing, administering, granting/refusing of licences, and appeals concerning licence applications,
- facilitate the establishment of more consistent and resourced implementation structures (on a national or regional basis) and the roll-out of technological administrative solutions, and
- clearly set out the statutory roles of licensing and regulatory authorities.

The adoption of all these approaches in the new Regulations have been identified as the most effective way of the addressing the major stumbling blocks which have hindered the implementation of the 1979 Regulations over the last number of years.

2. Fuels

Why is it necessary to change the Act to include other fuels, e.g. diesel?

The 1972 Dangerous Substances Act only provides for the licensing of “petroleum-spirit” and “petroleum”. Since the original legislation came into force, other fuels such as diesel and biofuels have become more prevalent in usage.

In addition, given the rapid nature of developments in the motor industry and the growing concern globally about the potential harmful effects of fossil fuels on the environment, it is incumbent on the Department to ensure that existing stores which have such substances on site are storing and dispensing these in as safe a manner as possible, just like petroleum.

Notwithstanding the increasing public preference for hybrid and electric vehicles, the Regulations also seek to ensure that short to medium-term future trends in the potential development of alternative fuels are also provided for to offset the requirement for future revisions of the Regulations.

Why is diesel being included when it is not combustible at ambient temperatures?

One of the primary objectives of the new Regulations is the promotion of safety and mitigation of the risk of injury to humans and the prevention of harm to the environment. The inclusion of diesel, and indeed other flammable liquids and fuels (as defined in the new Regulations) is consistent with this objective and also in line with good international practice.

As was raised in the consultation, while diesel is not combustible at ambient temperatures, it can be an environmental hazard. As such, it should be subject to the same controls as other flammable liquids. In addition, where diesel is co-located with more flammable liquids, it may also become a hazard if those combust.

3. Licence Applications

Will existing licence holders have to reapply for a licence under the new Regulations?

No, specific provisions are included in both sets of Regulations to ensure that anyone who currently holds a licence, approved under the 1979 Regulations, will continue to have these recognised as valid licences until the expiry date of individual licences has elapsed.

However, once current licences **do** expire, the owner or operator will be required to submit a new licence application in accordance with the new Regulations (once commenced). All first-time applications under the new Regulations must have an accompanying risk assessment in line with the format set out in the Regulations to be considered a valid application.

Will new developments/stores have to apply for a licence using the new Regulations?

Yes, once commenced any newly established developments or stores seeking a licence to operate will expect to be fully compliant with the new Regulations in order to be granted a licence.

Can 24/7 Unmanned Stations receive a licence under the new Regulations?

Yes. It should be noted that Section 45(2) of S.I. No. 311 of 1979 did effectively allow for the provision of licences to unmanned stations subject to compliance with the conditions specified by a licensing authority.

This will continue to be the case under the new Regulations. That is, where an owner or operator is seeking a licence under the new Regulations for an 'unmanned' filling station, then the applicant must ensure that as well as including a risk assessment conducted by a competent person when submitting an application, that the site is in compliance, as far as reasonably possible, with the accepted industry standards and good practice for such stations.

The licensing authority may grant a licence for unmanned filling stations, subject to any additional conditions deemed appropriate, where the proposed development is considered to be fully, or as far as reasonably practicable, compliant with good practice standards.

Are there any additional requirements when applying for a Dangerous Substances licence if there is CNG located on the site of the proposed filling station?

Yes, where making an application for a Dangerous Substance licence for a site on which CNG is located, the owner or operator's application must, in addition to the documentation required under the Regulations, submit a written declaration that the applicant is in full compliance with the requirements of the Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002) and the Electricity Regulation Act 1999 (No. 23 of 1999).

The new Regulations will require that anyone seeking a Dangerous Substances licence for a site on which CNG is co-located must ensure that an approved safety case from the Commission for Regulation of Utilities (CRU) is already in place when applying for a licence to a licensing authority.

What about those stations which did not previously require a licence, e.g. diesel only stations, operators storing flammable liquids for use in company vehicles, or distributing flammable liquids?

All owners or operators storing, dispensing, selling or distributing any or all categories of flammable liquid or fuels as defined by the Regulations will be required to have a licence to operate.

Where an owner or operator has been, to date, operating without a licence they will be required to apply for a licence in accordance with the new Regulations as soon as possible. The new Regulations have been published in advance of commencement to ensure that sufficient notice is given to industry to allow anyone operating without a licence plenty of warning that they need to prepare an application.

What electronic application program will we be using?

The Department is supportive of a move towards an electronic-based system of applying and processing licences as well as the recording of inspection and compliance data for Dangerous Substances licensing. The new Regulations are drafted in such a way as to best facilitate this once an agreed platform has been developed. This issue is part of another body of work with the Local Authority sector, and is still under investigation.

In the interim, we would encourage all licensing authorities to move towards electronic based systems for accepting and processing licence applications, where feasible. This will ease the transition to any future regional/national based system which may be introduced as part of any new regulatory structure.

Will a licence be granted automatically if the Local Authority doesn't reply within the timeline?

No. However, to ensure that an application is processed in a transparent and fair manner, if the licensing authority cannot complete the assessment in 60 days, they are required to inform the applicant and set out the reason for the delay in writing.

A revised deadline for the completion of the processing of any delayed application will be agreed with the applicant.

4. Risk Assessment

Is there a requirement for an EPD (Explosion Protection Document)?

Yes, this must be included with the risk assessment for both Regulations.

What needs to be included in a risk assessment?

A risk assessment must be site specific, so there are no fully prescribed requirements. The minimum requirements are laid out in the Schedules to the Regulations, but a risk assessment can be broader in scope. If a licensing authority requires further information on a risk assessment, they may request it during the assessment process.

Local/Fire Authorities and regulatory bodies will also publish additional guidance materials on good practice in conducting risk assessments as part of their ongoing statutory functions.

5. Competent Person

What is the definition of a ‘competent person’?

The definition of ‘competent person’ contained in the new Regulations is as follows (based on the definition in the Safety, Health and Welfare at Work Act):

‘competent person’ means a person who, having regard to the task required to be performed and taking account of the inventory, size or hazards (or any combination of these) of the undertaking or establishment concerned, and taking account, as appropriate, of the framework of qualifications referred to in the Qualifications (Education and Training) Act 2012 (No. 28 of 2012), possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken;

Having considered submissions from several stakeholders as part of the consultation process undertaken by the Department over the last year and the goal of removing, to the greatest extent possible, the approach of the overly-prescriptive provisions of the 1979 Regulations, this wording has been deemed to give maximum scope to industry and to ensure the competitive availability of relevant expertise within the sector.

Can a competent person be a member of our organisation?

Yes. The only requirement is that they are competent to carry out the risk assessment in accordance with the definition set out in the new Regulations:

‘competent person’ means a person who, having regard to the task required to be performed and taking account of the inventory, size or hazards (or any combination of these) of the undertaking or establishment concerned, and taking account, as appropriate, of the framework of qualifications referred to in the Qualifications (Education and Training) Act 2012 (No. 28 of 2012), possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken;

It is the responsibility of an applicant(s) to ensure that the person carrying out the risk assessment is competent. Failure to do so could result in any risk assessment being rejected by a licensing authority, which in turn could lead to significant extra costs in redoing a risk assessment. All costs associated with conducting a risk assessment as part of the new licensing process shall be borne entirely by the owner or operator seeking a licence.

Are there particular qualifications that a competent person needs?

No, the definition of competent person is in keeping with that in the Safety, Health and Welfare at Work Act to ensure that it is not overly prescriptive. Having considered submissions from several stakeholders as part of the consultation process undertaken by the Department over the last year and the goal of removing, to the greatest extent possible, the approach of the overly-prescriptive provisions of the 1979 Regulations, this wording has been deemed to give maximum scope to industry and to ensure the competitive availability of relevant expertise within the sector.

It is the responsibility of the applicant to ensure that the person they engage to carry out the risk assessment is competent to do so. All costs associated with conducting a risk assessment as part of the new licensing process shall be borne entirely by the owner or operator seeking a licence.

6. Major/Minor/Emergency Works

What is the difference between major and minor works?

A major work is:

works which lead to material changes, additions or modifications to the structure, operation, machinery, equipment, buildings or any other aspect of the store which alter how flammable liquids and fuels are stored, dispensed, or accessed. This includes, inter alia, additional pumps, the stocking of new fuels, the addition of new or differently sized tanks, whether underground or other, transfer or relocation of pumps, tanks or other equipment, the expansion of any structures on the site, the addition of structures/equipment such as car washes and tyre pumps, and changes to the entrance and exit which alter the path of vehicles through the store;

Minor works are:

works which do not lead to material changes, additions or modifications to the structure, operation, machinery, equipment, buildings or any other aspect of the store and which do not alter how flammable liquids and fuels are stored, dispensed, or accessed. This includes, inter alia, minor repairs to the premises, painting, hanging or replacing of signs, replacing pumps or tanks (provided that the location and size of the equipment and type of fuel is not altered), changes to the interior layout of any associated shop (where applicable), and changes to the interior layout of private staff areas;

The difference between the two is whether or not the works change how flammable liquids are accessed, transferred or otherwise handled.

Examples of major works include:

- Adding a new pump
- Adding a new tank/replacing a tank with one of a different size
- Adding new structures to the site
- Changing entrances or exits, ie, changing the route vehicles take through the site.

Examples of minor works include:

- Replacing pumps or other equipment with equipment of the same size
- Painting
- Hanging signs

- Changes to the interior layout of any associated shops or private staff areas
- Minor repairs, eg, repairing a boundary wall

An allowance will be provided for emergency works, which are:

works which must be carried out as soon as possible due to the immediate potential for risk of injury, whether required by wear and tear, extreme weather, accidents, negligence, or other causes

Where emergency works can also be classified as major work, the licensee may apply for an amended licence retroactively, no later than 90 days after the emergency works have been completed.

7. Schedules

Why use Schedules instead of generic references or having the requirements in the text?

One of the difficulties with the old Regulations is that they went out of date fairly quickly. By including industry standard good practice texts, particularly the Blue Book and the Red Guide, it is envisaged that this will future proof the Regulations against any changes and updates, particularly in relation to any new or alternative fuels which may enter into common use.

In addition, identifying specific good industry practice and standards for the industry provides clarity and reference baselines for owners, operators, licensing authorities, and regulators regarding the minimum acceptable levels to be achieved

Following industry consultation, the Schedule of documents was divided into two parts. Part 1, made up of the Blue Book and Red Guide, is mandatory, which all existing stores must follow as far as is reasonably practicable (new stores must be fully compliant). Part 2 is a set of guidance documents which must be referred to if they apply to the risk assessment.

It should be noted that there is a provision in both Regulations stating that any reference to a document in Schedule 1 refers to the most up to date edition. The Schedules will be reviewed regularly to determine if any amendments are required.

8. Timeframes

What are the timeframes for processing applications, making an appeal, ruling on an appeal, renewing a licence etc.?

- All stores must apply for a Dangerous Substances licence within 3 months (90 day) of the expiry of their current licence (this includes licences granted under S.I. No. 311 of 1979 or S.I. No. 313 of 1979, where applicable).
- The licensing authority must assess an application within 60 days. If they require further time, they must contact the applicant explaining the delay and providing a new deadline.
- If a licensing authority requests further information, the applicant must provide it within 30 days.
- An appeal must be lodged within 30 days of the date of issue of a refusal/other decision.
- An appeal must be determined by the Appeals Authority (HSA) within 30 days.
- A store may continue to operate after the death of a licensee/owner for no more than 6 months (180 days), but an application for a licence must be made as soon as possible.
- The licensing authority must be notified of the intention to transfer ownership no less than 3 weeks (21 days) before the transfer.
- An application for a licence/transfer of a licence after a strong has been transferred must be submitted within 30 days of the transfer.
- The licensing authority must be notified of the intention to decommission a petrol station or bulk store no less than 3 months (90 days) before the cessation of operation.
- The licensee/owner must inform the licensing authority of their intention to carry out major works and apply for an amended licence at least 60 days before the work commences.
- The licensee/owner must inform the licensee of the intention to carry out minor works no less than 30 days prior to the work being carried out. There is no requirement for an amended licence. However, if the licensing authority determines that the works constitute major works, an amended application will be required.
- If a licensee has to carry out emergency works that can also be classified as major works, they must apply for an amended licence no later than 3 months (90 days) after the works have been completed.

When will the Regulations come into force?

The new Regulations have been published and will come into force on 1st April, 2020. This intervening period will allow licensing authorities and owners or operators to familiarise themselves with the new Regulations. We would also strongly encourage licensing authorities to begin utilising the new Regulations in conjunction with the 1979 Regulations in order to facilitate the transition to the new regime as smoothly as possible.

9. Bulk Stores

Will COMAH sites require a licence under these Regulations?

No. Sites which are currently subject to the COMAH (Seveso III) regulatory regime will no longer be required to also apply for a Dangerous Substances licence.

The new Regulations seek to simplify and clarify the responsibilities and obligations of owners and operators who are in control of sites storing or distributing flammable liquids and fuels (as defined by the new Regulations).

Historically, there has been some cross-over between the Dangerous Substances and COMAH regulatory regimes, however the new Regulations seek to remove this duplication of administrative burden and will be aligned with the current COMAH limits.

In addition, a number of other exemptions are included in the new Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations, 2019, these include:

- Fuel stored for domestic heating,
- Fuel stored for private agricultural vehicles or premises,
- Storage for manufacturing,
- Refineries, and
- Oil jetties (which are addressed under separate Dangerous Substances Regulations).

What are the lower limits of the Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations, 2019:

- Category 1 Flammable liquids: 2,000 L, and
- Category 2 and 3 Flammable liquids: 5,000 L.

Can a Local/Harbour Authority which has a bulk store located on a site(s) which they are in control/ownership of licence themselves?

No, any Local/Harbour Authority which has a bulk store situated on land or premises which it owns or controls may not approve a licence application for a development or store on the same site. Where such instances do occur the Local/Harbour Authority must apply for a

licence with another licensing authority, or with any Regional/National Offices that may be established for the purpose of Dangerous Substances licensing.

What if a bulk store also has a retail store open to the public on the same site?

Where the owner or operator of a store subject to the Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations 2019 wishes to operate or co-locate a retail store for the sale or supply of flammable liquids and fuels on the same site, the licensee will be required to have both the Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 licence and the Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations, 2019 licence and to comply with the provisions of each set of regulations. Approval for the licensing of a store in such cases will be at the discretion of an appropriate licensing authority (noting that a licensing authority cannot licence its own premises).

Why isn't industry that maintains levels for production/manufacturing above the 5000 litres included?

The new Regulations govern the legal obligations on owners or operators who are in control of flammable liquids or fuels for the purpose of a) sale or supply to the public or b) distribution or commercial supply. The storage of fuels as part of the manufacturing industry should be done so in such a manner as to ensure the health and safety of workers. However, given that the new Regulations are already significantly broadening the scope of the 1979 Regulations and the likelihood of such premises being considered a COMAH site, it was felt that it was not appropriate to include manufacturing in these Regulations.

What if my bulk store did not need a licence previously, but does now?

Any bulk stores which did not require a licence under the previous legislation will have to apply for one within 1 year of the new Regulations coming into force.

10. Existing Stores

What about older stations which are not kerbsides?

These stations will be given the opportunity to become as safe as is reasonably practicable. All filling stations will be required to have a licence in accordance with the new Regulations in order to continue to operate. In particular, they must:

- complete a risk assessment by a competent person,
- comply with any conditions applied by a licensing authority,
- complete any works within a specified timeframe, as deemed necessary by the licensing authority, and
- become as safe as reasonably practical in line with current industry good practice.

These conditions are in line with a modern risk-aware health and safety approach and put all stores on an equal legal footing with existing licenced premises.

11. Kerbside Stations

Will someone availing of the derogation for kerbsides have to apply for a licence under the new Regulations?

Yes, however owners or operators currently availing of the exemption will continue to be able to do so until the expiry of the current Derogation Order (December 2020). As with current licence holders, once the derogation expires, all owners and operators will be obliged to submit a licence application, accompanied by a risk assessment, in accordance with the new Regulations.

How can a 'kerbside' be granted a licence if they could not be considered compliant under the 1979 Regulations?

The current derogation for kerbside stations will cease with effect from 1 January 2021. The derogation allowed stations established before 1979 to operate without having to meet all of the very prescriptive requirements of the 1979 Regulations.

As part of the review, the Department considered a certification-only process for kerbside stations, however, following industry feedback and legal advice it has been decided to allow kerbsides to be granted a Certificate of Operation which is defined in the Regulations as a 'licence with conditions' subject to:

- the completion of a risk assessment by a competent person,
- compliance with any conditions applied by a licensing authority,
- completion of any works within a specified timeframe, as deemed necessary by the licensing authority, and
- becoming as safe as reasonably practicable in line with current industry good practice.

These provisions are in line with a modern risk-aware health and safety approach and put kerbsides on a legal par with existing licenced premises i.e. they must become as safe as reasonably possible in line with the published best practice guidance.

Failure to have a licence or to comply with the conditions of a licence, or a Certificate of Operation, which in effect is a licence with conditions, will constitute an offence under the Act and can be prosecuted by the licensing authority.

12. Exemptions

Who is exempt from the Regulations?

There are no exemptions under the Dangerous Substances (Flammable Liquids and Fuels Retail Stores) Regulations, 2019 other than COMAH.

Under the Dangerous Substances (Flammable Liquids and Fuels Distribution and Commercial Supply Stores) Regulations, 2019, the following exemptions are in place:

- Agriculture,
- Manufacturing,
- Domestic Heating,
- COMAH,
- Refineries, and
- Oil jetties.

In addition, the Defence Forces are exempt under Section 5 of the Dangerous Substances Act 1972.

13. Fees

Will there be any changes to the Licensing Fees?

The fees payable for licences under both Regulations are set out in the Dangerous Substances (Licensing Fees) Regulations, 1979 (S.I. No. 301 of 1979). Changes to the level of these fees may be made from time to time and will be published in accordance with normal practice.

Licensing authorities may also apply fees/charges in respect of administrative costs associated with the processing of licence applications. For further details on these charges please contact the relevant licensing authority.

14. Enforcement/Inspections

How will enforcement be implemented? What can be done to prosecute non-compliance?

One of the main goals of the new Regulations is to significantly improve compliance within the sector and to improve safety standards for workers, consumers, contractors and the prevention of damage to the environment.

The Local Authorities/Fire Services will continue to be responsible for licensing, inspections, and prosecuting breaches of licences. It should also be noted that the Licencing Authorities, Fire Authorities, Appeals Authority and other regulatory bodies (e.g. CRU, Revenue, EPA) will also retain their existing statutory and legal powers set out in relevant legislation e.g. Safety, Health and Welfare at Work Act, Fire Services Acts etc.

For inspections, can the authorised person be a company?

Authorised persons and inspectors are authorised by the Fire Services or the HSA. The Fire Services or the HSA may appoint an outside individual or company, but this would be unusual.

Can the HSA inspect premises under these Regulations?

The HSA's only role under these Regulations is as the Appeals Authority so they may inspect premises in that function only. However, these Regulations do not alter the HSA's powers to carry out inspections under other legislation, e.g. the Safety, Health and Welfare at Work Act.

Similarly, it should also be noted that the Licencing Authorities, Fire Authorities, and other regulatory bodies (e.g. CRU, Revenue, EPA) will also retain their existing statutory and legal powers set out in relevant legislation.

What enforcement actions will be available to licensing authorities?

Under the Dangerous Substances Act 1972 the licensing authorities will be able to prosecute those guilty of breaching a licence.

It should also be noted that the existing statutory powers of the Licencing Authorities, Fire Authorities, and other regulatory bodies (e.g. CRU, Revenue, EPA) will also retain their existing statutory and legal powers set out in relevant legislation.

Possible enforcement actions can include:

- Improvement Notices,
- Prohibition Notices, or
- Prosecution.

15. Appeals

How do I appeal a decision by a licensing authority not to grant a licence or to apply a condition(s) to a licence?

If an owner or operator disagrees with the decision of a licensing authority to not grant a licence, or to apply a condition to a licence, they may make an appeal within 30 days of the date of issue of the licensing authority's decision to the Appeals Authority – the Health and Safety Authority (HSA), or the District Court in the case of a kerbside store.

The Appeals Authority will assess all relevant material and matters concerning the appeal and may, at its discretion, inspect the premises for which the owner or operator is seeking a licence and issue its decision on whether to uphold or refuse the appeal within 60 days (the timeframe for the hearing of an appeal relating to a kerbside store will be at the discretion of the Courts).

The licensing authority will retain the power to direct whether or not a store can continue to operate while an appeal is underway and will inform the applicant of the reasons for any decision to restrict or prohibit operations.

The decision of the Appeals Authority/District Court will be final.

Where an appeal is upheld, the licensing authority will reconsider the application and proceed to grant a licence with or without conditions (or amended conditions). Where an appeal is refused (i.e. the licensing authority's decision is upheld) the applicant must either make a new amended application to the licensing authority or comply with conditions to be applied to the licence as specified by the licensing authority.

Should the Environmental Protection Agency (EPA) be the appeals body if there are environmental concerns?

No, the HSA is the statutory designated appeals body for Dangerous Substances. However, where necessary the HSA can consult with the EPA to seek advice on specific environmental matters when making determinations on appeals.

It should also be noted that the licensing authorities, Fire Authorities, Appeals Authority and other regulatory bodies, including the EPA, the Commission for Regulation of Utilities (CRU) and the Revenue Commissioners will also retain their existing statutory and legal powers set

out in relevant legislation e.g. Environmental Protection Acts, Safety, Health and Welfare at Work Act, Fire Services Acts etc.

Why is the District Court the appeals body for kerbsides?

Kerbsides serve a necessary socioeconomic purpose, particularly in rural areas where they may be the only petrol station serving a large area. As such, the determination whether a kerbside may continue to operate must take such circumstances into account, as well as the history of the station, namely whether there have been any serious safety incidents. The District Court is better equipped to assess the socioeconomic necessities along with safety concerns.