

Consultative Document

PROPOSALS TO AMEND THE NOTIFICATION OF INSTALLATIONS HANDLING HAZARDOUS SUBSTANCES REGULATIONS 1982

This consultative document seeks your views on a proposal by the Health and Safety Commission (HSC) to amend the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS), which would have the effect of **extending the notification requirements to establishments holding amounts of ammonium nitrate of 150 tonnes, or more.** The proposed amendment would be called the Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002. A draft of the Regulations is attached at Annexe 1.

The issues set out in this document arise from Government concern following the explosion of a stock of ammonium nitrate in Toulouse, France, in September 2001 and particularly a Government desire to establish precisely where significant stocks of ammonium nitrate are stored in Great Britain [GB]. The proposals stem primarily from a desire to heighten the safety and security of stored ammonium nitrate in the light of Toulouse and following the events in the US on 11th September 2001.

Detailed records are already maintained of all major stocks of ammonium nitrate i.e. 1000 tonnes or more, as are control and handling arrangements, but as the Toulouse explosion involved amounts well below this threshold, it is considered that **this threshold needs to be revised down to a start point of 150 tonnes**, along with a reduced threshold of nitrogen content of 15.75%, derived from ammonium nitrate.

The information thus obtained will provide the Government with comprehensive details of the ownership and location of all significant stocks of ammonium nitrate, which will enable it to plan and respond appropriately.

Consultation

The Health and Safety Commission has a statutory duty to consult with a wide cross section of stakeholders and those likely to be affected by its decisions, so that policies and decisions not only have wide ownership but also reflect the needs and aspirations of those affected. The Commission is then able to analyse those responses and agree a way forward acceptable to Ministers.

If you reply to this consultation document in a personal capacity, rather than as a post holder of an organisation, you should be aware that information you provide may constitute "personal data" in the terms of the Data Protection Act 1998. For the purposes of this Act, HSE is the "data controller" and will process the data for health, safety and environmental purposes. HSE may disclose this data to any person or organisation for the purposes for which it was collected, or where the Act allows disclosure. You have the right to ask for a copy of the data and to ask for any inaccuracies to be corrected.

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This consultation document is being sent to a wide range of organisations that are likely to be affected by what is being proposed.

A list of those is attached as part of this document. If you think that there are others who should be included, will you please let us know with contact details?

Please send such details to:

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Introduction

1. Ammonium nitrate is widely used in GB as a fertilizer. Stocks are held in a variety of places, either where they are produced and manufactured, or where they are distributed from, to where they are eventually received and put to use. Stock levels vary according to the season, with levels tending to be high in the Spring and Autumn.
2. In GB, all stocks of other than EC grade ammonium nitrate of 500 tonnes or more and 1000 tonnes of EC grade are presently notified to HSE under NIHHS and the Planning (Hazardous Substances) Regulations 1992. Guidance on appropriate storage has been produced by HSE as an Industry Guide, IND (G) 230L.
3. The thresholds for ammonium nitrate were set based on the knowledge of its harmful properties at that time.
4. Having knowledge of such stocks of ammonium nitrate has enabled appropriate controls, based on both the toxic and explosive effects, to be set around sites so that local planning authorities can be given advice as to the types of development that should be avoided in their vicinity.
5. **What happened at Toulouse challenges that. Reports of the incident clearly show that, not only were the stocks of ammonium nitrate that were involved considerably less than the GB threshold, but that the worst effects to people were caused by fire and explosion rather than toxic effect.**
6. There is clearly now a Government concern at the extent of the GB holdings of ammonium nitrate, and a desire to know where significant stocks are held. The Government has therefore requested HSE to collect and collate that data on its behalf.

Background

7. On 21 September 2001, an explosion occurred in an ammonium nitrate stack at the Grande Paroisse/AZF factory in Toulouse. Grande Paroisse is a top tier Seveso II site. The explosion caused the death of 22 people inside the factory and 8 outside: 2,500 were injured (30 seriously). Ten thousand homes, five schools and a hospital were damaged. The building concerned held between 300 and 400 tonnes of different compositions of ammonium nitrate, including downgraded or off-specification material. It is reported from the initial investigation, that between 40 and 80 tonnes of ammonium nitrate detonated, which is comparable to 20 to 40 tonnes of TNT. There is no information available about how the stack detonated.
8. Following the explosion and on-going investigations, it is apparent that the effects of an explosion under certain circumstances of much smaller quantities of ammonium nitrate than previously considered can actually cause major disruption. For GB, this presents us with a concern. At present we only have data from the Notification of Installations Handling Hazardous Substances Regulations 1982 (NIHHS) on sites holding more than 500 tonnes of non EC grade and in very limited circumstances ≥ 350 tonnes under COMAH.

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9. From the size of the crater reported in the French investigations, HSE has estimated (based on the explosion and crater at Oppau, Germany in 1921 where the quantity of ammonium nitrate involved was well known) that the quantity estimated by the French authorities of 40-80 tonnes may be too low and that a figure of around 200 tonnes could be the true quantity of ammonium nitrate involved in the explosion. For this reason HSE believes that the quantity of 150 tonnes is a more appropriate figure to enable us to identify the relevant sites in Great Britain.

The Proposal

10. To gather complete information on all types of ammonium nitrate **it is proposed to require notification of holdings of ammonium nitrate fertilisers and mixtures containing ammonium nitrate where the amount stored or held is 150 tonnes or more and the nitrogen content derived from ammonium nitrate exceeds 15.75%**. These figures are in line with the proposed amendment to the Seveso Directive and the UN Recommendations on the Transport of Dangerous Goods - Model Regulations (12th revised edition).

11. The amendment to NIHHS rather than the Planning (Hazardous Substances) Regulations is considered to be the most appropriate route at this stage. The means of dealing with the issue post collection of the baseline information is not the subject of this paper. Any further development of regulations will depend upon the information gathered by this amendment of NIHHS and will be subject to further consultation. The Government has requested HSE to gather information as soon as possible on those sites that are not already registered.

12. Section 1 of the Health and Safety at Work Act etc 1974 does include among the purposes of the Act, "controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances." With heightened security concerns following the events in the US on September 11th 2001, HSE believes it appropriate to look again at its guidance on the storage and use of ammonium nitrate and its role under Section 1 of the Act. This will form part of the follow-up work to the collection of information resulting from the changes to the NIHHS Regulations covered by this consultation document.

Regulatory Impact

13. Please see Annexe 2 for the detailed Regulatory Impact Assessment. The proposal envisages ownership and location details of stock held, including information drawn down from the actual packaging or goods received invoices, being notified to HSE. The data produced will need to be input to the register, but once the initial first flow of notifications is dealt with it is anticipated that there will be few further notifications received. The register will then be held on a care and maintenance basis. It is estimated that collation of the initial notifications will take ten staff days and maintenance two days per year thereafter.

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14. Industry has estimated that notification would be required from farms of 300 hectares or greater which equates to 5,000–6,200 units in all. HSE estimates that a further 400 manufacturers, importers and agricultural merchants are also likely to have to notify.

Outcome

15. Amending the regulations will enable HSE, and thus the Government, to get a clearer picture of the distribution of ammonium nitrate throughout the country. The proposed change does not imply changes to the way that risks are currently assessed and managed by HSE, but for it to be in a position to look objectively at the whole picture for GB in the light of the tragic events at Toulouse. Any subsequent change will only follow a full review of the lessons and outcomes of Toulouse, when there will be a full assessment of the likely costs as part of a formal consultation exercise.

Issues

16. A key purpose of any consultation is to draw from those most likely to be affected by any change, their views on the actual practicalities on how it will work, including whether the assumptions made are soundly based.

17. A transitional period of 4 weeks will be allowed for sites already holding stocks of 150 tonnes or more of ammonium nitrate, as newly defined, to make their notification.

Q1. Do you agree that this is sufficient time for this?

18. NIHHS currently requires at least a 3-month notification period before the operation [such as storage] commences. The proposal would, in this instance, bring that period down to 4 weeks. Our argument is that given the need for the information, the seasonal nature of the use of the material and that the level of information required will be ready to hand, this should not present a great hindrance to those with the duty complying.

Q2. Do you think that this is a reasonable approach?

Q3. Should the prior notification period be shorter?

Q4. What difficulties do you envisage dutyholders encountering in complying?

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19. NIHHS has been considered to be the appropriate way to gaining information quickly, and without great effort. Using this regulatory approach does not of itself imply any other changes, but would give HSE early access to information on which to map out its response to Toulouse.

Q5. Do you agree that this presents the best option in the timescale?

Q6. If not what other option should be considered to obtain the information?

20. The notification requirements are designed to draw down only that information that is readily available, and sufficient for HSE to begin its review, it would present an opportunity to draw up other information that could be deemed appropriate.

Q7. Is this a reasonable approach?

Q8. Do you have any thoughts on whether additional information should be requested, and if so what information?

Please send Comments to:

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**THE CONSULTATION PERIOD WILL BE OF 12 WEEKS DURATION,
SO COMMENTS MUST BE RECEIVED BY 4 OCTOBER 2002.**

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Annexe 1

STATUTORY INSTRUMENTS

2002 No.

HEALTH AND SAFETY

The Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002

<i>Made</i> - - - -	2002
<i>Laid before Parliament</i>	2002
<i>Coming into force</i> - -	2002

The Secretary of State, in exercise of the powers conferred upon him by sections 15(1), (2), (3)(a) and 82(3)(a) of, and paragraphs 1(1) and 15(1) of schedule 3 to, the Health and Safety at Work etc. Act 1974⁽¹⁾ (“the 1974 Act”) and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act, after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Notification of Installations Handling Hazardous Substances (Amendment) Regulations 2002 and shall come into force on 2002.

Amendment of the Notification of Installations Handling Hazardous Substances Regulations 1982

2. The Notification of Installations Handling Hazardous Substances Regulations 1982⁽²⁾ (“the principal Regulations”) shall be amended in accordance with the following regulations.

3. Regulation 3 of the principal Regulations shall be amended by inserting, after the word “months”, the words “or, in the case of a hazardous substance consisting of ammonium nitrate or mixtures of ammonium nitrate, at least 4 weeks”.

⁽¹⁾ 1974 c. 37. Sections 15 and 50 were amended by the Employment Protection Act 1975 (c.71) Schedule 15, paragraphs 6 and 16 respectively.
⁽²⁾ S.I. 1982/1357; amended by S.I.1996/825.

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4. Regulation 7 of the principal Regulations shall be amended by inserting after paragraph (1) the following paragraph—

“(1A) Paragraph (1) shall not apply in relation to ammonium nitrate or mixtures of ammonium nitrate”.

5. After regulation 8 of the principal Regulations the following regulation shall be added—

“Transitional provision for ammonium nitrate

9. Where—

at [the date of coming into force of the amendment to be inserted] a person—

is undertaking an activity in which there is or is liable to be at any one time a notifiable quantity or more of a hazardous substance consisting of ammonium nitrate or mixtures of ammonium nitrate; and

was not immediately before that date required by regulation 3(1) to notify particulars to the Executive in relation to a notifiable quantity of ammonium nitrate or mixtures of ammonium nitrate; or

a person commences such activity within 4 weeks after that date,

it shall be sufficient compliance with regulation 3(1) if he notifies to the Executive the particulars specified in Schedule 2 within 4 weeks after that date.”

6. In Part I of Schedule 1 to the principal Regulations—

the entry in column 1 relating to ammonium nitrate and mixtures of ammonium nitrate shall be amended by substituting for the words “28%” to the end of the entry the words “more than 15.75%”; and

the corresponding entry shall be amended by substituting for the words “500” the words “150”.

Signed by authority of the Secretary of State

2002

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

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Annexe 2

PROPOSALS TO AMEND THE NOTIFICATION OF INSTALLATIONS HANDLING HAZARDOUS SUBSTANCES REGULATIONS 1982 [NIHHS]

REGULATORY IMPACT ASSESSMENT

PURPOSE AND INTENDED EFFECT

Issue

1. It is proposed that the above regulations be amended to reduce the threshold quantity of ammonium nitrate that requires notification. This action follows the explosion that occurred in an ammonium nitrate stack in Toulouse on the 21 September 2001.

Risk assessment

2. Following the explosion and the continuing investigation at Toulouse, it is apparent that the explosion of much smaller quantities of ammonium nitrate than previously considered can actually have major disruptive effects. At present there is limited data as to the location and quantity of ammonium nitrate present in Great Britain.

3. Detailed records are already maintained of all major stocks of ammonium nitrate i.e. 1000 tonnes or more but, as the Toulouse explosion involved amounts well below the current NIHHS notification threshold, it is considered that this threshold needs to be revised down to a start point of 150 tonnes.

Objectives

4. The need to ascertain precisely where in Great Britain significant amounts of ammonium nitrate are being stored.

Options considered

5. HSE considered a number of reduced threshold quantities for the notification requirements. Taking into account evidence from Toulouse, HSE believes that a quantity of 150 tonnes is most appropriate to enable us to identify the relevant sites in Great Britain.

BENEFITS

6. The main benefit of notification is that it will enable HSE to gather strategic information on those sites that are not already registered so that a strategy for ensuring safe handling and storage of ammonium nitrate at these sites can be determined.

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COSTS

Business sectors affected

7. According to the Department for Environment, Food and Rural Affairs [DEFRA] June 2000 census there are 48,000 agricultural holdings above size fifty hectares (ha) who are likely to hold some ammonium nitrate. However only those farms with greater than 300 ha. are likely to have more than 150 tonnes. This gives a figure of 5,200 (around 11%). Depending on the composition of ammonium nitrate this figure could increase to around 13% of farms. The total number of agricultural holdings required to comply with the notification requirements of the amended regulations is therefore likely to be in the region of 6,000-6,200.

8. In addition, HSE estimates that a further 400 stores belonging to manufacturers, importers and agricultural merchants are also likely to be affected by the amended regulations.

Compliance costs to business, charities and voluntary organisations

9. Costs to industry of the notification requirements will be minimal. We would expect that familiarisation with the requirements of the amendment and the notification procedure would take around one hour of management time. The New Earnings Survey (NES) 2001 gives the hourly wage of a manager in farming and horticulture of £10. Adding an allowance of one-third for non-wage labour costs indicates that the notification procedure would cost around £13 per firm. This leads to an estimate of total cost to business of around £85,000 from the notification requirements.

10. To allow for new companies and farms coming into the scope of the regulations for the first time in following years we allow a recurring cost of 10% of the above figure, or £8,500 each year. Total costs over ten years are therefore estimated at around £140,000 in present value terms.

Impact on small and medium sized businesses

11. Whilst the vast majority of the businesses affected will be small firms, the costs of notification to the individual businesses are minimal.

Costs to HSE

12. HSE will incur costs through the need to input notification details into a register. This is estimated to take ten days of staff time in the first year and maintenance of two days per year thereafter. The cost to HSE is estimated at £1,200 in the first year and around £250 in each year thereafter. Total costs to HSE over ten years are estimated at £2,700 in present value terms.

Other costs

13. There are no other costs associated with these proposals.

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Total costs to society

14. Total present value costs over ten years are estimated at £140,000 to industry, with a small additional administrative cost of around £3,000 to HSE.

ENVIRONMENTAL IMPACTS

15. These are positive in that the risks addressed could cause significant environmental damage.

BALANCE OF COSTS AND BENEFITS

16. Costs are minimal, so even a minute reduction in the risk of explosion would result in benefits exceeding costs.

Uncertainties

17. The number of sites affected is predicted and is based on best available information.

Arrangements for monitoring and evaluation

18. The notification requirement will be kept under review. There are no plans for a formal evaluation.

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LIST OF CONSULTEES

A B Handling Ltd
A E Murphy Ltd
A G Watts Transport Ltd
A R Gane & Sons
AEM (Avon) Ltd
Agricultural Bulk Services (Bristol) Ltd
Agricultural Engineers Association
Agriculture Industry Advisory Committee
Agroserve Ltd
Alan Firmin (Linton) Ltd
Albert Dent Ltd
Allied Grain Ltd
Amesbury Transport Ltd
Angus Fertilizers
Associated British Ports
Association of Chief Police Officers
Association of Chief Police Officers in Scotland
Association of London Government (ALG)
Association of Police Authorities
Association of Port Health Authorities
AV Dawson Ltd
Axholme Developments
Banks Oddam Derrick Ltd
Bird Port Ltd
BOC (Special Gases)
Boothferry Port Services
British Agricultural & Garden Machinery Assn
British Agrochemicals Association
British Association for Chemical Specialties
British Chemical Engineering Contractors' Assn
British Chemical Distributors & Traders Assn Ltd
British International Freight Assn
British Marine Industries Federation
British Pyrotechnics Association
British Safety Council
British Safety Industry Fedn (BSIF)
British Transport Police
British Transport Police Federation
Bromborough Stevedoring & Forwarding Ltd
Buston Barns Farms Ltd
C A Stevens & Sons (Transport) Ltd
Cabinet Office
Cabinet Office Regulatory Impact Unit
Caledonian MacBrayne Ltd
Calport of Perth
Carlisle Warehousing Ltd
Carrs Fertilisers Ltd
CBI
CBI Small Firms Council
CBI SME Unit
Chemfreight Dangerous Goods Training
Chemical Industries Association Ltd
Chief & Assistant Chief Fire Officers' Assn
Clydeport Operations Ltd
Coal Mining Contractors Association
Colchester Dock Transit Co Ltd
Confederation of UK Coal Producers
Consumers Association
Convention of Scottish Local Authorities (CoSLA)
Country Landowners Association
Countryside Commission
Countryside Council for Wales
Countrywide Farmers Plc
County Surveyors Society
Court Y Parc
Croner Publications Ltd
D T Jones & Son
Dalgety Agriculture Ltd
Daltrade Ltd
Defence Police Federation
Department of Health
Department of Trade and Industry
E D Weetman (Haulage & Storage) Ltd
E T Morris & Sons Ltd
EA
Eagle House
Eagle Star Farm Ltd
Edward Nicholson Ltd
Emergency Planning
Environmental Protection Agency
Euromin Ltd
Exchem Explosives Ltd
Falmouth Docks & Engineering Co
Farmers' Union of Wales
Federation of Small Businesses
Fertiliser Manufacturers Association
Fertiliser Solutions Ltd
Fire Brigades Union
Firmin Coates & Sons Ltd
First Corporate Shipping
Flexible Intermediate Bulk Container Association
Flexible Packaging Association
Forestry Commission
Forth Ports Plc
Forum of Private Business
Frank Armitt & Son
Freight Transport Association
Freshney Cargo Services Ltd
Friends of the Earth
G C Hayball Ltd
G D Platt
G G Tomkinson Ltd
G H Barber Ltd
George Dutton

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Glasson Fertilizers Ltd
Global Shipping Services Ltd
Goole Stevedores Ltd
Graham Russell (Transport) Ltd
Greenpeace
Griffin Marston Ltd
Grosvenor Grain and Feed Company Ltd
H Burtwistle & Sons
H C Robinson & Sons
Harvest House
Health & Safety Executive
Health & Safety Executive for Northern Ireland
Heard & Sendell Ltd
Heltor Ltd
Her Majesty's Fire Service Inspectorate
Hereford Storage Ltd
Hightown Green Farm
Home Office
Humberside Sea & Land Services Ltd
Hydro Agri (UK) Ltd
Hydro Fertilisers Ltd
IAWS Fertilisers (UK) Ltd
Immingham Railfreight Terminals Ltd
Industrial Society
Institute of Directors
Institute of Directors Wales Division
Institute of Explosives Engineers
International Tank Container Organisation
Ipswich Port Authority
Isle of Man Government - Marine Administration
ITS Inglis Transport Services Ltd
J & H Bunn Ltd
J & H Watt Ltd
J Revis & Sons
J Warton (Shipping) Ltd
Jade Recruitment Services
John Parsons Marketing Ltd
Jos Mulligan (Penton) Ltd
K Foster & Son Ltd
Kali (UK) Ltd
Kemira Agros UK Ltd
Kemira Ince Ltd
Killingholme Wharfage Co Ltd
L E Jones Ltd
L Gwillim
L N Jones (Tattenhall) Ltd
Larkbeare Services Ltd
Limb Group of Companies
Local Government Association (LGA)
M Thomas Management
Marchwood Wharfage Ltd
McGawn Bros
Mersey Docks & Harbour Co
Midland Shires Farmers Ltd
Mile Oak Industrial Estates
Ministry of Defence
Montrose Port Authority
Morris Young (Perth) Ltd
Mostyn Docks Ltd
Mullany Developments
National Association of Local Councils
National Chemical Emergency Centre
National Consumer Council
National Trust
Natural Environment Research Council NERC
New Holland Bulk Services Ltd
New Holland Services
Newark Storage Co Ltd
NFU
Norsk Hydro Fertilizers Ltd
North Killingholme Storage Ltd
North West Stevedores
Northern Ireland Committee - Irish Congress
Northern Ireland Health and Safety Agency
Northern Ireland Officer
Occupational Health Advisory Committee
Omex Agriculture Ltd
P D Wharfage Ltd
Payne Brothers Ltd
Peter Cox Farms Ltd
Peterborough Heavy Haulage Co Ltd
Piggins & Rix Ltd
Pointbid Plc
Port of Tilbury (London) Ltd
Port Sutton Bridge Ltd
Portland Port Ltd
Ports Safety Organisation (PS) (Technical Services)
Powell Duffryn Wharfage
R Durham & Sons Ltd
R E Shuttleworth & Sons
R S Logistics
Reader Storage Ltd
Relay Distribution Services Ltd
Richard Johnson Ltd
Richard Preston & Son Ltd
Richards & Osborne Ltd
Ridham Sea Terminals
Road Haulage Association Ltd
Robert Eversden Ltd
Roffes Transport Ltd
Rosskeen Farms
Royal Agricultural Society of England
Royal Highland & Agri Society of Scotland
Royal Society for the Prevention of Accidents

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Royal Society of Chemistry
S J Bargh Ltd
Safeguard Storage Ltd
Sandford Hall
SBS Logistics
SCC transport Devizes Ltd
Scottish Executive
Scottish Executive Agriculture Environment Fisheries
Scottish Natural Heritage
Scottish Police Federation
Sharpness Docks Ltd
Shoreham Port Authority
Shropshire Grain Supplies
Sidney Banks Plc
SIESO
Simon Warehousing Services
Small Business Service
Smallwood Storage
Society of Chemical Industry
Soil Fertility Dunns Ltd
Solent Stevedoring Ltd
South Docks Termina Ltd
Steele's Transport Ltd
Strawberry Farm
STUC (Scottish Trades Union Congress)
Surenough Ltd
Sutton Bridge Wharfage Co Ltd
Swallow Stevedores Ltd
T James Ltd
Tees & Hartlepool Port Authority
Terra Nitrogen (UK) Ltd
The Crown Estate Commissioners
The Fertiliser Manufacturer's Association
The Grain Store
The Independent Tank Storage Assn
The Potter Group Ltd
The Royal Institute of Public Health & Hygiene
The Scottish Chambers of Commerce
The Windmill
Thomas Bell & Sons Ltd
Thruxtron Storage Company
TMW Ltd
Trades Union Congress
Trent Wharfage Ltd
UK Agricultural Supply Trade Association (UKAS)
United Kingdom Warehousing Association
Usborne Fertilisers Ltd
Victory Maritime Ltd
W H Wallington & Sons
W J Read (Fertilisers) Ltd
W L Vallance Ltd
W S Atkins Science & Technology
W S Merrill (Haulage) Ltd
Wagstaff Transport, Sharpness Dock Ltd
Welsh Assembly Government
Welsh Development Agency
Welsh Local Government Association
Welsh Office
West Devon & North Cornwall Farmers Ltd
West Midlands Farmers
Westlink Storage & Shipping
WF Fertilisers
Williamson Cliff Ltd
Wrabness Storage Depot
Wrekin Farmers Ltd