

**EXPLANATORY MEMORANDUM TO**  
**THE PLANNING (CONTROL OF MAJOR-ACCIDENT HAZARDS)**  
**REGULATIONS (NORTHERN IRELAND) 2009**

**2009 No. 399**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule 2009 No. 399 which is laid before the Northern Ireland Assembly.

1.2 The statutory rule is made under Articles 10, 53(3) and (4), 54(1), 60(3) and 129(1) of the Planning (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 31st December 2009.

**2. Purpose**

2.1 These Regulations amend the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (S.R. 1993 No.275) to increase the range of dangerous substances for which consent must be obtained for storage or processing; the definitions of these substances, and the amounts allowed before consent must be obtained.

2.2 The Regulations also amend the Planning (Development Plans) Regulations (Northern Ireland) 1991 (S.R. 1991 No. 119) to add to the matters that the Department shall have regard to in formulating its development plan policies.

**3. Background**

3.1 These regulations implement Article 12 of Directive 96/82/EC on the control of major accident hazards involving dangerous substances as amended by Council Directive 2003/105/EC.

3.2 Article 12 relates to land-use planning. Its purpose (as amended) is to prevent major accidents which involve dangerous substances and to limit the consequences of such accidents for people and the environment. It does this by ensuring that there are appropriate land-use policies and procedures in place which take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential/public buildings and areas, including major transport routes and recreational areas.

3.3 Article 12 was amended following a number of industrial accidents and, in particular, an accident in Romania which led to a cyanide spill in the Danube. It was also amended in response to studies on carcinogens and

substances dangerous for the environment carried out by the European Commission.

3.4 Under the Planning (Northern Ireland) Order 1991 (“the 1991 Order”) and the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (“the Hazardous Substances Regulations”), consent for the storage and processing of hazardous substances must be obtained from the Department of the Environment as it is the hazardous substances authority. Before granting such consent the Department must consult the local District Council, the Health and Safety Executive for Northern Ireland (HSENI), the Northern Ireland Environment Agency and the Northern Ireland Fire and Rescue Service Board. Under Article 55 of the 1991 Order the Department, in determining such applications for consent, has to take into account planning permissions already granted, the way in which that land is already used and any plans for the future development of the land as well as any concerns expressed by HSENI.

3.5 The consent regime already in place for hazardous substances under the 1991 Order and the Hazardous Substances Regulations ensures that account is taken of the need to maintain appropriate distances in accordance with the Directive. However, Schedule 3 to the Hazardous Substances Regulations sets out the list of hazardous substances and controlled quantities of these substances to which the consent regime applies. The 2003 amendment to the Directive extended the scope of these categories and put tighter controls on the controlled quantities of these substances. The Hazardous Substances Regulations need to be amended to reflect this change.

#### **4. Consultation**

4.1 The Department carried out a consultation on its proposals for implementing Directive 2003/105/EC between November 2005 and January 2006. However, at that time, the proposals, in common with the rest of the UK, did not make any provision for transitional arrangements so that a company would not be committing an offence if it did not have consent for a substance newly subject to consent on the first day that the new regulations came into operation. The reasoning behind this omission, agreed by each of the UK planning jurisdictions, was that following the introduction of the Hazardous Substances Regulations in 1993 and again in 2000 when changes were made in relation to the Seveso II Directive, industry should be aware that as substances are classified or reclassified, and as a result fall within scope of the Seveso II Directive, they will subsequently also become subject to the requirements of the Planning (Hazardous Substances) Regulations. Accordingly, transitional arrangements were not considered necessary. The Department received 7 responses with a further 6 consultees indicating they had no comments to offer. No comments supporting the introduction of transitional arrangements were received from consultees in response to the Department’s invitation to comment on their omission.

4.2 However, it subsequently transpired that the petroleum industry submitted a representation to the 2005 consultation on the draft regulations for

England, which indicated that certain operators could find themselves in breach of the new regulations during the process of obtaining hazardous substances consent, and that suitable transitional provisions should be provided. The concern was that the lack of transitional arrangements would cause uncertainty about the future of a number of plants that did not have consent, but which would require it as a result of the proposed legislative amendments. The Office of the Deputy Prime Minister (ODPM) (now Communities and Local Government (CLG)), the lead UK department on COMAH, acknowledged the points made and decided not to proceed with the proposed amendments at that time without looking into the potential for offering deemed consent to operators. The other UK regulations were also put on hold pending further consideration of the issue.

4.3 CLG eventually concluded that their new regulations should include transitional provisions for deemed consent and notified the other UK planning authorities accordingly. A further consultation took place in England on that basis between March and May 2009. The Department decided not to consult again in Northern Ireland as only seven consultees submitted responses to its previous consultation, all of which were generally supportive of the need for the legislation plus the only potential change was the inclusion of transitional provisions. Scotland and Wales also decided not to consult again.

4.4 Following the second consultation in England, CLG had concerns about whether the inclusion of transitional provisions offering deemed consent for operators would raise questions about compliance with the Directive given the delay in implementing it. Further discussions took place between the UK planning authorities and it was subsequently decided to include transitional provisions only for operators that have existing consents where the substances in question are re-named or re-categorised under the new regulations, but to require “express” hazardous substances consent from the relevant hazardous substances authority for those operators who would be brought into the consent regime for the first time as a result of the new regulations. Firms requiring “express” consent will be immune from prosecution for a period of six months from the operative date of the Regulations. The Department has contacted relevant operators and trade associations to inform them of this change.

## **5. Equality Impact**

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1978, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have significant implications for equality of opportunity. The measures will not affect any racial group disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

## **6. Regulatory Impact**

6.1 A Regulatory Impact Assessment accompanies this memorandum at Annex 1.

## **7. Financial Implications**

7.1 Businesses which store, manufacture or distribute hazardous substances will be affected by the Regulations. The main impact will be on those which will be brought in to the hazardous substances consent regime for the first time as a result of the Regulations and which will need to apply to the Department for express consent. It is thought that the amendments will affect some 6 to 9 sites across Northern Ireland, of which 3 sites may require express hazardous substances consent. Charities or the voluntary sector are unlikely to be impacted. There will be an additional administrative element for the Department, however in view of the small number of affected sites the impact is likely to be minimal. HSENI will have to undertake additional work in setting the consultation distances around any “new” hazard sites for which consent will be needed as a result of the amendments, but as stated above, this is likely to be only some 6 to 9 sites.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department considers that the legislation complies with the requirements of Section 24 of the Northern Ireland Act 1998.

## **9 EU Implications**

9.1 The Regulations are being introduced to implement an amendment to Article 12 of Directive 96/82/EC (“the Seveso II Directive”). Infraction proceedings have been initiated against the UK and it is necessary that Northern Ireland legislation is compliant with the amended Directive as soon as possible.

## **10. Parity or Replicatory measure**

10.1 Each of the UK planning jurisdictions is required to transpose the amended Directive. The English regulations came into force on 1st October 2009 while both Scotland and Wales are currently preparing draft implementing legislation for introduction in November/December 2009.

## **11. Additional information.**

11.1 Joe Torney at the Department of the Environment Tel: 028 9025 6505 or e-mail: Joe.Torney@doeni.gov.uk can answer any queries regarding the new regulations.

# REGULATORY IMPACT ASSESSMENT

## 1 Title of Proposal

The Planning (Control of Major- Accident Hazards) Regulations (Northern Ireland) 2009.

## 2 Purpose and Intended Effect

### 2.1 The Objective

These regulations give effect in Northern Ireland to the land use planning requirements arising from Directive 2003/15/EC, which amends Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (“the Seveso II Directive”).

### 2.2 The Background

The Seveso II Directive came into force in 1999 and aims to prevent major accidents and limit the consequences of such accidents for people and the environment. It applies to establishments where specified dangerous substances, or generic categories of dangerous substances, are present at or above qualifying quantities listed in the Directive. The land use planning requirements of the Directive were implemented in Northern Ireland by the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000<sup>1</sup> (“the 2000 Regulations”).

The main obligations arising under the Directive relate to health and safety and environmental measures. These are implemented through Regulations prepared by the Health and Safety Executive for Northern Ireland (“HSENI”).

The Directive also requires Member States to ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land use policies. It requires that these are pursued through controls on:

- the siting of new establishments;
- modifications to existing establishments that could have significant repercussions on major-accident hazards; and,
- new development in the vicinity of existing establishments where the siting or development are such as to increase the risk or consequence of a major accident.

Land use planning controls apply to all establishments that are within the scope of the Directive.

---

<sup>1</sup> S.R. 2000 No. 101

We have given effect to these requirements by way of amendment to planning legislation relating to hazardous substances consents, preparation of development plans and on consultation before the grant of planning permission. The effect is that sites that fall within the scope of the Seveso II Directive have to obtain hazardous substances consent from the Department of the Environment (“the Department”). Once consent is issued, HSENI fixes a consultation zone around the site that serves to control future development within the vicinity of dangerous sites.

Directive 2003/15/EC made changes to the way in which some substances and preparations are classified or defined, and to some qualifying quantities that determine whether an establishment falls within the scope of Seveso II. There were also some administrative changes.

These regulations amend the 2000 Regulations to reflect the changes to the Directive and ensure we continue to fulfil the land use planning requirements of the Seveso II Directive.

The Directive applies throughout the United Kingdom so these amendments will be transposed separately in England, Wales and Scotland.

## 2.3 Risk Assessment

Accidents involving dangerous substances have the capacity to cause serious dangers to human health and the environment. Stringent safety measures applied at a plant can minimise, but never completely eliminate, the risk. Where such accidents happen there is no guarantee the hazard can be contained on site.

We have no information about accidents at the sites that will be brought into the scope of these new regulations against which we can meaningfully assess risk. The incidents at Toulouse and Enschede with loss of life, significant environmental impact, damage to property and huge economic cost adequately demonstrate the off-site consequences that can arise in the event of a major accident.

## 3 Options

### Option 1: Do nothing

This is not a realistic option as failure to transpose the land use planning requirements of the Directive into national legislation would result in infraction proceedings by the European Commission and the European Court of Justice which could result in the imposition of financial penalties on the UK.

## Option 2: Continue to give effect through the consent procedure

A clear link between the planning requirements of the Seveso II Directive and the consent procedures in the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993<sup>2</sup> (“the Hazardous Substances Regulations”) has been established over recent years. The list of substances and controlled quantities in the Hazardous Substances Regulations has been aligned with the list of dangerous substances and preparations and their qualifying quantities specified in the Seveso II Directive. Amending the Hazardous Substances Regulations to reflect the changes to the Seveso II Directive will involve minimum change.

## 4 Business Sectors Affected

The Seveso II Directive applies only to sites where dangerous chemical substances and preparations are present above defined thresholds. The sites affected by the amendments are operated by businesses in the chemical, petroleum, electricity and water supply sectors and those involved in the manufacture and storage of explosives. These regulations will affect all businesses which currently hold or propose to hold substances at or over the thresholds defined in the Directive.

## 5 Benefits

### Option 1: Do Nothing

There are no benefits to this option. The UK is obliged to transpose the Directive into national legislation. Failure to do so would result in infraction proceedings by the European Commission.

### Option 2: Continue to give effect through the consent procedure

The benefits that arise are in providing members of the public with extra reassurance that adequate controls are being exercised over the use and storage of hazardous substances and preparations and the establishments where they are present, and that such controls are effective in maintaining public health and safety, and in protecting the environment. The controls complement other regulations that give effect to the requirements of the Seveso II Directive that are implemented jointly by HSENI and Northern Ireland Environment Agency (NIEA). Land use planning controls cannot themselves prevent a major accident. However, by ensuring that proposed development within the vicinity of dangerous establishments is authorised only after the public health, safety and environmental issues have been fully taken

---

<sup>2</sup> S.R. 1993 No.275

into account, they mitigate the consequences of any major accident by minimising damage that may be caused to property or injury to persons or loss of life.

It is difficult to quantify economic benefits directly attributable to regulations that give effect to the land use planning requirements of the Seveso II Directive. However, it is expected that these changes will reduce the off-site risks associated with dangerous substances and will reduce economic damage caused as a result of a major accident. An estimate of such costs at fairly recent major accidents is given below under option 1.

## **6 Costs**

### **Option: 1 Do nothing**

The 'do nothing' option involves no costs to industry, business or charities. However, to "do nothing" would result in infraction proceedings against the UK for failing to implement the land use planning requirements of the Seveso II Directive. Continued failure to implement the Directive could result in costs to the UK through fines imposed by the European Court of Justice.

It is difficult to estimate the social or environmental costs of this option, which would only become apparent in the event of a major accident of the type that the Directive aims to prevent. The costs of fairly major accidents at Toulouse (2001) and Enschede (2000) have been estimated at €2,066 million and €170 million, respectively. These costs include reconstruction and lost production, but it's not clear how much is due to 'off-site' costs. It is clear, however, that major accidents can have substantial social and environmental costs.

### **Option 2: Continue to give effect through the consent procedure**

Costs are likely to arise as follows-

#### *(i) Hazardous Substances Site Operators*

Costs arise from the need for hazardous substance consent to be obtained as a result of the extension of the hazardous substance list to include substances which are currently held on sites and for which consent is currently not required.

It is thought that the amendments will affect some 6 to 9 sites across Northern Ireland, of which 3 sites may require express hazardous substances consent.

The operators of these sites will need to bear the costs of applying for express consent including an application fee of between £311 and £391 and the associated administrative process. Currently, for applications where no one substance exceeds twice the controlled quantity, the fee is £311. For proposals involving the presence of a substance in excess of twice the controlled quantity, the fee is £391. Total costs to these additional sites are likely to range from approximately £2,000 to £3,000 depending on the fee paid. This is a one-off cost.



*(ii) Department of the Environment*

The Department will face the costs of processing the express consent applications. As the amendments are thought to apply to just 3 sites across Northern Ireland, this is not expected to amount to a significant burden.

*(iii) Health and Safety Executive for Northern Ireland*

Once consent is granted HSENI would need to undertake an assessment and configure the appropriate consultation distances. This would have an affect on the resources of HSENI. However, as the number of additional sites that would require an assessment is relatively low, the costs are not thought to be significant.

*(iv) Northern Ireland Environment Agency*

NIEA is responsible for assessing measures to protect the environment under the regulations. This includes examining operators' safety reports and carrying out inspections on establishments covered by the regulations. In light of the low number of affected sites the additional costs to the Agency are not thought to be significant.

*(v) Benefits*

This option avoids the risk of the UK being infracted for non-compliance of the Seveso Directive. This is a substantial cost saving. Although instances of fines being imposed are relatively rare (presumably because Member States take action before infraction proceedings get that far), the European Court of Justice can impose very heavy fines (a Member State was recently fined a lump sum of €20 million, plus €58 million for every six months it failed to comply with a judgment of the ECJ – a total of €136 million per year or £117 million). However, it is not possible to anticipate the lump sum penalty or monthly penalty rate, as this is set by the EC according to the seriousness of the infringement and the situation.

## **7 Consultation with small business: the Small Firms' Impact Test**

Based on discussions with HSENI, we estimate that 3 sites in Northern Ireland would come within the scope of planning controls for the first time as a result of the proposed changes to the Hazardous Substances Regulations to fully accord with the Seveso II Directive.

## **8 Competition Assessment**

We do not consider that these proposals will have any differential impact on operators, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

## **9 Environmental Impact**

The regulations have the potential to improve environmental protection. There is also the health and safety benefit of fully adopting the requirement of the Directive.

## **10 Equality Impact Assessment**

The Seveso II Directive applies only to sites where dangerous chemical substances and preparations are present above defined thresholds. The sites affected by the amendments are operated by businesses in the chemical, petroleum, electricity and water supply sectors and those involved in manufacture and storage of explosives.

An Equality Impact Assessment screening carried out in respect of the proposed legislative amendments found no evidence of any additional impact on any of the Section 75 categories.

## **11 Rural, health and other social effects**

We do not consider that there would be any disproportionate impact to different groups from this proposal in terms of rural, health or other social effects.

## **12 Human Rights**

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

## **13 Enforcement and Sanctions**

The Hazardous Substances Regulations have existing provisions for enforcement and sanctions. These will apply as normal.

## **14 Monitoring and Review**

HSENI and NIEA are consultees for all applications made for hazardous substance consent. HSENI contributes to the assessment process for consents and uses the outputs in determining consultation zones for land use planning advice, while NIEA provides advice on measures to protect the environment under the regulations. We will be reviewing with HSENI and NIEA to ensure the consent procedure continues to provide a balance between the need to provide the public with reassurance on health, safety and environmental issues and the need to minimise burdens on industry.

## **15 Consultation**

### **(i) Within Government**

- The Health and Safety Executive for Northern Ireland which has responsibility for hazardous substances legislation.
- The Northern Ireland Office which has responsibility for explosives legislation.
- The Northern Ireland Environment Agency which has responsibility for environmental issues.
- Representatives of the other UK planning administrations in England, Scotland and Wales were consulted during the drafting of the implementing regulations.

## **(ii) Public Consultation**

The Department carried out a consultation on its proposals for implementing Directive 2003/105/EC during the period November 2005 to January 2006. However, at that time the proposals, in common with the rest of the UK, did not make any provision for transitional arrangements so that a company would not be committing an offence if it did not have consent for a substance newly subject to consent on the first day that the new regulations came into operation. No comments supporting the introduction of such arrangements were received from consultees in response to the Department's invitation to comment on their omission

However, following feedback to the consultation in England which favoured transitional provisions further discussions on the issue took place between the UK planning authorities, particularly on the potential delay to full implementation of the Directive which such provisions would entail. Accordingly, it was decided to include transitional provisions only for operators that have existing consents where the substances in question are re-named or re-categorised under the new regulations, but to require 'express' hazardous substances consent from the appropriate hazardous substances authority for those operators who would be brought into the consents regime as a result of these Regulations.

## **16 Summary and Recommendation**

These regulations are necessary in order to transpose the specific land use planning requirements of Directive 96/82/EC, as amended by Directive 2003/15/EC.

The proposed means of giving effect to these regulations is by way of amendment to the Hazardous Substances Regulations and to the Development Plans Regulations. This will continue the procedure introduced in 2000

The costs to businesses will be small. We estimate that the businesses affected are large enough to absorb this cost without damaging their competitiveness, and enabling them to provide extra reassurance that they are responsibly managing their health and safety obligations.

## 17 Declaration

Signed by a Senior Officer of the Department of the Environment



.....

Date: 3rd December 2009

Contact point:  
Marianne Fleming  
Department of the Environment  
Planning Service  
Millennium House  
17-25 Great Victoria Street  
Belfast BT2 7BN

Tel: 028 9025 6527

E-mail: [Marianne.Fleming@doeni.gov.uk](mailto:Marianne.Fleming@doeni.gov.uk)

## ANNEX 2

### TRANSPPOSITION NOTE

This transposition note has been prepared by the Department of the Environment to demonstrate how Article 12 of Directive 96/82/EC (as amended by Article 1(7)(a) of Directive 2003/105/EC) has been transposed in relation to land-use planning by the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2009 (S.R.2009 No. 399). The purpose of Article 12 of Directive 96/82/EC, as amended, is to ensure that land-use policies and the procedures for implementing them take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential/public buildings and areas, including the extended categories of buildings in public use, major transport routes and recreational areas. This is to prevent major accidents which involve dangerous substances and to limit their consequences for man and the environment.

The scope of Directive 96/82/EC was also extended by the Directive 2003/105/EC amendments to Annex 1 to Directive 96/82/EC. The amendments to Annex 1 to Directive 96/82/EC increased the number of dangerous substances listed and made changes to the ways in which they are categorised and the amounts allowed to be processed or stored without consent.

These Regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

### Council Directive 96/82/EC of 9 December 1996 (as amended by Directive 2003/105/EC of 16 December 2003) on the control of major accident hazards involving dangerous substances

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
Article 12 (as amended)	To ensure that land use policies and the procedures for implementing them take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential areas/ public areas as well as the following extended categories: buildings in public use, major transport routes as far as possible, and recreational areas. This is with the overall aim of preventing major	This has already been implemented by the Planning (Control of Major Accident Hazards) Regulations (Northern Ireland) 2000 (SR.2000 No. 101) and the consent regime set out in the Planning (Northern Ireland) Order 1991 (1991 No. 1220 (N.I. 11), the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (SR 1993 No. 275) and the Planning (General Development) Order (Northern Ireland)	Firms storing or processing hazardous substances are required to apply for Hazardous Substances Consent. The Health and Safety Executive for Northern Ireland (HSENI) is the expert consultee on such applications. The Department of the Environment ensures that appropriate distances are maintained.

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
	accidents involving hazardous substances.	<p>1993 (SR 1993 No. 278). However, the new thresholds set out in Annex 1 to the Directive (as amended) determine the application of article 12 and so the implementation of both are linked.</p> <p>Regulation 2 amends the Planning (Development Plans) Regulations (Northern Ireland) 1991 (SR 1991 No. 119) to take account of the extended categories introduced by the amended article 12.</p>	
Annex 1 (as amended)	To set quantity thresholds for listed dangerous substances, at or above which consent must be obtained for the storage or processing of such substances. This is in order to ensure high levels of protection throughout the Community in a consistent and effective manner.	<p>Regulation 3 amends the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (SR 1993 No. 275) by updating Schedule 3 to those regulations to reflect the new lists and categories for dangerous substances as set out in the amended Annex 1 to Directive 96/82/EC. Regulation 3 also makes some minor amendments to reflect the substitution of the new Schedule 3.</p> <p>Transitional provision is made at regulation 4 for establishments with existing hazardous substances consents where the substances in question are renamed or re-categorised under these regulations. These consents will continue</p>	Firms storing or processing hazardous substances are required to apply for Hazardous Substances Consent. The Health and Safety Executive for Northern Ireland (HSENI) is the expert consultee on such applications. The Department of the Environment ensures that appropriate distances are maintained.

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
		<p>to have effect, notwithstanding the new thresholds in Annex 1 to the Directive (as amended), until varied by the Department.</p> <p>Transitional provision is made at regulation 5 to protect establishments which do not require consent before these regulations come into operation from prosecution and contravention proceedings for failing to have consent. A period of six months from the coming into operation of these regulations is allowed for the making of applications for consent.</p>	