

POLICY NOTE

THE TOWN AND COUNTRY PLANNING (HAZARDOUS SUBSTANCES) (SCOTLAND) AMENDMENTS REGULATIONS 2014

SSI 2014/51

Introduction

1. The above instrument was made in exercise of the powers conferred by section 3 of the Planning (Hazardous Substances) (Scotland) Act 1997. The instrument is subject to negative resolution procedure.

Policy Objectives

2. These Regulations amend the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 ('the 1993 Regulations'), to add "Heavy Fuel Oils" to the list of petroleum products in Part A of Schedule 1 to the Regulations. The effect of this change is to specify a significantly higher and more proportionate threshold quantity above which hazardous substances consent must be obtained from the Planning Authority. The changes are required to implement article 30 of European Directive 2012/18/EU (known as the 'SEVESO III' Directive) with respect to the Scottish planning system, and follows recognition in Europe that previous qualifying inventory thresholds in respect of Heavy Fuel Oils ('HFO') were unreasonable and needed to be rationalised.

Background

3. The SEVESO III Directive is concerned with the control of major-accident hazards involving dangerous substances; it aims to prevent major-accident hazards involving certain dangerous substances and limit their consequences for human beings and the environment. To achieve this, the Directive specifies certain substances as dangerous and sets threshold quantities for their presence that trigger various requirements for on-site safety measures, off-site emergency plans, and land use planning requirements.
4. Existing requirements are implemented in the main by the Control of Major Accident Hazards Regulations 1999 (COMAH Regulations), which apply on a GB wide basis and are enforced by HSE and, in Scotland, SEPA. Corresponding land use planning provisions are devolved, and in Scotland are given effect through the 1993 Regulations.
5. The 1993 Regulations therefore require sites with hazardous substances above certain threshold quantities to obtain a hazardous substances consent from the planning authority. They contain both individually named substances and generic categories of substances with threshold quantities triggering the need for Planning Hazardous Substances consent.

Article 30 of New Directive 2012/18/EU

6. Article 30 of the Seveso III Directive amends European Directive 96/82/EC by adding a new entry to Part 2 of Annex 1 to the Directive under the Petroleum Products heading. The effect of this change is to remove the uncertainty that previously existed as regards the appropriate qualifying quantities for heavy fuel, by specifying a significantly higher and more proportionate threshold quantity of 2,500 tonnes for the total amount of petroleum products, and more accurately reflecting the major-accident potential of HFO.

Currently, the absence of a specific entry for HFO means such substances come under the generic category of “dangerous for the environment” with a controlled quantity of only 100 tonnes.

7. In light of the above changes to European legislation, this instrument amends the schedule of named substances and controlled quantities in the 1993 Regulations to add “heavy fuel oils” to the named category of “Petroleum Products”. Provision is also made to confer transitional immunity from prosecution and contravention proceedings for a period of 6 months from the day these Regulations come into force. During that time, an application for consent may be made.

Consultation

8. The Health and Safety Executive (HSE) published a GB wide consultation paper setting out the changes required to COMAH regulations and to planning legislation on hazardous substances consent in the constituent parts of Great Britain. That paper was widely circulated including to industry and to Scottish planning authorities. A separate Scottish consultation was not considered necessary.

Impact Assessments

8. There are no equality impact issues arising, therefore an equalities impact assessment has not been undertaken.
9. As there is no likely significant effect on the environment, or on environmental issues, no Strategic Environmental Assessment (SEA) is required.
10. The changes will not require the use and/or storage of personal data, therefore, no Privacy Impact Assessment (PIA) is required.

Financial Effects

11. The Minister for Local Government and Planning confirms that no Business and Regulatory Impact Assessment is necessary, and any financial effects arising from this instrument are considered to be negligible.

Scottish Government

Directorate for Local Government and Communities

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