

TRANSPOSITION NOTE

LAND-USE PLANNING PROVISIONS IN DIRECTIVE 2012/18/EU ON THE CONTROL OF MAJOR-ACCIDENT HAZARDS INVOLVING DANGEROUS SUBSTANCES

This transposition note explains how the land-use planning requirements (articles 13 and 15) of Directive 2012/18/EU are implemented in Scotland. It also covers certain other requirements in so far as they relate to planning (articles 22, 23 and 28). A transposition note on the remaining provisions of the Directive is attached to the Explanatory Memorandum for the Control of Major Accident Hazards Regulations 2015.

Key

PHS Act – The Planning (Hazardous Substances) (Scotland) Act 1997

PHS Regs – Town and Country Planning (Hazardous Substances) (Scotland) Regs 2015

DP Regs – Town and Country Planning (Development Planning) (Scotland) Regs 2008

DM Regs – Town and Country Planning (Development Management Procedure) (Scotland) Regs 2013

Regulation(s) – a regulation(s) in the PHS Regs unless otherwise stated.

Article	Objective	Transposition
13(1) First paragraph	To ensure the objectives of preventing and limiting the consequences of major accidents are taken into account in planning and other relevant policies.	Regulations 3 and 10 of the DP Regs (as amended by paragraph 2 of Schedule 8 to the PHS Regs). Regulation 21.
13(1)(a)	To pursue the above objectives through controls on new hazardous establishments.	Section 2 of the PHS Act. Regulation 3 of and Schedule 1 to the PHS Regs. Regulation 13 of the Explosives Regulations 2014. Regulation 36 of the Dangerous Substances in Harbours Regulations 1987. Paragraph 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).
13(1)(b)	To pursue the above objectives through controls on modifications to hazardous	Section 2 of the PHS Act.

	establishments.	<p>Regulation 3 and Schedule 1 to the PHS Regs.</p> <p>Regulation 13 of the Explosives Regulations 2014</p> <p>Regulation 36 of the Dangerous Substances in Harbours Regulations 1987.</p> <p>Paragraph 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p>
13(1)(c)	To pursue the above objectives through controls on developments in the vicinity of hazardous establishments.	<p>Section 28 of the Town and Country Planning (Scotland) Act 1997.</p> <p>Paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p> <p>Regulation 23.</p>
13(2)(a)	To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of the need for safety distances between hazardous establishments and other land uses.	<p>Regulations 3 and 10 of the DP Regs (as amended by paragraph 2 of Schedule 8 to the PHS Regs).</p> <p>Paragraphs 3, 3A and 4 of the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p> <p>Regulations 3 (and Schedule 1), 14, 16, 21, 23.</p>
13(2)(b)	To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of the need to protect areas of natural sensitivity.	<p>Regulations 3 and 10 of the DP Regs (as amended by paragraph 2 of Schedule 8 to the PHS Regs).</p> <p>Paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p> <p>Regulations 3, 14, 16, 21, 23.</p>

13(2)(c)	To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of the need to take additional technical measures for existing establishments.	<p>Regulations 3 and 10 of the DP Regs (as amended by paragraph 2 of Schedule 8 to the PHS Regs).</p> <p>Paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p> <p>Regulations 3, 14, 16, 21, 23.</p>
13(3)	To ensure that appropriate consultation procedures are established to provide information on the risks arising from an establishment and that operators provide sufficient information on risks arising for land-use planning purposes.	<p>Regulations 6, 7, 8, 13, 14, 23, 30, 36 and 63 and paragraph 17 of Schedule 2 to the PHS Regs.</p> <p>Regulation 24 of and Paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p> <p>Schedules 3 and 5 to the Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Rules 2007 (as amended by paragraph 1 of Schedule 8 to the PHS Regs).</p>
13(4)	To clarify that the obligations above apply without prejudice to the Environmental Impact Assessment and Strategic Environmental Assessment directives and to allow Member States to provide coordinated or joint procedures.	No specific transposition of this provision is necessary.
15(1)(a)	To ensure the public concerned is given an early opportunity to give its opinion on individual projects on planning for new Establishments.	<p>Regulations 5, 9, 10, 14 and 23.</p> <p>Regulations 15, 18, 20, 21, 22 and 23 of and paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).</p>
15(1)(b)	To ensure the public concerned is given an early opportunity to give opinion on	Regulations 5, 9, 10, 14 and 23

	individual projects on significant modifications subject to planning controls.	Regulations 15, 18, 20, 21, 22 and 23 of and paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).
15(1)(c)	To ensure the public concerned is given an early opportunity to give opinion on individual projects on new developments around hazardous establishments.	Regulation 23. Regulations 15, 18, 20, 21, 22 and 23 of and paragraphs 3, 3A and 4 of Schedule 5 to the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).
15(2)	To ensure the public is informed by notices of certain specific information related to the projects in Article 15(1).	Regulations 5, 9, 10, 14 and 23. Regulation 20 of the DM Regs (as amended by paragraph 3 of Schedule 8 to the PHS Regs).
15(3)(a)	To ensure the main reports and advice available to the competent authority when public is notified is made available.	Regulations 23 and 41(the latter in combination with regulations 5, 9, 10 and 14).
15(3)(b)	To ensure other information is made available in accordance with the Directive on public access to environmental information.	Environmental Information (Scotland) Regulations 2004.
15(4)	To ensure the public concerned is able to express comments and that the results of consultations are taken into account.	Regulations 5, 9, 10, 14, 15, 17 and 23
15(5)	To ensure that the content of, and reasons for the decision, and the results of consultations, are made available to the public.	Regulations 18, 23, 38 and 41.
15(6)	To ensure the public is given early and Effective opportunities to comment on relevant plans and programmes.	Regulation 22.
15(7)	Detailed arrangements for public consultation should be determined by Member States and that reasonable timeframes should be provided.	As specified above.
22	Access to Information and Confidentiality	Environmental Information (Scotland) Regulations 2004.
23	Access to Justice	Regulation 57.
28	Penalties	Regulation 50.