

2014 No. 162

HEALTH AND SAFETY

TOWN AND COUNTRY PLANNING, ENGLAND

The Heavy Fuel Oil (Amendment) Regulations 2014

Made - - - - 28th January 2014

Laid before Parliament 30th January 2014

Coming into force - - 20th February 2014

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) in relation to measures relating to the prevention and limitation of the effects of accidents involving dangerous substances(b).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 15(1) and (2) of, and paragraph 1(1)(b) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(c) (“the 1974 Act”), sections 5 and 40 of the Planning (Hazardous Substances) Act 1990(d) (“the 1990 Act”) and section 2(2) of the 1972 Act.

In doing so the Secretary of State gives effect without modifications to proposals submitted to him by the Health and Safety Executive under section 11(3) of the 1974 Act after consulting in accordance with section 50(3) of that Act.

Citation and commencement

1. These Regulations may be cited as the Heavy Fuel Oil (Amendment) Regulations 2014 and come into force on 20th February 2014.

Amendment to the Control of Major Accident Hazards Regulations 1999

2. In Part 2 of Schedule 1 to the Control of Major Accident Hazards Regulations 1999(e), in column 1 of the table under the entry relating to petroleum products, after “(c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)”, insert—

(a) 1972 c.68; section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The power of Ministers to make regulations in relation to matters in or regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c.46).

(b) S.I. 1998/1750.

(c) 1974 c.37; section 11(3) was inserted by S.I. 2008/960; section 15(1) was inserted by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 6, and also amended by S.I. 2002/794; section 50(3) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 16, the Health and Social Care Act 2012 (c.7), Schedule 7, paragraph 6, and also by S.I. 2008/960.

(d) 1990 c.10; section 40 was amended by the Planning and Compulsory Purchase Act 2004 (c.5), Schedule 6, paragraph 27.

(e) S.I. 1999/743, amended by S.I. 2005/1088.

“(d) heavy fuel oils”.

Amendment to the Planning (Hazardous Substances) Regulations 1992

3.—(1) In Part A of Schedule 1 to the Planning (Hazardous Substances) Regulations 1992^(a) (“the 1992 Regulations”), in column 1 of the table under entry 36 relating to petroleum products, after “(c) gas oils (including diesel fuels, home heating oils and gas oil blending streams)”, insert—

“(d) heavy fuel oils”.

(2) In relation to—

- (a) any hazardous substances consent granted or deemed to have been granted before the relevant date;
- (b) any application for hazardous substances consent made before the relevant date;
- (c) any hazardous substances consent granted in respect of an application of the type mentioned in paragraph (2)(b);
- (d) any appeal under section 21 of the 1990 Act to which an application of the type mentioned in paragraph (2)(b) relates;
- (e) any proceedings in relation to an offence under section 23 of the 1990 Act committed before the relevant date;
- (f) any hazardous substances contravention notice issued by a hazardous substances authority before the relevant date;
- (g) any action started or anything done in relation to any matter mentioned in sub-paragraphs (a) to (f) before the relevant date,

the 1992 Regulations continue to apply without the amendment made in paragraph (1).

(3) In paragraph (2), “the relevant date” means the day on which this regulation comes into force.

(4) This regulation applies in England only.

Review

4.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulation 2 of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Article 30 of Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances^(b) (“the Directive”) is implemented in other member states.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by Article 30 of the Directive and by regulation 2 of these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(a) S.I. 1992/656, amended by S.I. 2009/1901; there are other amending instruments but none is relevant.

(b) O.J. No. L 197, 24.7.2012, p.1.

(5) Reports under this regulation must afterwards be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Work and Pensions

28th January 2014

Mike Penning
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 30 of Directive 2012/18/EU of the European Parliament and of the Council on the control of major accident hazards involving dangerous substances (O.J. No. L 197, 24.7.2012, p.1) (the “Seveso III Directive”).

Article 30 of the Seveso III Directive deals with uncertainty in relation to the correct classification of heavy fuel oils, by adding heavy fuel oils to the table in Part 2 of Annex 1 to Council Directive 96/82 (O.J. No. L 10, 14.1.1997, p. 13) as amended by Directive 2003/105 of the European Parliament and of the Council (O.J. No. L 345, 31.12.2003, p.97) (the “Seveso II Directive”) under the heading Petroleum Products with qualifying quantities of 2,500 tonnes for column 2 and 25,000 tonnes for column 3. This removes the uncertainty that existed as regards the appropriate qualifying quantities for heavy fuel oils for the purposes of implementing Seveso II.

Regulation 2 of these Regulations amends the Control of Major Accident Hazards Regulations 1999 (the “1999 Regulations”) by adding heavy fuel oils to the list of named substances in Part 2 of Schedule 1 to the 1999 Regulations. The effect of this is that an establishment where heavy fuel oils are present in a quantity equal to, or exceeding the qualifying quantity in column 2 (2,500 tonnes) becomes subject to the 1999 Regulations and an establishment where heavy fuel oils are present in a quantity equal to, or exceeding the quantity in column 3 (25,000 tonnes) becomes subject to additional requirements as set out in regulation 3(1) of the 1999 Regulations.

Regulation 3 amends the Planning (Hazardous Substances) Regulations 1992 (the “1992 Regulations”) and makes a similar amendment by adding heavy fuel oils to the list of named substances in Part A of Schedule 1 to the 1992 Regulations. The effect of this is that an establishment where heavy fuel oils are present in a quantity equal to, or exceeding the controlled quantity (2,500 tonnes) becomes subject to the 1992 Regulations. It also makes saving provision to ensure that existing hazardous substances consents and other specified matters are not affected by the amendment.

Regulation 4 requires the Secretary of State to review the operation and effect of regulation 2 of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether these Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke these Regulations or to amend them.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Health and Safety Executive, Redgrave Court, Merton Road, Merseyside, L20 7HS and is available in the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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£4.00

UK2014012825 02/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/162>

ISBN 978-0-11-110895-6



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