
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate, with amendments, the Planning (Hazardous Substances) Regulations 1992 (S.I. 1992/656) and subsequent amending instruments insofar as they apply to Wales. They also include provision relating to the period for determination of procedure under sections 20 and 21 of the Planning (Hazardous Substances) Act 1990 (“the PHSA”).

These Regulations also implement the land-use aspects of Directive 2012/18/EU of the European Parliament and 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”). That Directive amends and repeals Council Directive 96/82/EC. In order to fully implement those requirements, parts of regulations 24 and 26 of the Planning (Hazardous Substances) Regulations 2015 (S.I. 2015/627) apply to Wales. They apply to the extent that they relate to non-devolved infrastructure planning matters. The non-planning aspects of the Seveso III Directive are implemented through The Control of Major-Accident Hazards Regulations 2015 (S.I. 2015/483).

Consequently the following Regulations are revoked so far as they apply to Wales:

- (1) The Planning (Hazardous Substances) Regulations 1992;
- (2) The Planning (Control of Major-Accident Hazards) Regulations 1999 (S.I. 1999/981);
- (3) Regulation 10 of The Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006 (S.I. 2006/1282);
- (4) The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2010 (S.I. 2010/450 (W. 48));
- (5) The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2014 (S.I. 2014/375 (W. 43)); and
- (6) The Planning (Hazardous Substances) (Determination of Procedure) (Prescribed Period) (Wales) Regulations 2014 (S.I. 2014/2777 (W. 283)).

The main changes in these Regulations are as follows—

- (1) existing exemptions to the requirement to obtain hazardous substances consent are extended in regulation 4 and Schedule 2;
- (2) a new exemption to the requirement for hazardous substances consent in the case of certain minor changes is provided for in regulation 4 and paragraphs 16 and 17 of Schedule 2;
- (3) the prescribed form for making an application for consent is replaced with a list of information required by regulation 5;
- (4) public participation in the hazardous substances consent regime is enhanced in regulations 6, 7, 10, and 11(2);
- (5) regulation 13 provides that a 6 month time limit to appeal under section 21 of the PHSA applies only to appeals under section 21(1);
- (6) there is a requirement on the Welsh Ministers in regulation 26 to take into account, in their national land-use planning, transport route and fishery harbour policies, certain objectives and other considerations which relate to the prevention of major accident-hazards and the limitation of the consequences of such accidents for human health and the environment;
- (7) there are public consultation requirements in regulation 27 for general plans and programmes which relate to planning for new hazardous substances establishments, where the siting or development may increase the risk or consequences of a major accident. These requirements

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Changes to legislation: There are currently no known outstanding effects for the The Planning (Hazardous Substances) (Wales) Regulations 2015. (See end of Document for details)

do not apply to plans and programmes which are subject to public participation under Part 3 of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (S.I. 2004/ 1656 (W. 70));

- (8) there are new requirements for public consultation before decisions are made on development around hazardous substances establishments in regulation 28 where the siting or development may be the source of or increase the risk or consequences of a major accident;
- (9) the list of substances controlled has changed in Schedule 1 and the controlled quantities in Schedule 1 are aligned with those establishments referred to as “tier 1” in the Seveso III Directive, (except the quantities for hydrogen and certain liquefied flammable gases); and
- (10) in Part 3 of Schedule 1 there are controls on substances that could be generated by the loss of control of an industrial process where it is reasonable to foresee that a hazardous substance might be generated.

These Regulations apply to Wales and set out—

- (1) in Part 2 and Schedule 1, the substances which are hazardous substances for the purposes of the Act, the controlled quantities of those substances;
- (2) in Part 2 and Schedule 2, exemptions from the need for hazardous substances consent;
- (3) in Part 3 and Schedule 3, the procedures to be followed for an application for hazardous substances consent;
- (4) in Part 4 and Schedule 4, provisions relating to hazardous substances contravention notices, including appeals against them, their effect and a requirement on hazardous substances authorities to maintain a register of them;
- (5) in Part 5, other matters relating to hazardous substances consent, including the information to be held in a consents register, the fees required in connection with an application for hazardous substances consent and deemed applications, how hazardous substances control applies to hazardous substances authorities and notification requirements on hazardous substances authorities and the COMAH competent authority (being either HSE, or the Office for Nuclear Regulation, and the Natural Resources Body for Wales) relating to claims for exemption for the presence of established substances;
- (6) in Part 6, the obligation to take certain matters in the Seveso III Directive into account in land-use planning, transport route and fishery harbour policies; public consultation and participation obligations in relation to certain plans, programmes and projects; and
- (7) in Part 7 and Schedule 5, revocations, amendments, savings, transitional provisions and application to the Crown.

A regulatory impact assessment has been prepared in relation to this Order. Copies may be obtained from Planning Division, the Welsh Government at Cathays Park, Cardiff, CF10 3NQ and on the website at <https://www.wales.gov>.

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