

**EXPLANATORY MEMORANDUM TO**  
**The Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland)**  
**2015**

**S.R 2015 No. 344**

**1. Introduction**

1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule 2015 No. 344 which is laid before the Northern Ireland Assembly.

1.2 The Statutory Rule is made under section 2(2) and paragraph 1A of Schedule 2 to the European Communities Act 1972 and by sections 8(5)(c), 9(6)(c), 108(4) and (5), 109(1), (2) and (4), 111, 115(7), 116(3), 162(4), (10) and (12), 223 and 247(1) of the Planning Act (Northern Ireland) 2011 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 16th October 2015.

**2. Purpose**

2.1 These Regulations revoke and replace the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (“the 2015 Regulations”). They are being made to implement Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (“the Seveso III Directive”) in respect of the land-use planning in Northern Ireland.

**3. Background**

3.1 The Seveso III Directive aims to prevent major-accidents involving dangerous substances and to limit the consequences of such accidents for human health and the environment. It is the latest in a series of Directives on this issue. The bulk of the Directive’s requirements are implemented by the Control of Major-Accident Hazards Regulations 2015 which are the responsibility of the Health and Safety Executive for Northern Ireland (HSENI). Those Regulations cover issues such as on site safety managements, safety reports, emergency plans and inspection regimes.

3.2 The main changes made by the Seveso III Directive in relation to land-use planning are the result of changes in the European chemical classification system<sup>1</sup>. The Seveso III Directive therefore includes an updated list of controlled substances based on the new European classification system. The

---

<sup>1</sup> On 1 June 2015, the hazard-based classification for chemicals upon which the scope of Seveso II was based was replaced by the new direct-acting European Classification, Labelling and Packaging Regulations (Regulation 1272/2008). This new classification system brings greater alignment with the United Nations international chemicals classification (Globally harmonised System), and as such is expected to bring trade benefits to industry.

Seveso III Directive also changes and supplements existing procedural requirements in relation to planning for sites where hazardous substances are held and land near those sites. Some of these requirements have the aim of bringing procedures into line with the public participation requirements of the Aarhus Convention<sup>2</sup>.

3.3 These Regulations transpose those updates and changes. In transposing the Seveso III Directive the policy objective is to meet its requirements whilst minimising costs to business and administrative burdens on the regulatory bodies responsible for implementing it.

3.4 Where existing domestic controls go beyond the requirements of the Seveso III Directive without good reason, these Regulations reduce them. Minor changes to the types and quantities of substances held will be able to be made where such changes would not result in significant consequences for major-accident hazards and public safety controls will be maintained. In certain cases the controls under these Regulations go beyond the Seveso III Directive. For three substances, liquefied petroleum gas, natural gas and hydrogen, the existing more stringent domestic controls are being maintained to ensure there is not a reduction in public safety.

#### **4. Consultation**

4.1 The Department consulted on its proposals for transposition over a six-week period ending on 11th June 2015. There were 5 substantive responses and 2 respondents welcomed the opportunity to respond but had no further comment. There was general approval and acceptance for the proposed approach to transposition of the land-use planning requirements of the Seveso III Directive. A consultation analysis will be published shortly after these Regulations are laid and placed on the Planning NI website at [http://www.planningni.gov.uk/index/news/doe\\_planning\\_news/news\\_consultation-2/consultation-amendment-hazardous-substances-regulations-010515.htm](http://www.planningni.gov.uk/index/news/doe_planning_news/news_consultation-2/consultation-amendment-hazardous-substances-regulations-010515.htm)

#### **5. Equality Impact**

5.1 An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any Section 75 categories.

#### **6 Regulatory Impact**

6.1 A Regulatory Impact Assessment accompanies this memorandum at Annex 2.

#### **7. Financial Implications**

---

<sup>2</sup> The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the “Aarhus Convention”.

7.1 Establishments that are classed as “new establishments” under the Directive will require hazardous substances consent. These are establishments that are constructed or come into operation after 1 June 2015 or are subject to certain modifications after that date. The fee for a new hazardous substances consent is £340.

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

8.1 The Statutory Rule does not discriminate on grounds of religious belief or political opinion nor does it modify the European Communities Act, the Human Rights Act 1998 or any statutory provisions listed in section 7 of the 1998 Act.

## **9. EU Implications**

9.1 A transposition note is attached as Annex 1 to this Explanatory Memorandum.

## **10. Parity or Replicatory Measure**

10.1 There are no parity or replicatory issues. The other UK jurisdictions have introduced similar planning legislation.

## **11. Additional Information**

11.1 Joe Torney at the Department of the Environment Tel: 02890 823535 or e-mail: Joe.Torney@doeni.gov.uk can answer any queries regarding the new regulations.

## Annex 1

### TRANSPOSITION NOTE

This transposition note has been prepared by the Department of the Environment to explain how the land-use planning requirements (Articles 13 and 15) of Directive 2012/18/EU have been transposed in relation to land-use planning by the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (S.R.2015 No. xx).

#### **Council Directive 2012/18/EU of 4 July 2012) on the control of major accident hazards involving dangerous substances**

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
Article 13(1) First paragraph	To ensure that the objectives of preventing and limiting the consequences of major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in planning and other relevant policies.	Regulation 14 of the Planning (Local Development Plans) Regulations (Northern Ireland) 2015 (“ <b>the LDP Regulations</b> ”) as amended by Regulation 28 of the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015 (“ <b>the No. 2 Regulations</b> ”).  Regulation 17 of the No. 2 Regulations.	Councils and the Department of the Environment (“DOE”)
Article 13(1)(a)	To pursue the above objectives through controls on new hazardous substances establishments	Section 108 of the Planning Act (Northern Ireland) 2011 (“ <b>the 2011 Act</b> ”)  Regulation 3 of and Schedule 2 to the No. 2 Regulations.  Regulation 11 of The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006.  Regulation 2 of the Explosives in Harbour Areas Regulations (Northern Ireland) 1995  Section 24 of the 2011 Act, and Schedule 3 Part 1 paragraph 2(b) and Part 2 Paragraph 2(b) to the Planning (General Development Procedure) Order (Northern Ireland) 2015 (“ <b>the GDPO</b> ”)as amended by Regulation 27 of the No. 2 Regulations.	Councils, DOE, the Health and Safety Executive for Northern Ireland (HSENI), the Department of Justice for Northern Ireland (DoJ)

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
Article 13 (1)(b)	To pursue the above objectives through controls on modifications to hazardous substances establishments	<p>Section 108 of the 2011 Act.</p> <p>Regulation 3 of and Schedule 2 to the No. 2 Regulations.</p> <p>Regulation 11 of The Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006.</p> <p>Regulation 2 of the Explosives in Harbour Areas Regulations (Northern Ireland) 1995.</p> <p>Section 24 of the 2011 Act, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) to the GDPO as amended by Regulation 27 of the No. 2 Regulations.</p>	Councils, DOE and HSENI
Article 13(1)(c)	To pursue the above objectives through controls on developments in the vicinity of hazardous substances establishments	<p>Section 24 of the 2011 Act.</p> <p>Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.</p> <p>Regulation 19 of the No. 2 Regulations.</p>	Councils and DOE
Article 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 substances establishments and other land uses	<p>Regulation 14 of the LDP Regulations as amended by Regulation 28 of the No.2 Regulations.</p> <p>Regulations 11, 17 and 19 of the No. 2 Regulations.</p> <p>Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.</p>	Councils and DOE
Article 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>Regulation 14 of the LDP Regulations as amended by Regulation 28 of the No.2 Regulations.</p> <p>Regulations 11, 17 and 19 of the No. 2 Regulations.</p>	Councils and DOE

ARTICLE	PURPOSE	IMPLEMENTATION	RESPONSIBILITY
		Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.	
Article 13(2)(c)	To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of additional technical measures for existing establishments	<p>Regulation 14 of the LDP Regulations as amended by Regulation 28 of the No.2 Regulations.</p> <p>Regulations 11, 17 and 19 of the No. 2 Regulations.</p> <p>Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.</p> <p>Section 112 of the 2011 Act.</p>	Councils and DOE
Article 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 5, 11, 19, and 26 of the No. 2 Regulations.</p> <p>Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.</p>	Councils and DOE
Article 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.	

<b>ARTICLE</b>	<b>PURPOSE</b>	<b>IMPLEMENTATION</b>	<b>RESPONSIBILITY</b>
Article 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	Regulations 6, 7, 8, 11 and 19 of the No. 2 Regulations  Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.	Councils and DOE
Article 15(1)(b)	To ensure the public concerned is given an early opportunity to give opinion on individual projects on significant modifications subject to planning controls	Regulations 6, 7, 11 and 19 of the No. 2 Regulations  Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.	Councils and DOE
Article 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	Regulations 6, 7, 11 and 19 of the No. 2 Regulations  Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.	Councils and DOE
Article 15(2)	To ensure the public is informed by notices of certain specific information related to the projects in 15(1)	Regulations 6, 7 and 19 of the No. 2 Regulations	Councils and DOE
Article 15(3)(a)	To ensure the main reports and advice available to the competent authority when public is notified is made available	Regulations 8 and 19 of the No. 2 Regulations	Councils and DOE
Article 15(3)(b)	To ensure other information is made available in accordance with the directive on public access to environmental information	Environmental Information Regulations 2004, Part 2	Public authorities, including councils

<b>ARTICLE</b>	<b>PURPOSE</b>	<b>IMPLEMENTATION</b>	<b>RESPONSIBILITY</b>
Article 15(4)	To ensure the public concerned is able to express comments and that the results of consultations are taken into account	Regulations 12 and 19 of the No. 2 Regulations.	Councils and DOE
Article 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 12 and 19 of the No. 2 Regulations.	Councils and DOE
Article 15(6)	To ensure the public is given early and effective opportunities to comment on relevant plans and programmes	Regulation 18 of the No. 2 Regulations.	Responsible authorities , including councils and DOE
Article 15(7)	To ensure that detailed arrangements for public consultation should be determined by Member States and that reasonable timeframes should be provided.	Regulations 6, 7, 8, 11 and 19 of the No. 2 Regulations  Schedule 3 Part 1 paragraph 2(a) and part 2 paragraph 2(a) to the GDPO, and Schedule 3 Part 1 paragraph 2(b) and Part 2 paragraph 2(b) as amended by Regulation 27 of the No. 2 Regulations.	Councils and DOE

### Regulatory Impact Assessment

#### 1. Title of Proposal

The Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015.

#### 2. Purpose and Intended Effect

##### (i) The Objective

The objective is to transpose Directive 2012/18/EU<sup>3</sup> (“the Seveso III Directive”) on the control of major-accident hazards involving dangerous substances in respect of land-use planning in Northern Ireland. The Seveso III Directive has replaced Directive 96/82/EC<sup>4</sup> (“the Seveso II Directive”). The main aim of the Seveso III Directive is the prevention of major accidents which might result from certain industrial activities and the limitation of their consequences for human health and the environment.

##### (ii) The Background

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 (“the 2015 Regulations”) ensured the continuation of the planning hazardous substances consent regime under the new two-tier planning system which transferred planning powers to councils from 1st April 2015. They will require amendment in respect of the requirements of the Seveso III Directive.

##### (iii) The proposed change

The changes that are being proposed are:

- A new schedule of substances and thresholds requiring hazardous substances consent and related transitional arrangements regarding consents.

---

<sup>3</sup> O.J. L.197, 24.7.2012, p1

<sup>4</sup> O.J. L.10, 14.1.1997,p.13 Directive 96/82/EC was amended by Directive 2003/105/EC O.J L 345, 31.12.2003, p.97

- Amendment of application and appeal procedures for hazardous substances consent and for other planning decisions within scope of the Directive to reflect public participation requirements.

#### **(iv) Risk assessment**

Failure to amend the legislation would mean that the current hazardous substances consent regime would not be fully compliant with the Seveso III Directive.

### **3. Options**

#### **Option 1: Do Nothing**

This is not a realistic option. Failure to make the amendment would mean that NI planning legislation would not comply with Directive 2012/18/EU. The UK as the Member State could then be subject to infraction proceedings by the EU and ultimately by the European Court of Justice which could result in financial penalties on the UK to be met by the NI Executive.

#### **Option 2: Amend the Regulations**

This option was preferred at consultation stage as it was considered to be the best way to ensure that the Seveso III Directive is transposed in respect of land-use planning in Northern Ireland. It would have resulted in an additional statutory rule containing the amendments.

#### **Option 3: Revoke and Replace the 2015 Regulations**

This option came into consideration post-consultation when it became evident that the 2015 Regulations would require extensive textual amendment in order to effect transposition. It is regarded as the better legislative option and improves access by having all of the provisions in a single statutory rule.

### **4. Costs & Benefits**

#### **Option 1: Do Nothing**

There are no benefits to this option. Costs could be substantial as failure to amend the Regulations would eventually result in infraction proceedings and subsequent heavy fines by the EU for non-compliance.

### **Option 2: Amend the 2015 Regulations**

This would ensure transposition and avoid EU infraction fines but would split the relevant provisions across two statutory rules, the 2015 Regulations and an amendment rule. That could make it harder for users to understand what the law entails and is not considered to be good legislative practice.

### **Option 3: Revoke and Replace the 2015 Regulations**

This will ensure transposition and avoid EU infraction fines, while also improving access for users in accordance with best practice.

## **5. Business Sectors Affected**

These regulations will affect all businesses which currently hold or propose to hold hazardous substances at or over the thresholds defined in the Directive. However establishments which already have consent will not have to apply for a new consent simply because, for example, there have been changes to the way a hazardous substance is classified in the Directive. Operators with an existing consent, where there has been no change to the way the Directive requires the consented substances to be controlled, can continue to operate in the same way using their existing consent.

## **6. Small Firms Impact Test**

The Regulatory Impact to the 2015 Regulations indicated that they are unlikely to apply to small firms due to the nature of the substances that are subject to control. There is no reason to conclude that this would differ in respect of the changes arising from the Seveso III Directive. Neither HSENI nor DOE have specific information on the number of sites in Northern Ireland that are likely to be affected by the Seveso III Directive, but HSE research estimated that across the UK 13 establishments might come into the scope of the Directive for the first time and HSENI consider that this research can apply proportionately to

Northern Ireland. The Directive's requirements apply equally to all affected businesses.

## **7. Enforcement and Sanctions**

Part 5 of the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015 and Part V (section 117) of the Planning Act (Northern Ireland) 2011 have provisions for enforcement and sanctions.

## **8. Equality Impact Assessment**

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

## **9. Health Impact**

DOE does not anticipate any change in risk to health.

## **10. Human Rights Assessment**

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

## **11. Monitoring and Review**

The 2015 Regulations were to be monitored along with the other subordinate legislation introduced to facilitate the transfer of planning functions to councils in April 2015. The replacement of those Regulations by the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015 will allow for the transposition of the Seveso III Directive to be encompassed in that review.

## **12. Consultation**

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

These proposals have been drawn up in discussion with the HSENI and colleagues from the other UK planning administrations in England, Scotland and Wales

## **(ii) Public Consultation**

A full public consultation on the proposed amendment of the 2015 Regulations to transpose the Seveso III Directive was carried out over a six- week period ending on 11th June 2015. A partial Regulatory Impact Assessment formed part of that consultation. The Consultation Paper was sent to a wide range of bodies on the Department's standard consultation list as well as to operators and industry representative bodies. It was also advertised in local newspapers and on the Department's website. There were 5 substantive responses and 2 respondents welcomed the opportunity to respond but had no further comment. There was general approval and acceptance for the proposed approach to transposition of the land-use planning requirements of the Seveso III Directive.

## **13. Summary and Recommendation**

Option 3 is the recommended option as it is the only option which ensures full compliance with the Seveso III Directive and complies with best legislative practice regarding accessibility.

## **14 Declaration**

Signed by a Senior Officer of the Department of the Environment



**Angus Kerr**

Date 24th September 2015