

EXPLANATORY MEMORANDUM TO
THE PLANNING (HAZARDOUS SUBSTANCES) REGULATIONS (NORTHERN
IRELAND) 2015

S.R. 2015 No. 61

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 108, 109, 111, 115, 116, 223 and 247 of the Planning Act (Northern Ireland) 2011 (the 2011 Act), and is subject to negative resolution procedure before the Assembly.

2. Purpose

- 2.1 The Statutory Rule transfers to the new councils the same range of provisions relating to hazardous substances that are currently available to the Department under the Planning (Hazardous Substances) Regulations (NI) 1993.

3. Background

- 3.1 Section 108 of the 2011 Act provides that the presence on, over or under land, of a hazardous substance equal to or in excess of the controlled quantity (as specified in Regulations) requires the consent of the council.
- 3.2 The Regulations specify the substances which are hazardous substances for the purposes of the 2011 Act and the controlled quantities of those substances. They also lay down the procedure for applications for consent, determination of applications, including where the council itself is the applicant for hazardous substances consent and applications that may be called-in by the Department.
- 3.3 In addition they make provision for hazardous substances contravention notices, specify matters to be included in such notices and apply certain provisions of the 2011 Act with modifications to appeals against such notices, penalties for non-compliance, works required by and the effect of such notices.

4. Consultation

- 4.1 The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between

28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation. The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 was one of those Statutory Rules.

5. Equality Impact

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have implications for equality of opportunity. The measures will not affect any group disproportionately.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment carried out in respect of the changes to applications for hazardous substances consent indicated that the proposals would not impose any significant costs to business or the voluntary sector.

7. Financial Implications

7.1 The financial implications of the move to the new two-tier planning system have been addressed in the financial package being transferred to the new councils.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the proposed Regulations are compatible with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1 The Regulations secure compliance with Council Directive 96/82/EC, as amended by Council Directive 2003/105/EC on the control of major accident hazards involving dangerous substances.

10. Parity or Replicatory Measure

10.1 Equivalent Regulations have been made in England and Wales and have been in force since 1992. In Scotland equivalent Regulations came into force in 1993. Both sets of Regulations, as has been the case over the years to secure compliance with EU Directives on case in Northern Ireland, been subject to amendment controls over hazardous substances.

REGULATORY IMPACT ASSESSMENT Hazardous Substances

1. Title of Proposal

The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015

2. Purpose and intended effect of measure

i) The objective:

The main objective of the Statutory Rule is to provide a framework for councils to process applications for hazardous substances consent and take enforcement action against breaches of hazardous substances consent. The Regulations specify hazardous substances and controlled quantities, exemptions from the requirement for consent, and the associated forms for making applications for hazardous substances consent. The Regulations also prescribe how councils' own applications for hazardous substances consent shall be dealt with.

The proposed Regulations will only affect Northern Ireland.

ii) The background:

The new draft Regulations are required as a direct consequence of the introduction of the two tiered planning system introduced in the Planning Act (Northern Ireland) 2011 which comes into operation in 2015 with the transfer of most planning functions to councils.

iii) Risk Assessment and Rationale for Government Intervention:

The draft Regulations provide a framework for protecting the environment and heritage and contribute to sustainable development. They also provide the necessary safeguards to protect the integrity of the planning process by ensuring that councils own applications for hazardous substances consent can be scrutinized, where appropriate, by the Department.

3. Options Appraisal

Option 1 – Do Nothing

The current provisions in the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 continue to apply. This is not considered an appropriate option as it fails to achieve the Department's objective of reforming the planning process by transferring the majority of planning functions to local government.

Option 2 - Introduce new Regulations

Chapter 2 of Part 4 (Additional Planning Control) of the Planning Act (Northern

Ireland) 2011 provides that applications for hazardous substances consent shall be made to a council. As the enabling provision (section 109) in the Planning Act (Northern Ireland) 2011 mirrors that (section 7) in the Planning (Hazardous Substances) Act 1990 in England and Wales it is considered appropriate to introduce Regulations to apply to Northern Ireland similar to those which apply in England and Wales.

4. Costs and Benefits

Unlikely to be any compliance costs over and above those which already apply in respect of the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993.

Option 1: Do Nothing

There are no additional economic benefits or costs. Doing nothing is not considered an appropriate option as there needs to be a level of control exercised over applications for hazardous substances.

Option 2: Introduce new Regulations

Control over hazardous substances consent applications is required to safeguard the integrity of the environment and built heritage. Departmental control over councils own applications for hazardous substances consent will provide transparency and safeguard the integrity of the planning process by allowing the Department, where appropriate, the opportunity of calling in councils own applications for determination.

5. Sectors and Groups Affected

The main sectors and groups affected are the district council and those individuals or groups who apply for planning permission for hazardous substances consent.

6. Enforcement and Sanctions

The council's enforcement regime will operate in the same way as that which the Department currently applies. Available sanctions include powers to compel developers to submit an application for works which require hazardous substances consent, and powers to serve a hazardous substances contravention notice in respect of works which are unacceptable. All such sanctions are subject to the right of appeal by the affected developer.

7. Consideration of Impacts

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.

Health Impact

No impact on health has been identified associated with compliance with the Regulations.

Small Firms Impact Test

The proposed Regulations are unlikely to apply to small firms due to the nature of the substances that are subject to control.

Human Rights Assessment

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

Rural Impact Assessment

There will be no significant differential impact of the Regulations between urban and rural areas because of the nature of the substances that are subject to control.

8. Monitoring and Review

The introduction of the new two tiered planning regime will require to be monitored to determine whether the aims of introducing the new Regulations are met. The overarching aim has been to safeguard the environment and built heritage by ensuring that the storage of hazardous substances are subject to adequate controls, and where appropriate can be scrutinized by the Department. In this context the new Regulations will be the subject of future review, when the new Regulations have had an opportunity to bed down following transfer of planning powers to district councils in 2015.

9. Consultation

The Department consulted on its "Planning Reform & Transfer to Local Government Proposals for Subordinate Legislation Phase 1" between 28 May 2014 and 20 August 2014. In the consultation document the Department indicated that it will also take forward a range of technical Statutory Rules which are needed to take account of the new two-tier planning model. These SRs will all be subject to the full scrutiny of the Assembly as part of the legislative process but as they do not involve new policies or significant changes to existing policies they are not being made subject to public consultation. The Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 was one of those Statutory Rules.

10. Summary and Recommendations

Option 2 is the recommended option as it will provide an opportunity for councils to control the storage of hazardous substances to protect the integrity of the environment and built heritage.

Declaration:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by a senior officer of the Department of the Environment.



Date: 16th February 2015

Angus Kerr
Planning Policy Division
Department of the Environment
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG