

Final Business and Regulatory Impact Assessment

Title of Proposal

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

Implementation of the land use planning aspects of the EU Directive, 2012/18/EU (the Seveso III Directive) on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (the Seveso II Directive)

Purpose and intended effect

- **Background**

EU Directive 2012/18/EU (the Seveso III Directive) on the control of major accident hazards involving dangerous substances (referred to as hazardous substances in domestic planning legislation) is to be transposed into law by 1 June 2015. The objective of the Directive is the prevention of major accidents which involve dangerous substances and the limitation of their consequences for human health and the environment, with a view to ensuring a consistently high level of protection throughout the European Union. The Directive replaces EU Directive 96/82/EC (the Seveso II Directive).

The main reason for the Directive is to address changes in the EU chemical classification system. At the same time, the opportunity has been taken to bring the Directive in line with other European environmental legislation, by including wider public information provisions in accordance with the UNECE Aarhus Convention¹.

Implementation of the Directive is being taken forward primarily through the Control of Major Accident Hazard (COMAH) Regulations 2015². These regulations will apply to the whole of the Great Britain (Northern Ireland has separate regulations) and in Scotland will be enforced by the Health and Safety Executive (HSE) and the Scottish Environmental Protection Agency (SEPA). Those regulations will deal with on-site safety measures, requirements for the inspection of sites and the preparation of site safety plans and emergency plans.

Land use planning aspects of the Directive are however being taken forward through town and country planning legislation. Since planning is a devolved

¹ the United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental matters. <http://www.unece.org/env/pp/treatytext.html>

² Regulations due into force 1st June 2015. Further information available from the Health and Safety Executive.

matter, in Scotland it is proposed to give effect to land use planning elements through the new Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 ('the 2015 regulations') also due into force on 1st June 2015.

Currently, land use planning requirements of the Seveso II Directive are mainly implemented in Scotland through the Planning (Hazardous Substances) (Scotland) Act 1997 (the 'PHS Act') and the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (the 'PHS Regulations'). Under this legislation the presence of substances listed in the PHS Regulations at or above set thresholds requires hazardous substances consent from the planning authority. The planning authority in consultation with HSE, SEPA and other statutory agencies must consider the potential risks associated with the presence of the substances, and the potential impacts on existing and proposed surrounding land uses. Application procedures include public engagement and opportunities for public representations to be considered prior to determination.

If consent is granted then a consultation zone is set by the HSE around the site. This consultation zone triggers a requirement for the planning authority to consult with HSE and others when considering certain planning applications for development that fall within a consultation zone. This procedure allows the impacts of the presence of hazardous substances for human health and the environment to be assessed when proposals for future development are considered and Development Plans formulated.

- **Objective**

Scotland already has a robust system in place for preventing major accident hazards through the existing PHS consent regime and the wider planning system. The Directive does not require fundamental changes to this existing regime.

Where changes are proposed, they are to accommodate revisions in the Directive to the classification of hazardous substances, and changes to strengthen existing provisions for public participation. The opportunity has also been taken to consolidate and generally update aspects of the domestic regulations on hazardous substances consent application and appeal procedures. The main Scottish policy objectives to implement the land use planning aspects of the Directive are to ensure:

- changes that are required are implemented in a way that is clear, coherent and easy to understand;

- changes do not place a disproportionate burden on industry, regulators or other stakeholders; and

- high levels of protection for human health and the environment are maintained as regards major accident hazards involving specified dangerous substances.

- **Rationale for Government intervention**

All EU member states are required to comply with the Directive by 1 June 2015 as outlined in Article 31 of the Directive. Whilst the UK is a member state in this respect, responsibility for transposition of the land use planning elements of the Directive is devolved to the Scottish Government as it is to each of the UK administrations. Failure to properly transpose the Directive could result in infringement proceedings against the UK.

The requirements are in line with the Scottish Government's strategic objectives of a wealthier, fairer, safer and stronger Scotland and its overall purpose to focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth.

Consultation

- **Within Government**

Discussions have been held with officials in the UK Government's Department for Communities and Local Government, the Welsh Government, the Northern Ireland Executive, HSE, SEPA and the Scottish Government Directorate for Legal Services in preparing the new regulations.

- **Public Consultation**

A formal public consultation took place from 8 December 2014 to 2 March 2015³ ('the 2014 consultation'). Respondents were invited to comment on a paper setting out the Scottish Government's proposals for transposing land use planning elements of the Directive and updating application and appeal procedures. Specifically, comments were invited in responses to 24 questions concerning aspects of the draft regulations; a partial Business and Regulatory Impact Assessment; and a partial Equalities Impact Assessment Record.

- **Business**

Businesses and industry trade bodies were invited during the formal public consultation period to discuss the proposals and the partial Business and Regulatory Impact Assessment (BRIA). In response to this wide invitation, meetings and / or telephone conversations took place with representatives from William Grant & Sons, North British Distillery Company, Calachem, JGas, UKLPG and Syngenta.

Meetings were held with the Chemical Industries Association in August 2014 and with the Scotch Whisky Association's COMAH Group in November 2014.

³ Consultation on the land use planning aspects of the Seveso III Directive 2012/18/EU on the control of major-accident hazards <http://www.gov.scot/Resource/0046/00465087.pdf>

Options

Option 1 – Do nothing

The Scottish Government is required to implement the land use planning aspects of the Directive by 1 June 2015. This will require changes in legislation. Failure to meet this deadline would leave the Scottish Government open to infringement proceedings.

'Do nothing' is therefore not an option.

Option 2(a) – Amend legislation to meet the requirements of the Directive

The existing hazardous substances consenting process does not need to be fundamentally changed to implement the Directive, however there are areas where amendments are necessary to transpose the new Directive. At the same time, it is proposed that the new Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 will consolidate, update and replace the existing 1993 regulations⁴ and amend the PHS Act to make PHS consent procedures more consistent with planning application procedures. The following changes are included:

- changes to take account of the revised EU chemical classification system
- transitional arrangements
- exemption for minor modification of consents
- public involvement and information arrangements
- updating appeal procedures for hazardous substances consent
- content of applications

Option 2 (b) - Amend legislation to meet the requirements of the Directive AND additional domestic policy changes

As part of the public consultation process, views were also invited on whether responsibility for public notices and neighbour notification for PHS consent should be transferred from the applicant to planning authorities, and on whether the fees for making such applications should be increased. These changes to be made in addition to those outlined in option 2(a) above.

Sectors and groups affected

All of the options have potential impacts for the following groups and sectors. The arrangements for implementing this Directive can apply across any and all sectors.

- operators of establishments storing hazardous substances, for example:
 - petroleum industry
 - gas industry

⁴ Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993

- chemical/ pharmaceutical Industry
- tank storage industry
- Scotch whisky industry
- developers in the vicinity of sites with hazardous substances
- the public and the public concerned
- statutory consultees (including HSE and SEPA)
- planning authorities
- Scottish Government Directorate for Planning and Environmental Appeals

Benefits and Costs of the Options

- Option 1 (Do nothing) – Benefits:

No benefits have been identified for the sectors and groups potentially affected. If the current requirements persist unchanged, in some instances PHS consent would not be required despite the Directive requirements and in others it would be required unnecessarily.

- Option 1 (Do nothing) – Costs:

This could result in infringement proceedings and ultimately financial sanctions could be applied. It would create legal uncertainty for industry, regulators and other stakeholders.

- Option 2 (a) (amend legislation to meet the requirements of the Directive) – Benefits:

The risks of a major accident involving hazardous substances is minimised and so are the costs in economic and social terms of such an accident.

Following changes to the Directive, some substances will no longer require consent (no application fee, no delays associated with applying for consent and no costs of refusal of consent and of identifying and securing a location likely to obtain consent) and therefore no related controls and costs on development in the surrounding area.

European obligations in respect of Land Use Planning elements of the Directive are met and public participation in the process is improved.

Specific benefits associated with ***changes in the EU chemical classification system, transitional arrangements, minor modification procedures, appeals*** and the **content of applications** are detailed below.

- Option 2 (a) (amend legislation to meet the requirements of the Directive) – Costs:

Specific costs associated with ***changes in the EU chemical classification system, transitional arrangements, minor modification procedures, appeals***, and the **content of applications** are detailed below.

- Option 2 (b) (as above AND additional domestic policy changes)
 - Benefits:

In addition to those benefits applying to Option 2(a) above, the following additional benefits also arise:

Procedural arrangements for PHS applications, appeals and called-in applications are updated and improved.

Responsibility for certain publicity procedures is transferred from the applicant to Planning Authorities, reducing potential delays in the submission, validation and processing of applications for PHS consent and making provisions consistent with arrangements for processing planning applications generally. It will also *remove* an existing procedural burden for operators.

Increased fees levels will increase the resources and capability of planning authorities to deliver a high performing PHS application service.

- Option 2 (b) (as above AND additional domestic policy changes)
 - Costs:

In addition to those benefits applying to Option 2(a) above, the following additional costs also arise:

New costs falling to planning authorities in light of the transfer of responsibility for certain publicity procedures, including the placing of newspaper advertisements.

New costs falling to the applicant as a consequence of the increase to PHS fees levels, which have not changed since 1993. This cost is partially offset by reduced costs associated with the transfer of responsibility for certain publicity procedures. Further detailed costs are set out below.

Changes in the EU chemical classification system

The Directive sets out a schedule of hazardous substances and thresholds for storage that supersede the schedules and thresholds in Seveso II. However, the schedule in the Directive, amongst other changes, increases thresholds for controlling the presence of Hydrogen, Liquefied Petroleum Gas and Liquefied Natural Gas. For safety reasons particular to the storage of these substances in the UK, it is proposed to maintain existing lower thresholds for these substances. HSE advise that because the UK promotes these substances as alternative fuels they are likely to be present in the UK in quantities below the thresholds in the Directive but in potential locations where there is a major accident risk. HSE advise there is therefore an overriding public benefit on safety grounds to maintain existing lower thresholds and associated safety standards for the storage of these substances. Although not a straight copy out of the Directive, this proposal does accord with the objective of the Directive to ensure prevention of major accidents which involve dangerous substances and the limitation of their consequences for human health and the environment.

Benefits

This approach is consistent with the proposed approach across the GB devolved planning administrations and within the GB wide COMAH regime (Northern Ireland has its own separate control of major accident hazards regime and planning regime). Copying out the schedule of substances and thresholds from the Directive with these exceptions will ensure consistency across the GB, provide certainty for industry, regulators and stakeholders, and maintains safety standards.

Some sites may fall outside scope, thereby reducing costs to industry.

Costs

An effect of the new schedule of substances and thresholds in the Directive is that some substances or quantities of substance which do not require consent now, will do so in future. This will give rise to direct costs, including the application fee (in the hundreds of pounds) as well as indirect costs such as those arising from any delay in obtaining consent, failure to get consent and/or in identifying and securing a suitable location capable of obtaining consent.

At the same time, some sites which are outside the scope of current regulations will come within scope for the first time (and some existing establishments may fall out of scope and no longer require controls). Some establishments that are currently categorised as being lower tier establishments will become upper tier establishments (those which the Directive categorises as having substances and quantities requiring additional safety measures beyond those applying to lower tier sites) and vice versa. Upper tier sites will have more on-site safety requirements under COMAH and additional restrictions on development in the vicinity.

HSE have undertaken research⁵ in order to understand the differences in the schedules in Seveso II and Seveso III Directives and the effect these differences have on what will come in and/or fall out of the scope of the Directive. This research, although it is not conclusive and does not provide a breakdown of the findings for each devolved administration, indicates across GB that between 13 to 18 sites will fall out of scope. There is expected to be a decrease in sites at upper tier by about 11 sites and a decrease in sites at lower tier of between 2 to 7. The overall picture is that more sites will fall out of scope than will come within scope as a result of the changes regarding substances and thresholds.

To give the above figures some context the estimated number of existing COMAH sites in GB as at summer 2013 is given in table 1 below:

⁵ Source: HSE: consultation on draft COMAH Regulations 2015 to implement the Seveso III Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, amending Council Directive 96/82/EC

Table 1: Estimated number of COMAH sites in GB

COUNTRY	COMAH LOWER TIER OPERATOR	COMAH UPPER TIER OPERATOR	TOTAL
England	450	256	706
Scotland	111	64	175
Wales	32	24	56
Total	593	344	937

The costs to industry of copying out the schedules and thresholds with the proposed amendments in the new PHS regulations have not been calculated but the research undertaken by HSE indicates that the number of establishments that will come within the scope of PHS Regulations as a result of the changes in the chemical classification system is not large and the costs in this respect associated with planning legislation changes should not be significant. The potential impacts of the change in the schedule will be minimised further through transitional arrangements identified below.

The requirements of the Directive have to be implemented; a 'do nothing' approach is not a viable option. The safety costs to industry associated with implementation of the Directive's schedule of substances and thresholds (with the proposed amendments) regarding sites coming within scope, are financially beneficial in the long term compared to the potentially massive costs of a major accident.

Transitional arrangements

It is proposed that, firstly, where the presence of a substance already has PHS consent, that consent will remain "good" despite any change in classification of the substance. Secondly, where sites were operating legally prior to 1 June 2015 without PHS consent they will be exempt from the need to obtain hazardous substances where their substances and quantities come within scope from that date. This is provided such sites had such substances legally in the 12 months prior to the legislative changes and do not go above the maximum quantity previously stored within that period.

This policy position is based on Article 13 of the Directive only requiring controls on "new establishments", as defined in the Directive. Operators will still require to comply with on-site safety measures specified under the new COMAH Regulations. When subsequently new or modified consents are required, the consents can be regularised in line with the new schedules.

Operators of sites which benefit from this exemption are required to notify the planning authority that they are so doing. That information is then required to be passed to HSE and SEPA. This is to ensure planning decisions about development around such sites are made in light of information about substances present under this exemption.

Benefits

The proposed legislative approach to transitional arrangements complies with the requirements of the Directive. The benefits are that it will provide certainty for industry, regulators and stakeholders with minimal regulatory impact.

Consideration has been given to an alternative transitional proposal that would require operators that fall within the scope of Seveso III to seek new hazardous substances consent, regardless of whether they have existing hazardous substances consent. This approach has been discounted. It is not considered necessary to implement the Directive, and would place a significant regulatory burden on operators, regulators and stakeholders. It would cause potential confusion and uncertainty about the continued operation of establishments.

Costs

The proposed transitional arrangements should not result in significant additional costs for operators, regulators and stakeholders.

Minor modification of consents

Current PHS legislation requires operators to seek consent if they wish to operate outside the terms of an existing PHS consent. This approach is more restrictive than is required by the Directive. Article 11 of the Directive only seeks control where a modification would result in a lower tier establishment becoming an upper tier establishment or vice versa or, where a modification would have significant consequences for major accident hazards. It is proposed that where modifications do not meet these criteria, the modification would be exempt from the need for a new PHS consent.

Benefits

This proposal complies with the requirements of the Directive and removes an unnecessary regulatory burden. The impact on the public and public concerned should be neutral given the proposal relates only to minor changes that do not have significant consequences.

Although operators will still require to go through a process to obtain confirmation that a change can be considered as an acceptable modification, the process is more streamlined than the existing PHS consent procedures, does not require a fee to be paid to the planning authority and should result in a quicker decision.

Costs

The proposal may help to reduce the number of applications for PHS consent for minor changes. Although PHS consent application fees received by local authorities will reduce there will be a reduction in PHS consent case work.

With the exception of HSE and SEPA the proposal may help to reduce casework for statutory consultees. The cost impact of the proposal on HSE and SEPA should be neutral given they will still have a role in assessing modifications.

Appeal arrangements

As PHS consent and enforcement appeal arrangements date back to 1993, we propose taking the opportunity to update appeal arrangements and to make them more consistent with provisions in the Town and Country Planning (Appeals) (Scotland) Regulations 2013⁶. A specific change will be the reduction in the time period for making such appeals from 6 months to 3 months, bringing this in line with appeals for planning permission.

A further change is to remove the so-called “ground (a) appeal” in relation to appeals against PHS contravention notices. The “ground (a) appeal” is one made on the basis that PHS consent should be granted for the contravention. This would be in line with the previous removal of similar grounds for appealing against enforcement notices in relation to planning permission.

We are not however proposing to create local review procedures for PHS applications. Neither are we proposing at this time to remove the right for appellants (or applicants where PHS consent applications are called-in) or for the planning authority, to appear before and be heard by a person appointed by the Scottish Ministers. (This right has previously been removed in relation to planning permission cases).

Benefits

The proposed changes would ensure more consistency in planning procedures and remove potential confusion for operators, regulators and stakeholders. It should allow some scope for a more proportionate process for appeals and called-in applications.

Costs

No costs are anticipated from the proposed changes. There have been no appeals against PHS contravention notices in the last 5 years. It is likely that operators would have the option of applying for hazardous substances consent before enforcement action was taken. Breach of PHS consent is however an offence regardless of the enforcement position.

Content of applications

It is proposed the PHS regulations will list the general information that is required for the submission and validation of applications for PHS consent. This will be tailored to ensure that information required by the planning authority and by HSE and SEPA to assess applications is provided upfront. HSE are developing a “smart form” for use across Great Britain and which will be available on their website and accessed from local authority websites. The form is being designed to ensure applicants receive online guidance on what information is needed to complete the form and to submit a valid PHS application.

⁶ The powers for making inquiries procedures rules in relation to PHS consent mean a separate statutory instrument will be needed, in addition to the appeal provisions in the 2015 Regulations.

Benefits

The proposal should improve the quality of submissions and significantly reduce the number of invalid applications received by planning authorities. This will reduce the number of occasions on which planning authorities and statutory consultees need to seek further information from operators after submission and help to speed up the determination of applications. This will benefit applicants by providing improved clarity about what information needs to be provided and allow applications to be determined more quickly.

Costs

There is a cost to HSE in developing and hosting the smart form, however the improved quality of submissions should ensure longer term savings to operators and regulators by allowing applications to be processed more quickly with less procedure.

Transfer of responsibility for publicity arrangements

The 2015 regulations contain new provision requiring that, in future, responsibility for public notices and neighbour notification for PHS consent will fall to the planning authority. Previously this responsibility fell to the applicant.

Benefits

Leaving publicity arrangements as they are would have a neutral impact. Transferring publicity arrangements to local authorities would make provisions consistent with other planning permission arrangements and would reduce potential delays in the submission, validation and processing of applications for PHS consent. It would also remove a procedural burden for operators.

Costs

There is no data available to accurately quantify costs associated with undertaking neighbour notification and publicity requirements, however costs are likely to fall into two categories; firstly there are the financial costs incurred in placing newspaper adverts; there are also administrative costs, and postage costs, associated with neighbour notification.

The Scottish Government requested information from planning authorities in 2012 on the costs of advertising planning applications. Responses were received from 16 out of 34 planning authorities and indicated an average cost of placing an advert in 2010/11 in the region of £70, though anecdotally the Scottish Government is aware of wide variations in practice, with one rural authority reportedly paying £200- £300 for a notice in some instances.

Given the negligible numbers of PHS cases⁷, administrative costs associated with neighbour notification are likely to be minimal, and authorities already have staff in place dealing both with notifications and in the placing of adverts for planning applications. There will however be some direct costs to cover printing and postage costs of neighbour notification. Unlike applications for planning

⁷ 28 applications for PHS consent were received in Scotland during 2012/2013.

permission, all PHS consent applications require to be advertised.

Application fees

The fees payable with applications for PHS have remained static since 1993. Current fee levels are shown in table 1 together with an inflationary adjustment using Treasury figures.

Table 1: Current PHS Fees and inflationary adjustment

Type of PHS Application	1993 Fee	Inflationary adjustment*
New consent without previous conditions	£200	£320
Application for new consents (quantity specified exceeds twice the controlled quantity)	£400	£640
Application for new consents (all other cases)	£250	£400
Application for continuation of consent	£200	£320

* Inflationary adjustment using calendar year HMT GDP deflators published in March 2015.

Views were invited through the 2014 consultation on whether fee levels remain appropriate and, whether fees should be increased were responsibility for public notices and neighbour notification transferred to planning authorities. There was general recognition from respondents of the need to reflect new costs falling to planning authorities associated with the transfer of responsibility for publicity functions. Some planning authorities also commented that an inflationary increase was required. Respondee did not however suggest the specific levels at which the new fees should be set.

Specific proposals on changes to the PHS fees were included in the Scottish Government's 2012 "Consultation on Fees for Planning Applications"⁸ which invited views on proposals for a new fees structure for planning applications generally, as well as on proposals to amend fees set out in the Hazardous Substances Regulations. The 2012 fees proposals were not intended to reflect any transfer of responsibility for publicity procedures, rather they were intended to take account of inflationary increases, and to increase the resources and capability of planning authorities. Specifically in relation to fees for PHS applications, the 2012 consultation paper proposed:

⁸ <http://www.gov.scot/Publications/2012/03/3164>

Table 2: Proposed PHS Fee

Type of PHS Application	Proposed Fee
New consent without previous conditions	£500
Application for new consents (quantity specified exceeds twice the controlled quantity)	£1000
Application for new consents (all other cases)	£500
Application for continuation of consent	£500

There were no specific themes emerging from that consultation on proposed changes to PHS fees.

Benefits

Increasing PHS fees will take account of increased costs falling to planning authorities associated with the increased costs arising from the transfer of publicity functions; whilst it is difficult to accurately quantify such costs, the available data indicates that a proposed increase to PHS fees to those levels proposed through the Scottish Government's 2012 consultation on fees will serve both to cover such costs, and also to increase the resources and capability of planning authorities more generally to deliver a high performing PHS service.

Whilst consideration was given to increasing costs to reflect only those additional publicity costs falling to planning authorities, in practice these costs will vary significantly between individual authorities. Such an increase would not address inflationary costs arising since the current fee levels were first introduced in 1993.

Costs

The increase in application fees is an additional direct cost for applicants. This is however partially offset by reduced costs associated with the transfer of responsibility for certain publicity procedures. Discussions with industry indicate that an increase in fees would not have a significant impact on business.

Given the numbers of applications, the overall costs to industry of increases to PHS application fees is anticipated to be small. Numbers of PHS applications in Scotland for each of the last 5 years for which data is held are listed in table 3.

Table 3: Number of PHS applications per year

Year	Total Number of PHS applications in Scotland
2013/14	24
2012/13	28
2011/12	8
2010/11	17
2009/10	5

Scottish Firms Impact Test

Businesses and industry trade bodies were invited during the formal public consultation period to discuss the proposals and the draft partial Business and Regulatory Impact Assessment (BRIA). In response to this wide invitation, meetings and/or telephone conversations took place with representatives from:

- William Grant & Sons
- North British Distillery Company
- Calachem
- JGas
- UKLPG
- Syngenta

Interviewees acknowledged the need to implement the Directive. No significant concerns were raised with the approach proposed in the consultation or with the partial BRIA. Overall, interviewees commented that the proposals would not have a significant impact on their operations. The transfer of responsibility for publicity to planning authorities was welcomed. It was generally accepted that some increase in application fees may be needed and it was not anticipated that this would have a significant impact on business.

Competition Assessment

Other than the changes to the substances and quantities being controlled, and the increase in PHS fees, the changes are mainly procedural changes to improve public participation, as required by the Directive, or procedural changes to modernise and improve the efficiency of the PHS consent regime. HSE anticipate no significant effect from changes to the classification of substances and quantities controlled and certainly no significant net effect.

There are not thought to be any areas where transposition of the Directive and other proposed changes restrict competition. The proposals will ensure the EU chemical classification system, public information requirements, and potential impacts for human health and the environment are consistently considered and

applied.

The UK Government intends to implement the new COMAH Regulations in any event. This would mean that if we do not have controls seeking to keep appropriate distances between establishments with hazardous substances and other developments or naturally sensitive environments, the costs to individual operators at some sites of on-site safety measures under the COMAH Regulations to protect the surrounding area may become unmanageable.

Test run of business forms

Electronic versions of PHS consent application forms are being developed by HSE which will be available online for use UK wide. HSE advise that development of the forms has included testing with Glaxo Smith Kline, a large chemical industry representative.

This electronic form is not obligatory, and the legislation itself does not specify a new form.

Legal Aid Impact Test

It is not envisaged that there will be any significant impact on the legal aid fund. It is proposed to upgrade where necessary consent procedures to comply with public participation requirements of the Directive, amend the list of hazardous substances to which controls apply and ensure policy making procedures require taking into account the objectives of the Directive. We are also taking the opportunity to bring application and appeal procedures for hazardous substances consent, which date from 1993, into line with the existing modernised procedures for planning permission cases and to increase fees which have not been altered since 1993.

Unlike the planning permission system, we are not at this juncture removing the right to appear before and be heard by a person appointed by the Scottish Ministers in PHS appeal cases and called-in PHS applications that come before them for decision.

In line with planning permission cases, we are removing the right to appeal against enforcement action against breaches of PHS consent requirements on the grounds that such consent should be granted for the breach.

As we intend to meet the Access to Justice requirement using rights to judicial review which currently apply in Planning, we are obliged to ensure that this can be accessed by all the bodies covered by the Directive's definition of "the public concerned". New provision has been introduced providing that "any non-governmental organisation promoting environmental protection and meeting any requirements under the law" are considered to have an interest which could be impaired for the purposes of the Article 23(b) (Access to Justice) of the Directive.

Enforcement, sanctions and monitoring

Enforcement of the land use planning aspects of the Directive will be under the PHS Act, the PHS Regulations and the Town and Country Planning (Scotland) Act 1997. Changes to existing provisions are not required to implement the Directive.

Implementation and delivery plan

Amendments to legislation and guidance are proposed to reflect the requirements of the Directive and to modernise procedures to bring them more in line with planning permission procedures. To comply with the Directive and to avoid potential infraction proceedings it is proposed to give effect to the legislative changes by 1 June 2015.

The legislative changes will comprise consolidated and amended PHS Regulations, amendments to the PHS Act, the Town and Country (Development Management Procedure) (Scotland) Regulations 2013, the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 and new generic public participation requirements to ensure other consent regimes which grant planning permission for developments near hazardous installations comply with the Directive.

It is proposed that in due course Planning Circular 5/1993, 'Planning Controls for Hazardous Substances' will be replaced and updated guidance published on the Scottish Government website.

- **Post-implementation review**

Implementation of the Directive by member states is scheduled for review by the European Parliament by 30 September 2020 and every four years thereafter. The Scottish Government Planning & Architecture Division will periodically review the implementation of the changes to planning legislation to monitor the effectiveness of the changes to ensure that subsequent reviews can be made on an informed basis.

Summary and recommendation

The Scottish Government is required to transpose the land use planning aspects of the Directive by 1 June 2015. A 'do nothing' approach is not a viable option. The key focus has been to ensure compliance with the Directive and to modernise PHS legislation to achieve greater consistency with other planning procedures and where possible to streamline procedures.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
Option 1 – Do nothing	No benefits.	Failure to implement the Directive by 1 June 2015 can lead to infraction proceedings being taken against Scottish Government.
Option 2(a) - Amend legislation and guidance to meet the requirements of the Directive	<p>Meets the requirements to implement the Directive.</p> <p>Improves public access to information and opportunities for participation in decision making.</p> <p>Strengthens consideration of environmental issues.</p> <p>Will take some substances and possibly sites outside the control leading to potential savings (see opposite).</p> <p>Minimises the risks of major accidents and the related social, environmental and economic costs</p>	Some substances and possibly sites will in future require PHS consent with associated direct and indirect costs including; PHS application fee, costs of compliance, costs of possible refusal and/or costs of identifying and securing an acceptable location.
Option 2 (b) (as per 2 (a) above AND additional domestic policy changes)	<p>In addition to benefits associated with 2(a) above:</p> <p>Modernises and streamlines aspects of PHS procedures.</p> <p>Minimises potential delay in the submission, validation and processing of applications for PHS consent. Removal of certain procedural burdens from operators.</p>	<p>In addition to benefits associated with 2(a) above:</p> <p>Increased application costs falling to the applicant, this is partially offset by the transfer of responsibility for certain publicity procedures from the applicant to planning authorities.</p>

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:**

MARCO BIAGI MSP
Minister for Local Government and Community Empowerment

Scottish Government Contact point:

Alan Cameron
Planning & Architecture Division
Tel. 0131 244 7065
alan.cameron@scotland.gsi.gov.uk