

## **POLICY NOTE**

### **THE TOWN AND COUNTRY PLANNING (HAZARDOUS SUBSTANCES) (SCOTLAND) REGULATIONS 2015**

**SSI 2015/181**

#### **Introduction**

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972, section 267(1) of the Town and Country Planning (Scotland) Act 1997 and sections 2(4) and (5), 3, 5, 6(1), 15(2), 16(7), 19(2) and (3), 22(4)(b), 23(1) and (3), 30(1) and 39(1) of the Planning (Hazardous Substances) (Scotland) Act 1997 and all other powers enabling them to do so. The instrument is subject to negative procedure.

#### **Policy Objectives**

2. The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (the 2015 PHS Regulations) implement the land use planning elements of Directive 2012/18/EU on the control of major accident hazards involving dangerous substances (the Seveso III Directive). The aims of the Seveso III Directive are to prevent major accidents which involve dangerous substances and to limit the consequences of such accidents for human health and the environment. This is the latest in a series of Directives on this issue.

3. The main changes made by the Seveso III Directive in relation to land use planning relate to changes in the European chemical classification system, which affect the list of substances and controlled quantities to which the Seveso III Directive applies. New public participation requirements in relation to decision making have also been included in the Seveso III Directive to bring it into line with the Aarhus Convention<sup>1</sup>.

4. We are also taking the opportunity to update, amend and consolidate the existing requirements in the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 1993 (the 1993 Regulations). The amendments include an increase in application fees and the transfer of publicity requirements from applicants to planning authorities.

5. A separate SSI, the Town and Country Planning (Hazardous Substances Inquiry Session Procedure) (Scotland) Rules 2015, has been made which contains inquiries session rules associated with the appeal provisions contained in the 2015 PHS Regulations.

#### **Background**

6. The Seveso III Directive specifies certain substances, or categories of substance, as dangerous and sets controlled quantities for their presence. Quantities present at or above these levels trigger various requirements for on-site safety measures, off-site emergency

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<sup>1</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'.

plans, and land use planning requirements. Domestic planning legislation refers to these “dangerous substances” as “hazardous substances”.

7. Existing requirements are implemented in the main by the Control of Major Accident Hazards Regulations 1999 (COMAH Regulations), which apply on a GB wide basis and are enforced by the Health and Safety Executive (HSE) and, in Scotland, the Scottish Environment Protection Agency (SEPA). These Regulations cover issues such as on site safety management, safety reports, emergency plans and inspection regimes.

8. Land use planning is a devolved matter, and in so far as it relates to hazardous substances is given effect through the Planning (Hazardous Substances) (Scotland) Act 1997 (the PHS Act), the 1993 Regulations, the Town and Country Planning (Scotland) Act 1997 (the 1997 Act), the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (the DM Regulations) and the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 (the DP Regulations).

9. The main requirements to be implemented via land use planning controls are in Article 13 (Land-use planning) and Article 15 (Public consultation and participation in decision making) but, in addition, Article 22 (Access to Information and Confidentiality), Article 23 (Access to justice) and Article 28 (Penalties) must also be implemented.

10. The transposition note accompanying this policy note sets out the requirements and implementing legislation. Much of the Seveso III Directive is implemented through the GB wide Control of Major-Accident Hazards Regulations 2015<sup>2</sup>, which has its own transposition note.

11. Article 13(1) requires that the siting of new establishments with hazardous substances, modifications to establishments where hazardous substances are present and new developments (including transport routes, locations of public use and residential areas) near establishments where hazardous substances are present should be controlled.

12. Article 13(2) requires that land-use or other relevant policies and procedures for implementing policies must take account of the need that appropriate distances should be kept between establishments where hazardous substances are present and residential areas, buildings and areas of public use, recreational areas, and as far as possible, major transport routes. It also requires that account must be taken of the need to protect areas of particular natural sensitivity or interest in the vicinity of establishments and, in the case of existing establishments, the need to take additional technical measures to minimise risks to human health or the environment.

13. Article 15 has a number of requirements with regard to ensuring that information about applications for specific projects is publicly available, that representations can be made, that they will be taken into account and that information about the decision is publicly available. It also has provisions for public participation in the establishment of plans or programmes.

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<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2015/483/contents/made>

## **Implementation of Article 13 (Land-use planning)**

14. Implementation of Article 13 does not require any fundamental change to the existing hazardous substances regime. Currently, subject to certain exemptions, where hazardous substances are going to be present at or above controlled quantities, a hazardous substances consent must be obtained.

15. Applications for such consent are subject to publicity requirements and information about them is available on a public register. There are also consultation requirements, involving consultation with the Scottish Environment Protection Agency (SEPA), HSE and Scottish Natural Heritage (SNH) amongst others. These bodies can pass comments to the planning authority on risks to people and the environment associated with the substances for which consent is sought. These views, along with other representations, development plan policies, and other material considerations then inform the decision on whether to grant consent.

16. Applications for planning permission for development near sites with hazardous substances also require publicity and information to be made available to the public, as well as consultation with HSE, SEPA and SNH amongst others. Again, the views of these bodies can inform the decision alongside the development plan policies and other material considerations.

17. Applications can be refused because of the risks to human populations or the environment, or conditions can be attached to permissions and consents covering, for example, appropriate safety measures, such as bunding around sites, or governing the storage and use of hazardous substances to limit the consequences should an accident occur.

18. With regard to the Article 13(2) requirements regarding policies having to take account of certain matters, the DP Regulations contain requirements for planning authorities and strategic planning authorities to take account of these matters when preparing local development plans and strategic development plans. These plans go together to make up the development plan for the area which underpins decision making on applications for planning permission and for hazardous substances consent.

## **Article 15 – Public consultation and participation in decision making**

19. Whilst the requirements of Article 15 are new, as indicated above, the relevant planning procedures already include public involvement and the provision of information, though some amendment is now required.

### **The changes made by the 2015 PHS Regulations**

20. The 2015 PHS Regulations consolidate, amend and update the 1993 Regulations and make necessary amendments to the PHS Act, the DM Regulations and the DP Regulations in order to implement the Seveso III Directive.

21. The following is a list of the significant changes made to the existing planning regime by the 2015 PHS Regulations:

## ***Main Changes contained in the 2015 PHS Regulations***

### *List of Substances and quantities – Schedule 1 to the 2015 PHS Regulations*

22. Schedule 1 to the 2015 PHS Regulations lists the substances, or categories of substance, and controlled quantities in Annex I of the Seveso III Directive, with three exceptions. HSE advise that the promotion of the use of Hydrogen, Natural Gas (including Liquefied Natural Gas) and Liquefied Petroleum Gas in the UK means lower threshold quantities than those in Annex I should be applied in the interests of safety.

### *Exemptions from PHS consent – Schedule 2 to the 2015 PHS Regulations*

23. Schedule 2 to the 2015 PHS Regulations contains a list of exemptions from the need for hazardous substances consent in line with Article 2 of the Seveso III Directive.

24. In addition there is an exemption for explosives and for temporary presence during emergencies relating to shipping because these are dealt with by separate regimes.

25. There is a new exemption (paragraphs 16 and 17 of Schedule 2 to the 2015 PHS Regulations) for minor changes to hazardous substances for which consent has been granted where there would be no significant consequences for major accident hazards.

26. Paragraphs 12 and 13 of Schedule 2 contain an exemption to allow sites which did not require consent before 1 June 2015 but which would on or after that date were it not for the exemption to continue to hold hazardous substances without consent in certain circumstances. Regulation 63 of the 2015 PHS Regulations requires site operators to notify the planning authority that they are relying on this exemption so that the existence of the site can be taken into account when determining applications for development in the vicinity. These sites will be subject to the new Control of Major-Accident Hazards Regulations 2015 as regards on-site safety measures for example.

### *Content of Applications and further information (regulations 6, 7, 8 and 13)*

27. Existing requirements regarding the content of applications have been amended to ensure necessary information is submitted, and a new power for planning authorities to require additional information has been added. This is part of the implementation of Article 13(1) and in line with existing provisions in relation to applications for planning permission.

### *Neighbour notification (regulation 9) and newspaper notices (regulation 10)*

28. In line with the procedures for applications for planning permission, we have updated the requirements for neighbour notification and newspaper notices and transferred responsibility for carrying out such notification from applicants to planning authorities. It also facilitates compliance with Article 15.

### *Consultation requirements (regulation 14)*

29. This is an update and extension of the existing list of statutory consultees on applications for hazardous substances consent and is part of the implementation of the public consultation requirements of Article 15.

*Decision notices (regulations 18 and 38)*

30. This expands on the existing requirement regarding information to be included in decision notices to ensure compliance with Article 15 of the Seveso III Directive and to match the requirements in the modernised planning permission

*Notification requirements (regulation 16)*

31. We have introduced a requirement to notify applications for hazardous substances consent to Scottish Ministers where the planning authority wishes to grant such consent contrary to the views of HSE or SEPA. This allows Ministers to consider calling in the application for their determination. This aligns with requirements regarding applications for planning permission.

*Policies (regulation 21 and paragraph 2 of Schedule 8)*

32. Regulation 21 contains a requirement in line with Article 13(2) for Scottish Ministers to ensure future versions of the Scottish Planning Policy and National Planning Framework take into account the matters described in paragraph 12 above.

33. Paragraph 2 of Schedule 8 includes an amendment to the DP Regulations to update the requirements for the preparation of development plans to take into account the matters described in paragraph 12 above.

*Plans and Programmes (regulation 22)*

34. Article 15(6) requires that the public have an opportunity to participate in the preparation, modification or review of plans and programmes for the location of new establishments with hazardous substances, modifications to establishments and development near such establishments. Regulation 22 contains the necessary provision to implement this.

*Other Planning Approvals for projects (regulation 23)*

35. Regulation 23 contains a general requirement on consultation and public participation to implement Article 15 of the Seveso III Directive in relation to various procedures where the Scottish Ministers can grant planning permission and/or hazardous substances consent outside the normal application procedures. For example, where Scottish Ministers, on granting consent to construct and operate an electricity generating station under section 36 of the Electricity Act 1989, direct that planning permission is deemed to be granted. Regulation 23 also requires that specified information about decisions which have been taken must be available to the public. It also applies to the usual planning permission application and related appeal and local review procedures where proposals are within scope of the Seveso III Directive.

36. Where other legislation requires such steps to be taken in the consent process, then there is no need to duplicate that action under this regulation.

### *Appeal procedures (Part 5)*

37. The appeal procedures in the PHS Regulations 2015 in relation to hazardous substances consent applications are similar to the modernised procedures for planning permission appeals. The principal differences are that there is no local review procedure for hazardous substances appeals and the applicant and the planning authority have a right to be heard in such appeals.

### *Enforcement (Part 7)*

38. This Part of the 2015 PHS Regulations contains provisions for enforcement where a hazardous substances contravention notice has been issued under section 22 of the PHS Act following a breach of hazardous substances control. It also contains provision about appeals against hazardous substances contravention notices.

39. Under the 2015 PHS Regulations it is no longer possible to appeal against a hazardous substances contravention notice on the grounds that hazardous substances consent should be granted. This reflects the situation regarding planning permission appeals.

### *Application Fees (regulation 55)*

40. We have increased fees by approximately 100%. This reflects the fact that fees have not increased since 1993 and reflects the new costs falling to planning authorities in light of the transfer of responsibility for newspaper notices and neighbour notification from applicants to authorities.

### *Transitional Arrangements (regulations 60 to 66)*

41. These Regulations contain provision with regard to applications and appeals received before 1<sup>st</sup> June 2015 but not determined by then. They also contain provision regarding the interpretation of consents granted prior to that date and there is a savings provision for conditions attached to consents which were deemed to be granted before that date.

### **Enabling powers**

42. Most of the provisions in the Regulations are made under powers in the PHS Act and the Town and Country Planning (Scotland) Act 1997 (as applied by the PHS Act). Where those Acts do not give Scottish Ministers the power to make regulations to implement the Seveso III Directive they are made under section 2(2) of the European Communities Act 1972. They include regulations 21 to 23.

43. For some other aspects of the Regulations, there might be a doubt about whether the powers in the PHS Act or the Town and Country Planning (Scotland) Act 1997 are sufficient to fully implement the provisions of the Seveso III Directive. Section 2(2) is therefore also cited to ensure that no difficulty arises in relation to the sufficiency of Ministers' powers under the other Acts.

## Consultation

44. A public consultation on proposals to implement the Seveso III Directive, including draft Regulations, was published on 10th December 2014 and closed on 2nd March 2015. A total of 15 consultation responses were received, the majority of which were from planning authorities, companies and industry bodies.

Table 1

<b>Respondent Group</b>	<b>Number of responses</b>
<b>Total Individuals</b>	<b>1</b>
<b>Total organisations</b>	<b>14</b>
Planning Authority	6
Company	4
Industry Body	2
Professional Body	1
Statutory Agency	1
Total	15

45. Overall, respondents generally understood the need to implement changes in line with the Seveso III Directive. There were no comments suggesting fundamental changes at this time to the proposed transposition approach.

46. A consultation analysis has been published and can be viewed at:  
<http://www.gov.scot/Publications/Recent>

## Impact Assessments

47. A Business and Regulatory Impact Assessment (BRIA) has been prepared and an Equalities Impact Assessment (EqIA) and they accompany this note. The BRIA recognised the requirement to comply with the Seveso III Directive and the implications, and the modernising of procedures which were not required by the Seveso III Directive. Six businesses were interviewed and none anticipated significant cost implications arising from the changes. Even an increase of fees of around 100% for hazardous substances consent does not represent a significant cost to business as a whole, there being less than thirty such applications per year.

48. There were no significant issues with the EqIA, the direction of change being towards more public involvement in decision making for example.

Scottish Government  
Planning and Architecture Division  
April 2015