

Title: Impact assessment for the changes to deregulate unwarranted existing domestic land-use planning controls going beyond the requirements of the Seveso III directive. IA No: RPC14-FT-CLG-2154(2) Lead department or agency: Department for Communities and Local Government Other departments or agencies:	Impact Assessment (IA)		
	Date: 02/02/2015		
	Stage: Final (validation)		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
Contact for enquiries: emily.mayhew@communities.gsi.gov.uk			
Summary: Intervention and Options			RPC Opinion: Awaiting Validation

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£0	£0	£0	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

European directive 2012/18/EU (the 'Seveso III directive') on the control of major accident hazards involving hazardous substances must be transposed by 31 May 2015. The Department is responsible for implementing the directive's land-use planning requirements in England. At the same time, opportunities have been identified to deregulate existing domestic controls where these without good reason go beyond the requirements of Seveso III. In the interests of transparency, separate and complementary impact assessments have been prepared: an assessment of the impacts of the changes proposed to land-use planning regulations in order to transpose the directive, and this assessment of the impacts of the proposed deregulation of unwarranted domestic land-use planning controls.

What are the policy objectives and the intended effects?

To minimise burdens to business and constraints on development, specifically, where not required to implement the directive or for public safety: (i) reduce the number of sites where operators are currently governed by a hazardous substances consent; (ii) remove the need for businesses to obtain consent in certain instances; (iii) increase flexibility for businesses to change their operations without needing to reapply for consent. These objectives will be achieved through deregulation of existing domestic legislation, which will enhance competitive advantage and result in savings to business through reduction in administrative burdens.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

(1) Transposition only. This does not meet Red Tape Challenge commitments or policy objectives for deregulation.

(2) Transposition, deregulation, and re-working of the whole system. This is a substantial undertaking and cannot be carried out to the transposition deadline of 31 May.

(3) Transposition and deregulation. This is the preferred option as it meets Red Tape Challenge commitments and objectives for deregulation, while implementing the directive's requirements within the necessary timeframe. Guidance will be provided to avoid the need for regulation where consistent with EU requirements. The extent of deregulation was carefully considered and is detailed in this assessment.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 06/2020					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: n/a		Non-traded: n/a	

I have read the 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.

Signed by the responsible Minister: Brandon Lewis **Date** 16 February 2015

Summary: Analysis & Evidence

Policy Option 3

Description: Policy Option 3 - Transposition and Deregulation (Preferred Option)

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

No gross cost to business.

Familiarisation costs to business are explained and accounted for in the separate and complementary assessment of the proposed changes to land-use planning regulations in order to transpose Seveso III. They are not repeated here in order to avoid double-counting. No other costs have been identified.

Other key non-monetised costs by 'main affected groups'

Existing domestic controls which go over and above EU requirements will be removed, reducing the number of businesses needing to apply for a hazardous substances consent where they hold substances in quantities below the EU threshold, and where they are seeking to make changes to their operations or inventory with no resulting significant consequences for major accident hazards. This will reduce costs and uncertainty for businesses which would otherwise need to apply for consent.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

A number of sites will fall out of scope of regulation and will no longer require hazardous substances consent. An estimated 25 sites may come out of scope and will no longer need a consent, although the impact on these sites has not been monetised, as explained at Section 5.1. Businesses wanting to make minor changes to their operations or inventories will also no longer need to apply for a consent where there are no resulting concerns about major accident hazards. Proxy measures have been relied on as appropriate to indicate the likely scale of benefit and therefore are not monetised.

Other key non-monetised benefits by 'main affected groups'

Business will benefit from a more streamlined and efficient system, allowing for greater flexibility. Deregulation to align with EU standards will level the playing field for industry, as well as reducing the administrative burden for industry. The changes will also result in a reduction in constraints to development surrounding certain establishments currently holding hazardous substances.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: 0	Yes	OUT
Benefits:	Net:	

Introduction

Please note: We have one proposal with two regulatory elements. This proposal is being taken forward through the introduction of new 'Planning (Hazardous Substances) Regulations 2015' and the wider planning regime, together delivering:

- a) Transposition of the Seveso III directive; and
- b) Deregulation of domestic rules that are more onerous than the Seveso directive

Separate and complementary assessments are provided for each element to ensure transparency in the calculation of costs and benefits. This was the format adopted at regulatory triage assessment stage and supported by the Regulatory Policy Committee.

This assessment deals with only the effects of (b) deregulation of domestic measures that are more onerous than the Seveso directive.

1. Problem under consideration

1.1 Background to the Seveso Directive and domestic regulation

1. Directive 2012/18/EU - the 'Seveso III directive' - was introduced into European law in August 2012 and is to be fully transposed by member states by 31 May 2015, to come into force on 1 June 2015¹. The Department for Communities and Local Government has responsibility for transposing the land-use planning requirements of the directive in England.
2. The stated purpose of the Seveso III directive is to prevent on-shore major accidents involving dangerous ('hazardous' in domestic regulations) substances, and limit their consequences for human health and the environment, with a view to ensuring a high level of protection throughout the European Union in a consistent and effective manner. Seveso III replaces EU directive 96/82/EC ('Seveso II').
3. EU legislation aimed at preventing major accidents involving hazardous substances has been in place since 1982, when the first Seveso directive was introduced in the wake of a number of incidents across Europe, including explosions at Flixborough in the UK and a major accident at Seveso in Italy. Land-use planning requirements were introduced in 1996 under Seveso II, and are amended in Seveso III.
4. At present, the Seveso II directive applies to just over 700 sites in England², mainly establishments related to petrochemical and chemical industries, large scale fuel, gas and chemical storage distribution depots, and some pharmaceutical and metal manufacturing sites. The chemicals industry had an output of £9.5bn in 2010, employs 100,000 people and plays a key role in the supply chain for other sectors³.

1.3 Domestic regulation

5. In developing our proposals to transpose the Seveso III directive⁴, we have identified some areas where existing domestic regulations clearly extend beyond those required by the directive, in particular relating to:
 - The range and quantities of substances that are controlled;
 - How changes to hazardous substances held on a site are controlled;
6. In these areas, additional domestic regulations impose unnecessary costs and administration on industry which can leave business at a disadvantage relative to European competitors.
7. In line with the Government's commitment to avoid 'gold-plating' of EU directives we are therefore proposing, at the same time as implementing the transposition of Seveso III, to bring forward changes in a number of areas where without good reason domestic controls exceed the directive's requirements. This impact assessment is concerned with these proposed deregulatory changes. A separate and complementary impact assessment has been prepared to consider the costs and benefits of the changes solely required to implement the directive.

2. Rationale for intervention

8. Changes to land-use planning regulations in England are necessary in order to fully transpose the requirements of the Seveso III directive by 31 May 2015. In developing our proposals to transpose the directive, opportunities to remove existing domestic gold-plating⁵ have been identified. In particular, substances controlled through the hazardous substances consent regime have not

¹ Directive 2012/18/EU can be viewed at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012L0018>

² Health and Safety Executive records indicate there are presently 715 establishments controlled under the Seveso directive in England.

³ BIS 'Review of Enforcement in the Chemicals Industry (COMAH)' Review, February 2013 - <http://discuss.bis.gov.uk/focusonenforcement/files/2013/02/bis-13-557-review-of-enforcement-in-chemicals-industry-comah.pdf>

⁴ For background to how the directive is implemented see the transposition validation impact assessment section 1.1.

⁵ The 'Better Regulation Framework Manual' 2013 - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

been overhauled since 1992 and are out of step with the new directive. The proposed deregulatory measures would remove burdens on business and bring competitive gain as the better alignment with EU and international standards levels the playing field for English business.

3. Policy objectives

9. A key government objective in implementing EU directives is to minimise burdens on business and ensure they are not put at a disadvantage relative to their European competitors. In developing our proposals to transpose the directive, we are therefore seeking to remove where possible existing, unwarranted domestic controls because they give rise to burdens on business and constraints on development. Specifically, we aim to, where not required to implement the directive or for public safety:
 - (i) Reduce the number of sites where operators are currently governed by a hazardous substances consent;
 - (ii) Remove the need for businesses to obtain a consent;
 - (iii) Increase the flexibility for businesses to change their operations without needing to reapply for a consent;
10. Business will benefit from the removal of unwarranted regulation. As a result of our proposals, a number of sites will no longer require a hazardous substances consent and will drop out of scope of regulation, benefitting from associated savings going forward. Businesses wanting to modify consents where the modifications bring no resulting concerns about major accident hazards will also benefit through not needing to apply for a consent.
11. The Department has worked with the Health and Safety Executive to ensure that the proposed deregulatory measures will not impact on the high levels of protection which the public and environment currently benefit from. The Executive has informed and supported the proposals.

4. Description of options considered

12. In considering how to transpose the land-use planning requirements of Seveso III, several policy options were identified, and are explained in greater detail below:
 - Option 1: Transposition only
 - Option 2: Transposition, deregulation, and re-working of the whole system
 - Option 3: Transposition and deregulation (Preferred option)

Option 1: Transposition

13. Policy option 1: Revise existing regulations to transpose the new content of the directive, adding new requirements and amending those where there have been changes between the existing and new directives. Use the European Communities Act to amend the Planning (Hazardous Substances) Regulations 1992 and, potentially, the Planning (Hazardous Substances) Act 1990. Where appropriate, transposition to be in the form of 'copy-out' in line with UK Government policy. Negative resolution process to be used.
14. This option is not suitable as our analysis of the hazardous substance consent regime shows that the current domestic requirements are more onerous than the directive (current and new). Option 1 would therefore result in additional domestic burdens on industry being retained. This option also fails to deliver our Red Tape Challenge commitment to consolidate existing regulations.

Option 2: Transposition, deregulation and reworking of whole system

15. Policy option 2: Rework the system to make substantial changes to the hazardous substances consent regime, and streamline land-use planning requirements for hazardous substances, while still meeting the expectations set out in the Seveso III directive.
16. In reworking the system, objectives are not only deregulation, but also ensuring we meet the requirements of the directive, and maintain required levels of public safety. This reworking would, therefore, be a substantial project which would take significant time and consultation with industry and agencies. This would risk the Government not achieving transposition within the required time-frame, potentially resulting in legal proceedings and leaving industry at a comparative disadvantage. Transposition of the land-use planning requirements is part of a wider package of measures being introduced by the Health and Safety Executive to transpose a European directive and ensure public safety from major accidents involving hazardous substances. If these regulations were not introduced, the chemicals industry would be faced with two parallel regimes and leave an uncertain position on to how to continue operating lawfully.
17. As part of the consultation, we consulted on the scope for further reform. The responses received provide useful evidence and will be taken into account in considering the scope and shape of any future reform.

Option 3 (Preferred option): Transposition and deregulation

18. Policy option 3: Transpose the land-use planning requirements of Seveso III using existing mechanisms (i.e. the hazardous consent regime and wider planning system); remove unwarranted existing additional domestic regulation going beyond the requirements of the directive; consolidate hazardous substances regulations in line with the Government's Red Tape Challenge commitment.
19. Option 3 is the best option for transposing the directive to the EU deadline, whilst meeting agreed actions for the Government's Red Tape Challenge. As part of this approach, accompanying guidance is also being published alongside new regulations. We will also seek opportunities in future for greater streamlining and further integration of the land-use planning regime with the Control of Major Accident Hazards regime.

5. Impact on business: monetised and non-monetised costs and benefits

20. Since options 1 and 2 above are not viable options, in accordance with Better Regulation guidance⁶ they have not been further analysed. The following is an assessment of the impact of the preferred option (Option 3) on business.
21. With regard to proposals to deregulate how unwarranted domestic controls might impact on business. **As explained, the impact of the proposed changes to transpose the directive is addressed in a separate and complementary assessment.**
22. Changes to the current land-use planning rules are necessary in order to transpose the requirements of Seveso III. All measures proposed to transpose the directive and the deregulatory proposals are being taken forward through a single set of regulations, the Planning (Hazardous Substances) Regulations. Familiarisation costs associated with the new regulations are accounted for in the separate impact assessment relating to the costs and benefits of the transposition. In order to avoid double-counting these costs are not represented in this impact assessment.
23. The Department has sought to identify monetised estimates of the savings to business where possible. However in view of the evidence available, proxy measures have been relied on as appropriate to indicate the likely scale of benefit rather than producing estimates that risk misrepresenting the monetary value of the costs and benefits of these deregulatory changes.

⁶ 'The Better Regulation Framework Manual' - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

Outline: Key impacts on business of deregulatory measures

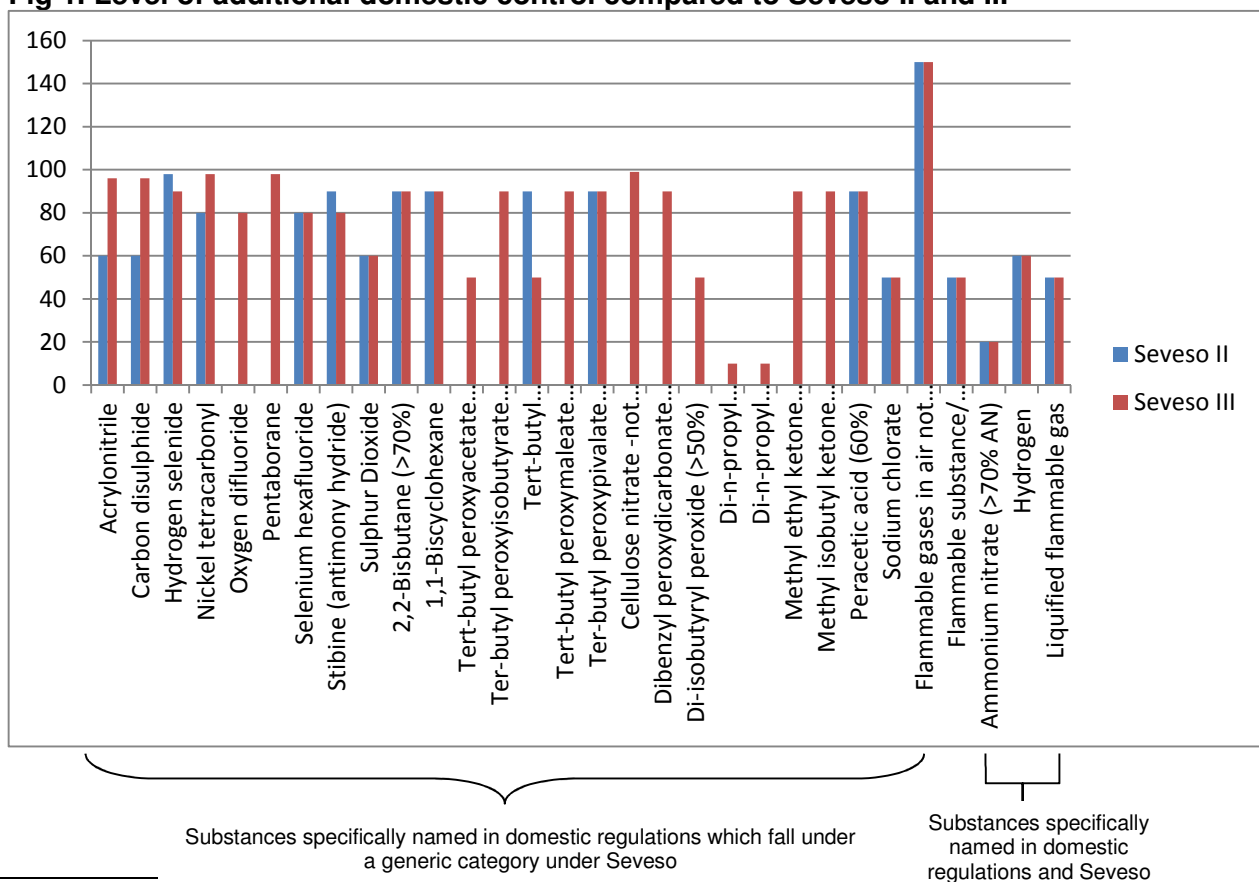
	Proposed Change	Anticipated Impact	Estimated Monetised Impact
1	Alignment of substances under additional domestic control with Seveso III	Up to 25 sites to fall out of scope of regulation; capacity for operators to obtain less restrictive consents; potential for a small decrease in the number of applications for consent each year.	Savings to business through deregulation; monetised benefit not provided.
2	Remove the need for businesses to reapply for a consent when making minor modifications	Increased flexibility for business; business will benefit through the removal of uncertainty surrounding applications being approved; small cost savings compared to applying for a consent.	Small cost savings to business relative to the consent application process; estimated monetised benefit not provided.

5.1 Impact of proposals to deregulate controls on hazardous substances: scope of regulation

24. For certain substances, regulations in England currently set a lower tonnage threshold for control than the Seveso directive. This translates into a stricter regime in England as these additionally controlled substances come into scope of regulation in England when held at lower quantities than the EU minimum threshold for control. Where substances are in scope of regulation in England, operators require a hazardous substances consent to hold them on site.

Figure 1 below shows the levels of additional control in England over and above that required by EU law (under Seveso II and Seveso III), as a percentage of the EU controlled threshold.

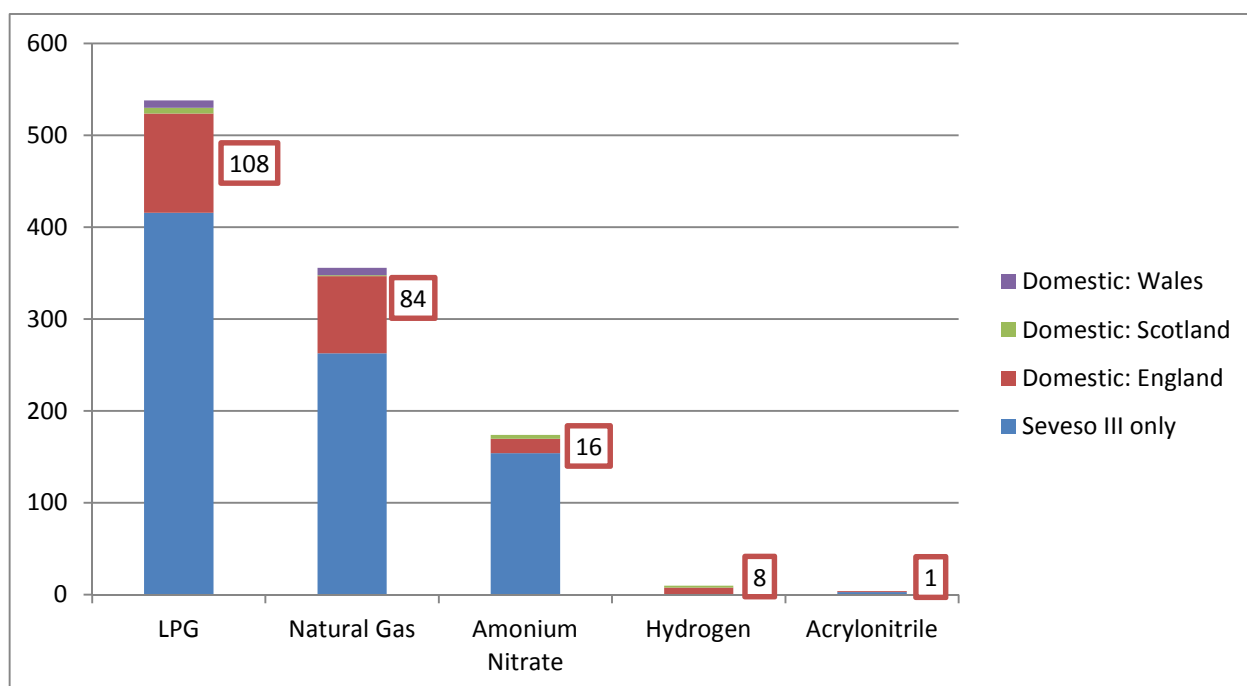
Fig 1. Level of additional domestic control compared to Seveso II and III⁷



⁷ Note that Figure 1 shows those substances which are controlled at lower quantities (i.e. more regulatory) than Seveso requirements. Seveso thresholds = 0, additional control is shown as a % of Seveso requirements. The larger the %, the more onerous the domestic threshold, when compared to the directive. (For example, if Seveso II controls substance A at 60 tonnes, domestic regulations are more regulatory by requiring consent for just 30 tonnes of substance A. The graph would therefore show that domestic regulations are 100% more regulatory than EU requirements).

25. Under the new Planning (Hazardous Substances) 2015 Regulations, domestic land-use planning controls on hazardous substances will be aligned with European standards, with the exception of liquefied petroleum gas, natural gas, and hydrogen, which will continue to be controlled at current levels for reasons of public safety, the rationale for which is further explained under [Section 6.1](#). This greater alignment with international standards will bring trade benefits and lower costs to business through deregulation.
26. The alignment of the majority of controlled substances with European requirements also provides greater flexibility for operators. Whereas existing regulations require operators to apply for a consent specifically for set quantities of the substance, our proposals allow operators in some cases to apply for consent under a generic category. This allows greater flexibility for operators to change the substances held within a category of substances with similar hazard characteristics.
27. As a result of this alignment, a number of sites could fall out of scope of regulation altogether and no longer need a consent. This will occur where controlled substances are held in quantities such that they are currently subject to control in England but fall below the threshold set in Seveso III.
28. Health and Safety Executive data indicates that there are at present around 700 sites in England subject to control under the Seveso directive. Additionally, 217 sites are currently controlled because of domestic regulatory requirements, although the total number is not known⁸.
29. **Figure 2** below is a summary of Health and Safety Executive data which shows the number of sites in England (numbered and in red) which are in scope of regulation as a result of holding the main substances where the control arises from a domestic and not an EU requirement. The information relates to those sites where consent has been granted for a single substance, not those where these substances might be present together with other substances.

Figure 2. Number of sites controlled under domestic regulations in addition to Seveso III requirements (2014)



30. A minimum of 17 sites⁹ are expected to come out of scope of regulation when the proposed changes come into effect. This is a conservative estimate, based on the number of sites that hold

⁸ Based on Health and Safety Executive data we have estimated the number of sites holding substances most affected by control arising from domestic regulation as 217. Data on sites controlled under additional domestic regulation is held by the individual hazardous substances authorities that process applications for consent, and is not centrally collected.

⁹ Figure based on 16 sites holding Consent for Ammonium Nitrate only and 1 site holding Consent for Acrylonitrile only. LPG, Natural Gas and Hydrogen will continue to be controlled at current levels and establishments will therefore not come out of scope as a result of holding a consent for any of these substances only.

a consent for a single substance. Where substances are held in combination with other substances, our proposals may lead to more sites falling below the threshold for regulation. This is because the combined quantities of substances held determine whether a hazardous substances consent is required. Health and Safety Executive data indicates that, in addition to the 17 sites to come out of scope through no longer needing a consent for a specific substance only, a further 8¹⁰ sites may come out of scope due to the combination of substances for which they hold a consent. Therefore, a total of 25 sites¹¹ may be expected to come out of scope of regulation as a result of the alignment of the list of controlled substances.

31. Because of the way information is held by the Health and Safety Executive, it is possible that there may be further sites we have not been able to identify which could come out of scope due to the particular combinations and quantities of substances held. More detailed assessment of the number of sites which could come out of scope would have required disproportionate resource to identify all additionally controlled sites in England and review their inventories to determine how the particular quantities and combinations of substances would affect the establishment's status under the new proposals. This would have been a significant and costly undertaking, which was judged disproportionate given we have no reason to believe significant numbers of additional unidentified sites would come out of scope.
32. In summary, the proposed deregulation of controls which currently go beyond the requirements of the directive will result in an estimated 25 sites coming out of scope. The decrease in the number of sites in scope of domestic regulation (and therefore subject to consent requirements) may translate into savings to business arising from the cost of complying with a consent, and greater operational flexibility. We do not have data related to these cost savings. There are no specific compliance costs related to the consent regime, and existing consents are valid until they are given up by operators or revoked (meaning that coming out of scope is not equivalent to saving the cost of making an application for a consent). The data held relates to costs incurred during the process of making a hazardous substances consent application. Given that these application costs only affect business as and when they need to apply for a consent, as determined by their business operations, we are not able to provide a monetised estimate of the savings to businesses as a result of coming out of scope of regulation. We do however anticipate that this might result in a small reduction in the number of applications made for hazardous substances consent per year¹², a process estimated to cost an average £17,300¹³. In addition, the deregulatory changes better align land-use planning controls in England with those of European competitors, ensuring that businesses are not unnecessarily disadvantaged.
33. Please note that sites coming out of scope as a result of the proposed deregulatory measures are in addition to a number of sites anticipated to come out of scope as a result of changes to the list of substances controlled under Seveso III compared to Seveso II, as detailed in the separate and complementary assessment of the impact of proposed transposition measures on business.

5.2 Impact of proposals to deregulate controls on hazardous substances: minor modifications

34. Under current regulations, operators seeking to make any change to the hazardous substances stored or used on site beyond those set out in an existing consent need to make an application to the hazardous substances authority for consent. Making an application for a consent costs an estimated average £17,300. This regulatory requirement is more onerous than in the directive, which requires control over changes "which could have significant consequences for major-accident hazards"¹⁴ or which result in an establishment moving between being a 'Lower Tier' and 'Upper Tier'

¹⁰ Health and Safety Executive data indicates respectively that 5, 1, and 2 sites holding substances in combination may out of scope of regulation as a result of changes in the tonnage threshold for Sulphur Dioxide, Cellulose Nitrate and Carbon Disulphide.

¹¹ Please note that these figures are estimates only and not based on site-specific data.

¹² There are currently an estimated 84-102 applications for hazardous substances consent made in England per annum.

¹³ Please refer to Section 6.2 for further details of the cost of making an application for hazardous substances consent

¹⁴ Directive 2012/18/EU (Seveso III), Article 7, paragraph 4

establishment. Current domestic regulations are therefore more burdensome than required by the directive and impose additional costs on business.

35. The proposed deregulation would mean that businesses looking to make minor modifications to their inventory or their operations will no longer need to apply for a consent where the changes proposed do not entail 'significant consequences for major accident hazards' or a tier change (following the wording in the directive). This will lower administrative costs for business and local authorities and allow businesses to be more flexible and reactive to industry trends and customer demand, enhancing competitiveness.
36. The Department also sought to ensure that in providing additional flexibility through the deregulatory measures, existing levels of public safety and environmental protection would be maintained. To ensure this, operators will need to provide information to the Control of Major Accident Hazards Competent Authority to certify that the modifications proposed will not entail significant consequences for major accident hazards. While there will be some costs to business in providing relevant information, a main advantage is that it will remove the uncertainty involved in the consent application process. There will also be cost savings through no longer incurring costs associated with a consent application, such as the application fee (£200-£400¹⁵) and public notification costs.
37. The proposed deregulation for minor modifications was supported by businesses and local authorities in the consultation, with respondents noting that it would help reduce red tape around the consent regime, and ease the brake on development resulting from the uncertainty to industry of a consent application. One business commented that it will reduce the long, costly and onerous process of applying for varied consents. As a result of consultation further flexibilities have been introduced. In order to provide further benefit to business, the Department will continue to work with the Control of Major Accident Hazards Competent Authority to ensure that guidance is provided to help businesses take advantage of the opportunity to make minor modifications without the need to apply for a consent.
38. At present, we know that on average 84-102¹⁶ applications are made for a hazardous substances consent in England each year. The existing hazardous substances consent regime does not differentiate between applications for consent for minor changes and other consent applications, meaning that there is no recorded data on the number of applications made by businesses seeking to make small changes to their inventories or operations. Even if this data were available, it would not identify situations where recent applications may have been made for greater quantities than an operator may require to meet business need (for example to win a new contract), or foregone opportunities.
39. While we considered asking business to quantify the advantage of the minor modifications route, we recognised that this would entail re-evaluation of old inventory lists and analysis for each change to determine whether the changes proposed would have been classed as having 'significant consequences for major accident hazards' and been eligible for the proposed new minor modifications channel. This was not a proportionate or realistically feasible option, especially given the relatively small number of consent applications made per year. We have therefore not provided a monetised estimate of predicted savings to business. Industry has given clear support to the proposed measure and the anticipated overall effect, as explained above, is increased flexibility for businesses together with a reduction in the administrative burden and removal of uncertainty in the process.

5.3 Impact of proposals to deregulate controls on hazardous substances: development in the vicinity of hazardous establishments

40. When preparing local plans, local planning authorities must have regard to the prevention of major accidents, and limiting their consequences. They must also consider the long-term need for

¹⁵ <http://planningguidance.planningportal.gov.uk/blog/guidance/hazardous-substances/how-are-applications-for-consent-made/>

¹⁶ Data on the number of consent applications per annum is provided in the separate and complimentary assessment of the changes proposed to carry out the transposition

appropriate distances between establishments holding hazardous substances and population centres or environmentally sensitive areas. The proposed measure to deregulate the existing controls will remove a number of sites from scope and, in so doing, may reduce the area of land that might otherwise be ruled out for development. This provides greater flexibility for other businesses that may want to develop in these areas, without compromising public safety.

6. Rationale and evidence

6.1 Extent of deregulation

41. At present, for certain substances, regulations in England set a lower tonnage threshold for control than the Seveso directive (II and III), meaning that the domestic system is more regulatory than required by EU standards. The Department initially explored the option to deregulate all substances where these were controlled more rigorously than required by the Seveso directive. However, on the basis of advice from the Health and Safety Executive, for now, retaining the existing levels of control in the hazardous substances consent regime for liquefied petroleum gas natural gas and hydrogen is considered to be justified in terms of public safety.
42. The Health and Safety Executive has advised that liquefied petroleum gas, hydrogen and natural gas are all extremely flammable gases and have the potential to cause a major accident even under the current control quantities, which are stricter than those imposed by Seveso. An indication of the potential consequences from an accident involving this quantity of flammable substances can be drawn from the Los Alfaques campsite disaster in Spain in 1978. This involved around 25 tonnes of a liquefied petroleum gas and resulted in 217 fatalities and 200 injuries.
43. There is a current drive for use of hydrogen as a 'clean' fuel at the point of use which may lead to more sites storing this substance. Maintaining control levels is therefore precautionary in light of the possibility of rapid proliferation of these sites. There is also current trend for liquefied natural gas fuel facilities at logistics sites (where a number of people will be present on site), and other sites which are not experienced major hazard operators, it is therefore also advisable to maintain current control standards on natural gas.
44. The intention to align the majority of substances with EU requirements was widely supported through public consultation. Energy UK commented that the approach was reasonable given advice from the Health and Safety Executive. Additionally, it was noted that if regulations were to be relaxed now but later thought to be necessary, it would be difficult to tighten these controls again without impacting on business, as affected establishments might become surrounded by inappropriate development in the meantime, which could lead to operational restrictions on the business.
45. We will work with the Health and Safety Executive to keep these controls under review. Technical advice from the Executive, including on these three substances, will be used to inform the proposed review of the Seveso III directive in 2020.

6.2 Cost of making an application for a hazardous substances consent

46. The lack of available data on the overall costs to business of applying for a hazardous substances consent has led the Department to identify proxy costs associated with making a planning application for a typical warehouse development. The latest figures on costs of applying for permission for a 'typical warehouse development' were calculated by Arup in research carried out for the Department in 2009. Arup found that these costs varied significantly with an average of £15,321¹⁷ at 2009 prices. We have adjusted this figure for 2014 using the treasury deflator, giving an average figure of **£17,300** which we use in our calculations. The Arup report also provided a

¹⁷ DCLG (2009) Benchmarking the costs to applicants of submitting a planning application
<http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/benchmarkingcostsapplication.pdf>

lower and upper bound - around £3,900 and £41,000 – showing that a wide range of costs can materialise in applying for planning consent.

47. The Department has made further attempts to secure the data necessary to more accurately estimate the cost to business of making an application for a consent. This has been done through further engagement with industry, including working with chemical industry bodies to obtain information from their members. This has involved significant efforts by industry to provide the relevant information, albeit only a relatively small number (19) of business were able to help. We have been advised this is because business do not tend to record the costs involved in the consent application process, and the knock-on effects on competitiveness of the time taken to secure a consent.
48. We were advised by industry that while in straightforward cases, costs averaging around £15,000 were indicated, for more complex applications (including new applications), where the process becomes extended, and taking into account the cost of delays and lost business alongside the consultant or man-hour costs, the cost could be significantly higher (costs of up to £25,000 were reported by industry body members in England). Variables such as size and type of project, and whether a consent is being sought for an entirely new site or simply straightforward modifications, mean that there can be significant differences in costs incurred in making an application for consent.
49. Given industry feedback, we have judged that the proxy cost associated with making a planning application for a warehouse development (updated to reflect 2014 prices) remains the best available way of representing the costs that businesses might expect to incur in preparing and submitting an application for hazardous substances consent. Attempting to gather more detailed evidence would cause a disproportionate burden to businesses and industry, who had already invested significant effort in gathering information. This would be particularly unwarranted given that we were advised that the information we were seeking is not usually held by businesses and was therefore not available.
50. The Department is acting on industry concerns relating to risks of delay and complications in the hazardous substances consent regime, and has sought to streamline the application process to increase efficiency in line with the directive's requirements, as detailed in the impact assessment relating to the transposition of the directive.

7. Risks and assumptions

51. Estimates are based on the best available data, as explained in the relevant sections.
52. In calculating the number of sites likely to come out of scope as result of changes to the list of controlled substances, projections are based on data provided by the Health and Safety Executive. This information is the best available from Health and Safety Executive records, but this is not a definitive list of consents which are held by individual hazardous substances authorities. Therefore it is possible that there are further sites which may come out of scope that have not been accounted for. Nevertheless it is a reasonable illustration of the extent, and it is not likely that any significant number of additional unidentified sites would come out of scope. It is also possible that there may be further sites we have not been able to identify which could come out of scope due to the particular combinations and quantities of substances held.
53. The estimated number of sites which may come out of scope as a result of the proposals is based on the underlying assumption that these sites will continue to operate as they did at the start of 2014 when data was collected. If operators have made changes to substances and quantities stored or will change these in future, this could have an impact on whether or not a business will be within scope of legislation.
54. Further to this, it is conceivable that some businesses would seek to take advantage of changes by adapting their operations in future so as to fall out of scope and lessen their administrative burden. Business representatives have indicated this is unlikely. We have therefore assumed that this is not a very probable eventuality, but the result would be an increase in overall administrative savings to business.

8. Direct costs and benefits to business calculations (following One In Two Out methodology)

55. Our proposals to deregulate the Planning (Hazardous Substances) Regulations 1992 (as amended) are in scope of One In Two Out.
56. The deregulatory measures proposed entail no gross costs to business. For reasons set out in the relevant sections, a monetised estimate of benefits has not been provided, but the overall impact on business will be cost-saving, due to the proposed deregulation and reduction in the scope of land-use planning regulations on hazardous substances.
57. These measures are therefore classified as an 'OUT'.

9. Wider impacts

58. We have considered the potential impacts of the proposed project in the context of the general equality duty and concluded that they are not likely to result in any significant differential impacts on any of the protected characteristics.

10. Summary and implementation plan

59. The Seveso III directive on the control of major-accident hazards is to be transposed by 31 May 2015. The Department for Communities and Local Government has responsibility for transposing the land-use planning requirements of the directive in England.
60. At the same time as the transposition, the Department has taken the opportunity to deregulate domestic controls where these are more onerous than the requirements of the directive. Where domestic tonnage thresholds are lower than the minimum thresholds in the directive, (and therefore subject to stricter control) these will be aligned with EU thresholds in all but three cases, where the Health and Safety Executive have advised that controls are to stay at current standards for public safety reasons. As a result of this deregulation, around 25 sites could come out of scope of regulation in England altogether, and would therefore no longer be subject to the hazardous substance consent regime and associated costs.
61. Businesses seeking to make minor modifications to their operations or inventory will also no longer need to apply for a new consent where these modifications do not result in significant consequences for major accident hazards. This will remove the uncertainty involved in applying for a consent, reduce the administrative burden on industry and help enable greater business flexibility.
62. Further advantages to business will follow from other changes as a result of the transposition of the directive and the consolidation of land-use planning regulations as part of the Department's Red Tape Challenge commitment. These are detailed in the related separate impact assessment for the transposition.
63. Industry has been supportive of the changes proposed and consultation with industry has informed the Department's approach throughout the transposition. Measures outlined in this impact assessment carry no cost to business.
64. The regulations will be laid before Parliament in March 2015, and will come into effect in England on 1 June 2015 (the EU deadline for implementation). Guidance will be provided to support the proposed measures.

10.1 Post implementation review

65. The proposed Planning (Hazardous Substances) Regulations will be reviewed within five years of commencement. Furthermore, by 30 September 2020, the European Commission will review the implementation and functioning of the Seveso III directive.