

EXPLANATORY MEMORANDUM TO
THE PLANNING (HAZARDOUS SUBSTANCES) (AMENDMENT) (ENGLAND)
REGULATIONS 2009

2009 No. 1901

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
These Regulations amend the Planning (Hazardous Substances) Regulations 1992 (SI 1992/656) to increase the range of dangerous substances for which consent must be obtained for storage or processing; the definitions of these substances; and the amounts allowed before consent must be obtained.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
None
4. **Legislative Context**
 - 4.1 These Regulations implement Article 12 of European Directive 96/82/EC (the Directive) on the control of major accidents involving dangerous substances as amended by Council Directive 2003/105/EC.
 - 4.2 Article 12 relates to land use planning. The purpose of Article 12 (as amended) is to prevent major accidents which involve dangerous substances and limit their consequences for man and the environment. It does this by ensuring that there are appropriate land-use policies and procedures in place which take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential/public buildings and areas, including major transport routes and recreational areas.
 - 4.3 Article 12 was amended following a spate of industrial accidents and, in particular, an accident in Romania which led to a cyanide spill in the Danube. It was also amended in response to studies on carcinogens and substances dangerous for the environment carried out by the Commission.
 - 4.4 Under the Planning (Hazardous Substances) Act 1990 (the 1990 Act) and the Planning (Hazardous Substances) Regulations 1992 (the 1992 Regulations), consent for the storage and processing of hazardous substances must be obtained. The Health and Safety Executive (HSE) are consulted on all such applications for consent. Under section 9 of the 1990 Act, in determining such applications for consent, hazardous substances authorities (generally district or London borough councils; see sections 1 to 3 of the 1990 Act) have to take in to account planning permissions already granted, the way that land is already used and any plans for the future development of land as well as the HSE's concerns.

4.5 The consent regime already in place for hazardous substances under the 1990 Act and the 1992 Regulations ensures that account is taken of the need to maintain appropriate distances in accordance with the Directive. However, Schedule 1 to the 1992 Regulations sets out the list of hazardous substances and controlled quantities of these substances to which the consent regime applies. The 2003 amendments to the Directive extended the scope of these categories and put tighter controls on the controlled quantities of these substances. The 1992 Regulations need amending to reflect this change.

4.6 A Transposition Note is attached.

4.7 The 2003 amendments to the Directive required changes to be made to comply with the Directive by 1st July 2005.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 These Regulations amend the planning regulations for England to make them fully compliant with Article 12 of the Directive, as amended by Directive 2003/105/EC.

7.2 The principal change made by these Regulations is the amendment of the list of hazardous substances, and their qualifying quantities (the threshold which triggers the requirement for hazardous substances consent), so that it is compliant with the amended list, as set out in the Directive. There are also transitional arrangements for site operators with existing hazardous substances consent whose inventories include hazardous substances at or beyond the quantities stated in the amended list. The Regulations also allow a period of six months for the making of applications for hazardous substances consent by those site operators who will require consent as a result of the amendments.

7.3 Unless these Regulations are made (along with their equivalents for Scotland, Northern Ireland and Wales), the UK will not be compliant with the Directive and could be subject to infraction proceedings.

7.4 Due to the specialist and sector-specific nature of these Regulations, the level of public interest is relatively limited – the consultation paper resulted in fewer than 10 responses. However, within the industry – particularly those sectors affected by the changes – these Regulations are significant.

• *Consolidation*

7.5 There are no plans to consolidate the 1992 Regulations. The Department is currently undertaking a wide-ranging review of the planning system relating to

hazardous substances and will consider consolidation of the Regulations in the light of the findings of the review.

8. Consultation outcome

8.1 A consultation paper was issued in March 2009 which proposed changes to amend the 1992 Regulations to comply with the Directive. The period for making representations was 8 weeks.

8.2 The shorter consultation period was adopted because relatively few hazardous sites operators would be affected by the amendments proposed and because, prior to consultation, the Department had contacted an appropriate trade body representing the chemical and pharmaceutical businesses to ascertain the view of its members.

8.3 The public consultation paper set out the legislative background to the proposed Regulations. It stated how Article 12 of the Directive was transposed in relation to England by the 1990 Act and the 1992 Regulations, and that the 2003 amendments to the Directive required a corresponding change to the 1992 Regulations.

8.4 The draft regulations that accompanied the consultation paper contained three transitional provisions, including one transitional provision which provided for deemed consent to be granted to firms with an established presence of hazardous substances for at least 12 months before the coming in to force of the Regulations. These firms would not have required hazardous substances consent before the 2003 amendments to the Directive.

8.5 This transitional provision was included in the draft regulations in response to concerns raised in the chemical and pharmaceutical industry about the uncertainty that would otherwise ensue if firms were required to apply for express consent despite having already established their business in accordance with the law as it was.

8.6 The consultation paper contained two options: (A) no change; or (B) adopt the draft regulations proposed. Consultees were asked for views on these options.

8.7 There were eight responses, including responses from the HSE (Health and Safety Executive), UKPIA (UK Petroleum Industry Association - represents the interests of companies engaged in the UK oil industry), CIA (Chemical Industries Association - represents UK chemical and pharmaceutical businesses), and CBA (Chemical Business Association), RWE nPower, and a few local authorities. This relatively low number of respondees partly reflects the specialist nature of this sector of industry, and also that the transitional provisions broadly satisfied the industry concerns.

8.8 The majority of respondents did not express a preference for either option. Of those that did, there was clear support for the proposal for change (option B) – particularly the transitional provisions. Comments ranged from general remarks about the complexity of the overall system to specific examples where regulatory clarity could be improved. Some pointed out the disparity between the list of

substances and their threshold quantities under the 1992 Regulations and those under a parallel consent regime set out in the Planning (Control of Major-Accident Hazards) Regulations 1999 (SI 1999/891) with suggestions for consistency in the two regimes, something which is beyond the scope of these Regulations (but see paragraph 7.5). HSE had a range of concerns, including suggestions for separate notifications for petroleum sub-divisions, and advice about possible future guidance.

8.9 The consultation paper is available on the CLG website at: www.communities.gov.uk/publications/planningandbuilding/hazardousconsultation

8.10 However, although the transitional provision described in paragraph 8.4, as drafted, ensured that the HSE would be notified of applications for deemed consent for future planning applications, it did not allow for determinations to be made about whether hazardous substances consent should be granted, or special conditions attached, taking in to account existing (and not just future) land uses in the areas surrounding sites. The Department was concerned about the appropriateness of maintaining this provision given the delay in implementing the Directive.

8.11 The Department wanted to avoid land uses in existence when the Directive came into force not being taken into account in determining hazardous substances consent. Therefore, this particular provision has not been included in the Regulations. Firms with an established presence of hazardous substances which would not have required hazardous substances consent before the coming in to force of these Regulations must now apply for it expressly if the substances or quantities come within the new Directive categories and thresholds. However, such firms will be immune from prosecution and other proceedings for not having this consent for 6 months from the coming into force of these Regulations. The Department has contacted the relevant Departments and trade associations to inform them of this change.

9. Guidance

9.1 The guidance on the hazardous consents regime exists at Circular 4/2000 *Planning Controls for Hazardous Substances* and in the document *Hazardous Substances – A Guide to Industry*.

9.2 The Government will issue amending supplementary statements or documents in relation to these documents and give consideration to their complete replacement in due course after the Government has completed its review of the land use planning system for major hazard sites.

10. Impact

10.1 These Regulations will affect those businesses which involve the storage, manufacture or distribution of hazardous materials. The main impact will be on businesses which will be brought into the hazardous substances consent regime as a result of the Regulations and which will need to apply to the hazardous substances authority for express consent.

10.2 The Department does not envisage an impact on charities or the voluntary sector.

10.3 The impact on the public sector is relatively small. Across Britain, there are relatively few operators which will be affected by the Regulations. Whilst certain hazardous substances authorities will have to process applications for express or deemed hazardous substances consent, these are relatively few across the country as a whole, and the cost of the work will be met by the application fee.

10.4 The HSE will have to undertake additional work in setting the consultation distances around any 'new' hazard sites for which consent will be needed as a result of the amendments. However, across the country as a whole, the number of sites is expected to be 25.

10.5 An Impact Assessment is attached to this memorandum.

11. Regulating small business

Based on discussions with the HSE, we estimate that only 53 sites would come within the scope of the hazardous substances consent regime for the first time as a result of these Regulations. Due to the nature of the substances involved, the Department considers it more likely that these changes will impact principally on the larger and medium sized businesses, rather than small firms.

12. Monitoring & review

The changes made by these Regulations are designed to achieve full compliance with the Directive as amended by Directive 2003/105/EC. The Commission will be reviewing the Directive in due course.

13. Contact

Louise Waring at the Department for Communities and Local Government Tel: 020 7944 4400 extension 3962 or email: louise.waring@communities.gsi.gov.uk can answer any queries regarding the instrument.

**TRANSPOSITION NOTE: ARTICLE 12 OF DIRECTIVE 96/82/EC AS AMENDED
BY COUNCIL DIRECTIVE 2003/105/EC**

This transposition note has been prepared by the Department for Communities and Local Government to demonstrate how Article 12 of Directive 96/82/EC (as amended by Article 1(7)(a) of Directive 2003/105/EC) has been transposed in relation to land use planning by the Planning (Hazardous Substances) (Amendment) (England) Regulations 2009.

The purpose of article 12 of Directive 96/82/EC as amended is to ensure that land-use policies and the procedures for implementing them take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential/public buildings and areas, including the extended categories of buildings in public use, major transport routes and recreational areas. This is to prevent major accidents which involve dangerous substances and limit their consequences for man and the environment.

The scope of Directive 96/82/EC was also extended by the Directive 2003/105/EC amendments to Annex 1 to Directive 96/82/EC. The amendments to Annex 1 to Directive 96/82/EC increased the number of dangerous substances listed and made changes to the ways in which they are categorised and the amounts allowed to be processed or stored without consent.

These Regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

Directive			
Council Directive 96/82/EC of 9 December 1996 (as amended by Directive 2003/105/EC of 16 December 2003) on the control of major accident hazards involving dangerous substances.			
Articles	Objectives	Implementation	Responsibility
Article 12 as amended	To ensure that land-use policies and the procedures for implementing them take account of the need to maintain appropriate distances between establishments storing and processing dangerous substances and residential areas/ public areas as well as the following extended categories: <u>buildings in public use, major transport routes as far as possible, and recreational areas</u> . This is with the overall aim of preventing major accidents involving	This has already been implemented by the Planning (Control of Major Accident Hazards) Regulations 1999 (SI 1999/891) and the consent regime already in place as set out in the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992 (SI 1992/656). However, the new thresholds set out in Annex 1 to the Directive (as amended) determine the application of article 12 and so the implementation of both are linked – see below.	Firms storing or processing hazardous substances to apply for consent. The Health and Safety Executive to be the expert consultee on such applications. The Hazardous Substances Authorities to ensure appropriate distances are maintained.

Annex 1 as amended	<p>hazardous substances.</p> <p>To set quantity thresholds for listed dangerous substances, at or above which consent must be obtained for the storage or processing of such substances. This is in order to ensure high levels of protection throughout the Community in a consistent and effective manner.</p>	<p>Regulation 2 of these Regulations amends the Planning (Hazardous Substances) Regulations 1992 (SI 1992/656) by updating Schedule 1 to those Regulations to reflect the new lists and categories for dangerous substances as set out in the amended Annex 1 to Directive 96/82/EC.</p> <p>Transitional provision is made at regulation 3 of these Regulations for establishments with existing hazardous substances consents. These consents will continue to have effect, notwithstanding the new thresholds in Annex 1 to the Directive (as amended), until varied by the Hazardous Substances Authorities.</p> <p>Transitional provision is made at regulation 4 to protect establishments which do not require consent before these Regulations come into force from prosecution and contravention proceedings for failing to have consent. A period of six months from the coming in to force of these Regulations is allowed for the making of applications for consent.</p>	<p>Firms storing or processing hazardous substances to apply for consent. The Health and Safety Executive to be the expert consultee on such applications. The Hazardous Substances Authorities to ensure appropriate distances are maintained.</p>
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Summary: Intervention & Options

Department /Agency: Communities and Local Government	Title: Impact Assessment of Changes to Hazardous Substances Regulations	
Stage: Final	Version: 1	Date: June 2009
Related Publications: Consultation Document		
Available to view or download at: http://www.communities.gov.uk/documents/planningandbuilding/pdf/hazardousconsultation.pdf		
Contact for enquiries: Andrew Gough		Telephone: 0207 944 6511

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

The *Planning (Control of Major Accident Hazards) Regulations* need to be amended in order to comply with the requirements of EC Directive 96/82/EC, as amended (the Seveso II Directive) on the control of major accident hazards involving dangerous substances. This involves amendment of the list (schedule) of hazardous substances and their 'threshold' quantities (ie, quantities beyond which operators would need to obtain HS consent). Failure to achieve satisfactory EC compliance puts the UK at risk of incurring infraction fines - an unacceptable risk to the UK taxpayer. (Named substances annexed).

What are the policy objectives and the intended effects?

To amend the regulations to give effect (in England) to fully accord with the requirements of the Directive on the control of major accident hazards involving dangerous substances whilst, as far as possible, limiting any adverse impacts of these amendments on businesses that use, store, or manufacture hazardous substances. The effect is to achieve Directive compliance whilst minimising adverse regulatory impact.

What policy options have been considered? Please justify any preferred option.

- A. Do nothing. The regulation would remained unchanged.
 - B. Introduce amendments to the *Planning (Control of Major Accident Hazards) Regulations* to accord with the requirements of the Directive.
- Option B is preferred. Choosing Option A runs the risk of the being infringed for non-compliance with an EU Directive.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be revisited as required when the Directive is revised by the EU. This is expected within the next 3 years.

Ministerial Sign-off For Final stage Impact Assessments:

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) the benefits justify the costs.

Signed by the responsible Minister:

Ian Austin

..... Date: 15th July 2009

Summary: Analysis & Evidence

Policy Option: B

Description: Introduce amendments to the Planning (Hazardous Substances) Regulations to accord with the requirements of the EU Seveso Directive.

COSTS	ANNUAL COSTS		<p>Description and scale of key monetised costs by 'main affected groups' Approximately 48 hazardous substances site operators will have to pay one-off application fees when applying for deemed or express hazardous substances consent. The other groups affected are hazardous substance authorities (HSA) (usually local planning authorities); and the Health and Safety Executive (HSE). However, HSA costs should be offset the fees received. The costs to HSE are relatively small, given that only 48 sites are affected by these amendments to regulations. Neither HSE nor HSA costs have been monetised.</p>	
	One-off (Transition)	Yrs		
	£ 12,000-19,000	1		
	Average Annual Cost (excluding one-off)			
	£		Total Cost (PV)	£ 12,000-19,000
<p>Other key non-monetised costs by 'main affected groups'</p> <p>There may be a small cost to industry of familiarisation with planning regulations, but this is not expected to be significant.</p>				

BENEFITS	ANNUAL BENEFITS		<p>Description and scale of key monetised benefits by 'main affected groups'</p> <p>The key monetised benefit stems from the avoidance of heavy infraction fines. An estimate of the potential fine is provided in the main text below based on previous fines imposed and the maximum daily fine possible.</p>	
	One-off	Yrs		
	£ 117m - 167m	1		
	Average Annual Benefit (excluding one-off)			
	£		Total Benefit (PV)	£ 117m-167m
<p>Other key non-monetised benefits by 'main affected groups'</p>				

Key Assumptions/Sensitivities/Risks:

A key assumption is that there will be very little change as a result of amending the Regulations to accord with the Directive. The majority of operators are already subject to the regulations and have existing consents. For these, the deemed consent procedure should ensure certainty for their businesses. Of the rest, only 20 operators (in England) will need to apply for express hazardous substances consent. Assumptions about the level of a potential EU fine are key to the net benefits.

Price Base Year 2009	Time Period Years 1	Net Benefit Range (NPV) £ 117m - £167m	NET BENEFIT (NPV Best estimate) £ 142m
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What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	July 2009
Which organisation(s) will enforce the policy?	Local Authorities
What is the total annual cost of enforcement for these	£ 0
Does enforcement comply with Hampton principles?	N/A
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0

Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£ 0	Decrease of	£ 0	Net Impact £ 0

	Annual costs and benefits: Constant Prices	(Net) Present Value
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Background

In December 1996, Council Directive 96/82/EC on the control of major-accident hazards (Seveso II Directive) was adopted. This replaced its predecessor, Council Directive 82/501/EEC (the first Seveso Directive).

The Seveso II Directive introduced some important changes. Its focus incorporated protection of the environment, and consequently covered substances considered dangerous for the environment, in particular aquatoxics. It introduced new requirements relating to safety management systems, emergency plans and land-use planning and tightened up the provisions on inspections and public information.

The Directive is applicable to any establishment where dangerous substances are present – or likely to be produced as a result of an accident – in quantities equal to/in excess of those quantities listed in the Annex. In addition, the scope of the Directive was both broadened and simplified. The list of named substances in the Annex was reduced from 180 to 50, but is accompanied by a list of categories of substances, which in practice broadens the scope.

We have given effect to the requirements of this Directive by way of amendment to planning legislation relating to hazardous substances consents, preparation of development plans and on consultation before the grant of planning permission. The effect is that sites that fall within scope of the Seveso II Directive have to obtain hazardous substances consent from the local planning authority.

In 2003, Council Directive [2003/105/EC](#) further extended the scope of the Seveso II Directive. It made changes to the way in which some substances and preparations are classified or defined, and to some qualifying quantities that determine whether an establishment falls within scope of Seveso II. There were also some administrative changes.

It is in order to fully comply with these changes to the Directive that we are proposing to make further amendments to the *Planning (Control of Major Accident Hazards) Regulations*

The Directive applies throughout the United Kingdom. Planning is a devolved responsibility so these amendments will be transposed separately in Scotland, Wales and Northern Ireland.

Sectors and groups affected

- Applicants/appellants (hazardous substances site operators)
- Hazardous Substance Authority (usually the Local Planning Authority)
- Health and Safety Executive

Policy options considered

The consultation paper contained two options:

Option A – Do nothing

The current process would be maintained.

Option B - Introduce amendments to the regulations to accord with Directive

This option proposed that changes be made to the legislation so that the list of hazardous substances and their qualifying quantities accord with that of the Directive.

The draft Regulations also provided for deemed consent to be granted to firms that had an established presence of hazardous substances for at least 12 months prior to the Regulations coming into force.

This provision was included in the draft regulations in response to concerns raised in industry about the uncertainty that would otherwise ensue if firms were required to apply for express consent despite having already established their business in accordance with the law as it was. The provision received considerable support in the consultation responses.

Consultation Response

There were eight responses. This relatively low number of respondents partly reflects the specialist nature of this sector of industry, and also that the deemed consent provisions broadly satisfied the industry concerns.

Respondees included the Health and Safety Executive; RWE nPower; a range of trade associations including the UK Petroleum Industry Association (represents the interests of companies engaged in the UK downstream oil industry), the Chemical Industries Association (represents UK chemical and pharmaceutical businesses) and the Chemical Business Association, and a few local authorities.

The majority of respondents did not express a preference for any option. Of those that did, there was clear support for the proposal for change (option B) – particularly the provisions for transitional arrangements which were warmly welcomed.

Other comments ranged from general remarks about the complexity of the overall system to specific examples where regulatory clarity could be improved. Some pointed out the disparity between the list of substances and their threshold quantities under the Hazardous Substances Regulations and those under the COMAH Regulations, with suggestions for consistency in the two Regimes. HSE's concerns focussed on the impacts from the way that the list of hazardous substances and thresholds – which largely followed the Directive – is drawn.

Option chosen

The Government indicated that its preference was for option B.

However, the draft Regulations in the consultation paper contained a transitional provision which is no longer contained in the Regulations the Government is taking forward.

The Department had concerns about whether this approach would raise questions about compliance with the Directive given the delay in implementing it. The Department took the view that transitional provisions were appropriate for operators that had existing consents, but that 'express' hazardous substances consent would be required for operators who would require it as a result of the amendments.

Whilst the provisions for transitional provisions received support from industry, with no particular concerns being raised during the consultation process, these issues were given additional consideration after the consultation was over. There were concerns about the viability of the transitional provisions, given the requirements of the Directive, and whether such an approach could undermine the validity of compliance with the Directive – particularly given the delay in implementing it. Following further discussions with the devolved administrations, the Department has re-evaluated its view on these provisions. The Regulations include transitional provisions for operators that have existing consents, but 'express' hazardous substances consent from the appropriate hazardous substances authority would be required for those operators who would be brought into the consents regime as a result of these Regulations.

The option chosen is therefore a variation of option B; the key difference being that express consent is required in the case of operators whose inventories mean they will be brought into the hazardous substances consents regime as a result of the Regulations.

Costs and Benefits

Option A - Do nothing

Costs

Option A means the UK would be in non-compliance with Directive 96/82/EC (the Seveso II Directive). This risks the UK being infringed for non-compliance. The failure to properly transpose and enforce an EU obligation can eventually lead to a fine. The maximum fine that could be imposed on the UK is some €530,000 (£456,897)¹per day.

There are no other costs associated with this option.

Benefits

This option will mean that hazardous site operators will not have to apply for express or deemed hazardous substances consent. Hazardous Substance Authorities, or the HSE will not have to process the applications.

¹ Based on exchange at 2nd July 2009 of £1 to €1.16.

There are no other benefits associated with this option.

Option B, as amended - Introduce amendments to the regulations to accord with Directive, with express consent being required for some hazardous site operators

Costs

- *Hazardous Substances Site Operators*

Costs arise from the need for hazardous substance consent to be obtained as a result of the extension of the hazardous substance list to include substances which are currently held on sites and for which consent is currently not required.

It is thought that the amendments will affect approximately 48 sites² across England, of which 20 sites (across England) will require express hazardous substances consent. .

The operators of these sites will need to bear the costs of applying for express or deemed consent including an application fee of between £250 and £400 and the associated administrative process. Currently, for applications where no one substance exceeds twice the controlled quantity, the fee is £250. For proposals involving the presence of a substance in excess of twice the controlled quantity, the fee is £400. Where an application is for the removal of conditions attached to a grant of consent, or for the continuation of consent upon partial change in ownership of the land, the fee is £200.

Total costs to these additional sites will range from approximately £12,000 to £19,000 depending on the fee paid. This is a one-off cost.

There is a potential cost to operators whose express application for hazardous substances consent is refused by the hazardous substances authority. However, given that the HSE is likely to support the application, this is considered highly unlikely.

- *Hazardous Substances Authorities*

The relevant hazardous substances authorities will face the costs of processing the express or deemed consent applications. However, the fee for the application is expected to cover the administrative costs of the application. These costs will vary but as many of the applications are made on the basis of deemed consent, this will shorten the process. In any case, as the amendments are thought to apply to just 48 sites across the country (England only), this is not expected to amount to a significant burden. The maximum number of authorities affected would be 48.

- *Health and Safety Executive*

Once deemed consent is granted the Health and Safety Executive would need to undertake an assessment and configure the appropriate consultation distances. This would affect the resources of HSE. However, as the number of additional sites that would require an assessment is relatively low, the costs are not thought to be significant.

² Health and Safety Executive estimation of affected sites across England.

Benefits

This option avoids the risk of the UK being infracted for non-compliance of the Seveso Directive. This is a substantial cost saving. Although instances of fines being imposed are relatively rare (presumably because Member States take action before infraction proceedings get that far), the European Court of Justice can impose very heavy fines (a Member State was recently fined a lump sum of Euro 20 million, plus Euro 58 million for every six months it failed to comply with a judgment of the ECJ – a total of €136 million per year or £117 million). However, it is not possible to anticipate the lump sum penalty or monthly penalty rate, as this is set by the EC according to the seriousness of the infringement and the situation. As stated above, the maximum daily fine is €530,000, which equates to approximately £460,000. If a fine of this magnitude was imposed by the European Court of Justice it would lead to an annual fine of over £165 million.

Furthermore, requiring relevant operators without hazardous substances consent to apply for deemed consent will bring additional health and safety benefits.

Specific Impact Tests

Small Firms Impact Test

Based on discussions with the Health and Safety Executive, we estimate that only 48 sites (for England) would come within the scope of planning controls for the first time as a result of the proposed changes *Planning (Hazardous Substances) Regulations* to fully accord with the Seveso II Directive.

Due to the nature of the substances involved, we believe it more likely these changes will impact principally on the larger and medium sized businesses, rather than small firms.

Competition assessment

The competition filter was applied to this proposal. We do not consider that this proposal will have any differential effect on operators, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

Environmental impact

This proposal would not result in any significant environmental impacts. Although there is also the health and safety benefit of fully adopting the requirement of the Directive.

Race, disability and gender equality impacts

The Seveso II Directive applies only to sites where dangerous chemical substances and preparation are present. The sites affected by the amendments are operated by businesses in the chemical, petroleum, electricity and water supply sectors and those involved in manufacture and storage of explosives.

We have undertaken an equalities screening and do not consider that the proposed amendments will be the cause of disproportionate impacts to different groups from this proposal in terms of race, disability or gender equality.

Rural, health and other social effects

We have considered these possible effects. We do not consider that there would be disproportionate impacts to different groups from this proposal in terms of rural, health or other social effects.

Human Rights

The proposed amendments do not have any impact on human rights and therefore do not have any ECHR implications.

Other impact tests

We have considered other impact tests – legal aid, sustainable development, and carbon assessment, and consider that there would be no demonstrable impact arising from this proposal in these areas.

Enforcement, sanctions and monitoring

The Planning (Hazardous Substances) Act and Regulations have existing provisions for enforcement and sanctions. These will apply as normal.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

1. Type of testing undertaken	2. Results in Evidence Base?	3. Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annex

NAMED SUBSTANCES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Hazardous Substances</i>	<i>Controlled quantity (Q) in tonnes</i>	<i>Quantity for purposes of note 4 to the notes to Parts A and B (Q*)</i>
1. Ammonium nitrate to which Note 1 of the notes to this Part applies	5000.00	10000.00
2. Ammonium nitrate to which Note 2 of the notes to this Part applies	1000.00	1250.00
3. Ammonium nitrate to which Note 3 of the notes to this Part applies	350.00	
4. Ammonium nitrate to which Note 4 of the notes to this Part applies	10.00	
5. Potassium nitrate to which Note 5 of the notes to this Part applies	5000.00	

6. Potassium nitrate to which Note 6 of the notes to this Part applies	1250.00	
7. Arsenic pentoxide, arsenic (V) acid and/or salts	1.00	
8. Arsenic trioxide, arsenious (III) acid and/or salts	0.10	
9. Bromine	20.00	
10. Chlorine	10.00	
11. Nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide)	1.00	
12. Ethyleneimine	10.00	
13. Fluorine	10.00	
14. Formaldehyde ($\geq 90\%$)	5.00	
15. Hydrogen	2.00	5.00
16. Hydrogen chloride (liquefied gas)	25.00	
17. Lead alkyls	5.00	
18. Liquefied petroleum gas, including commercial propane and commercial butane, and any mixture thereof, when held at a pressure greater than 1.4 bar absolute.	25.00	50.00
19. Liquefied extremely flammable gases excluding pressurised LPG (entry no.18)	50.00	
20. Natural gas	15.00	50.00
21. Acetylene	5.00	
22. Ethylene oxide	5.00	
23. Propylene oxide	5.00	
24. Methanol	500.00	
25. 4, 4-Methylenebis (2-Chloraniline) and/or salts, in powder form	0.01	
26. Methylisocyanate	0.15	
27. Oxygen	200.00	
28. Toluene diisocyanate	10.00	
29. Carbonyl dichloride (phosgene)	0.30	
30. Arsenic trihydride (arsine)	0.20	
31. Phosphorus trihydride (phosphine)	0.20	
32. Sulphur dichloride	1.00	
33. Sulphur trioxide (including sulphur trioxide dissolved in sulphuric acid to form Oleum)	15.00	
34. Polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (to which Note 7 of the notes to this Part applies)	0.001	
35. The following CARCINOGENS at concentrations above 5% by weight: 4-Aminobiphenyl and/or its salts, Benzotrichloride, Benzidine and/or salts, Bis (chloromethyl) ether, Chloromethyl methyl ether, 1,2-Dibromoethane, Diethyl sulphate, Dimethyl sulphate, Dimethylcarbamoyl chloride, 1,2-Dibromo-3-chloropropane, 1,2-Dimethylhydrazine, Dimethylnitrosamine, Hexamethylphosphoric triamide, Hydrazine, 2-Naphthylamine and/or salts, 4-Nitrodiphenyl and 1,3 Propanesultone	0.5	
36. Petroleum products (a) gasolines and naphthas, (b) kerosenes (including jet fuels), (c) gas oils (including diesel fuels, home heating oils and gas	2500.00	

oil blending streams)		
37. Acrylonitrile	20.00	50.00
38. Carbon disulphide	20.00	50.00
39. Hydrogen selenide	1.00	50.00
40. Nickel tetracarbonyl	1.00	5.00
41. Oxygen difluoride	1.00	5.00
42. Pentaborane	1.00	5.00
43. Selenium hexafluoride	1.00	50.00
44. Stibine (antimony hydride)	1.00	5.00
45. Sulphur dioxide	20.00	50.00
46. Tellurium hexafluoride	1.00	5.00
47. 2,2-Bis(tert-butylperoxy) butane (>70%)	5.00	50.00
48. 1,1-Bis(tert-butylperoxy) cyclohexane (>80%)	5.00	50.00
49. tert-Butyl peroxyacetate (>70%)	5.00	50.00
50. tert-Butyl peroxyisobutyrate (>80%)	5.00	50.00
51. tert-Butyl peroxyisopropylcarbonate (>80%)	5.00	50.00
52. tert-Butyl peroxy maleate (>80%)	5.00	50.00
53. tert-Butyl peroxy pivalate (>77%)	5.00	50.00
54. Cellulose Nitrate other than— (1) cellulose nitrate for which a licence granted by the Health and Safety Executive (HSE) under the Manufacture and Storage of Explosives Regulations 2005 ⁽³⁾ (where HSE is the licensing authority by virtue of paragraph 1(c) of Schedule 1 to those Regulations) is required; or (2) cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution.	50.00	
55. Dibenzyl peroxydicarbonate (>90%)	5.00	50.00
56. Diethyl peroxydicarbonate (>30%)	5.00	50.00
57. 2,2 Dihydroperoxypropane (>30%)	5.00	50.00
58. Di-isobutyryl peroxide (>50%)	5.00	50.00
59. Di-n-propyl peroxydicarbonate (>80%)	5.00	50.00
60. Di-sec-butyl peroxydicarbonate (>80%)	5.00	50.00
61. 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%)	5.00	50.00
62. Methyl ethyl ketone peroxide (>60%)	5.00	50.00
63. Methyl isobutyl ketone peroxide (>60%)	5.00	50.00
64. Peracetic acid (>60%)	5.00	50.00
65. Sodium chlorate	25.00	50.00
66. Gas or any mixture of gases (not covered by entry 20) which is flammable in air, when held as a gas	15.00	
67. A substance or any mixture of substances which is flammable in air when held above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute (see Note 8 of the notes to this Part).	25.00	

⁽³⁾ S.I. 2005/1082.

