

**EXPLANATORY MEMORANDUM TO**  
**THE HEAVY FUEL OIL (AMENDMENT) REGULATIONS 2014**

**2014 No. 162**

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These regulations implement Articles 30 and 31 of [Council Directive 2012/18/EU](#) (Seveso III) which amend [Directive 96/82/EC](#) ('Seveso II') by adding heavy fuel oil (HFO) to the named substance 'Petroleum products' in Part 1 of Annex 1 from 20 February 2014 rather than categorising as 'Dangerous for the environment' (DFE). Seveso II is implemented in Great Britain through the Control of Major Accident Hazards Regulations 1999 ([COMAH 1999](#)) and specific planning legislation which lays down rules for the prevention of major accidents which might result from certain industrial activities and the limitation of their consequences. Article 31 of Seveso III also requires the rest of the Directive to be implemented by 1 June 2015, on which date Seveso II is repealed.
  - 2.2 The regulations achieve this by amending COMAH 1999 and the [Planning \(Hazardous Substances\) Regulations 1992](#) as [amended \(2009\)](#) (The latter amend planning law in England only; Scotland and Wales will amend their planning regimes as appropriate.)
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Context**
  - 4.1 The Heavy Fuel Oil (Amendment) Regulations 2014 are being made to give effect to Article 30 of Seveso III. They are deregulatory in that they raise significantly the quantities of heavy fuel oil that may be held by establishments before the requirements of Seveso II apply. Also, these regulations remove uncertainty that existed previously among duty holders and regulators on those qualifying quantities.
  - 4.2 Also see Transposition Note and the Scrutiny History.
5. **Territorial Extent and Application**

The amendment introduced by Regulation 2 extends to Great Britain. The amendment introduced by Regulation 3 applies to England only.

## **6 European Convention on Human Rights**

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

## **7 Policy background**

7.1 The amendment introduced by Article 30 achieves the twin policy aims of raising the thresholds at which establishments holding HFO come within scope of Seveso II and COMAH 1999, and removes uncertainty about the qualifying thresholds which existed before Article 30. Accordingly, the measure is essentially deregulatory in that it increases significantly the amounts of HFO that must be held before the regulatory requirements of Seveso II and thereby COMAH 1999 become applicable. This change recognises HFO does not present a major accident risk at DFE quantities and will ease the burden on business, with many sites falling out of scope of the regulations and others dropping from the demanding top tier status to the less onerous requirements of lower tier status. Protection of the environment remains sufficiently regulated by relevant environmental law.

7.2 Implementing Article 30 will not put British businesses at a competitive disadvantage compared to European member states. Indeed, the regulatory relaxation represented by Article 30 means it would place GB businesses at a commercial disadvantage to leave things as they stand, as European businesses will benefit both from the legal clarification and regulatory relaxation.

7.3 It is considered that the only viable way of implementing the requirement in Article 30 is by amending regulations and that alternative measures such as guidance would not amount to full implementation. Judgments of the ECJ have indicated that it is necessary to put in place provisions to ensure that the directive is given full effect in law as well as in fact, and in instances such as the present non-binding administrative measures, such as guidance, are insufficient.

7.4 Great Britain aims to implement the regulations by 20 February 2014. This is the earliest practicable date following the Directive requirement for implementation by 15 February 2014.

7.5 There is no intention to consolidate. This is a small amendment to existing Regulations, which does not require consolidation.

## **8 Consultation outcome**

8.1 HFO duty-holders are a relatively small target group. Feedback from this group (trade associations, individual companies, etc – for example, discussions from 2011 with the UK Petroleum Industry Association) during informal consultation (before launching into public consultation) indicated the HFO amendment would be very welcome, as it would reduce the regulatory burden on industry and end confusion on the legal position.

8.2 HSE then held a formal six-week public consultation on the draft Regulations between September and October 2013. The consultation period reflected the uncontroversial nature of the changes and that the relatively small target group had been kept informed during negotiations. This consultative document was widely publicised by writing to all known stakeholders, publishing a link on the HSE COMAH website, advertising in 'e-bulletin' (an HSE newsletter with 17,000 subscribers) and updating those organisations and individuals (23,207 in total) subscribing to e-alerts for consultative documents.

8.3 Of 2,856 unique visitors to the online HFO consultative document, 11 responses were received from employers, employees, trade associations and other interested parties. The outcomes of consultation have been analysed and an anonymised summary of responses and the analysis (together with action proposed by the COMAH Competent Authority) is available at <http://www.hse.gov.uk/consult/condocs/cd262.htm>

8.4 As a result of consultation feedback, the draft regulations now address the matter of transitional arrangements under the Planning (Hazardous Substances) Regulations 1992 (as amended). All respondents were content with the proposed approach of addressing the requirements of Article 30 through regulatory amendment to COMAH.

8.5 Some respondents demonstrated a misunderstanding between HFO and other substances. This matter will be addressed by the competent authority in later guidance (under COMAH 2015). There was also some misunderstanding on compliance with the amendment and on 'unintended consequences' caused by the implementation date - mainly confusing the new legal requirement with other requirements.

8.6 Other responses concerned the competent authority's communications strategy for reaching stakeholders and this feedback will help inform that strategy.

8.7 The majority (9 out of 11 respondents) agreed with the analysis in the draft impact assessment. Of the other two respondents, one did not agree or disagree, and the second mentioned two issues, which are not relevant to the impact assessment. On the question of whether the amendment would be beneficial to companies that are small, the majority of respondents agreed it would. Those that did not think so either demonstrated some misunderstanding in their answer or were not comparing the proposed change to the baseline of enforcement.

## **9 Guidance**

The feedback from public consultation indicates a couple of minor areas of misunderstanding for some respondents around the implications of Article 30. HSE will address these by working with stakeholders to update its web-based guidance setting out the status of (and enforcement approach for) HFO under COMAH. These minor changes are to be published in January 2014.

## **10 Impact**

- 10.1 The impact on business arising from the Regulations is expected to result in savings to business because:
- 10.2 HSE's final stage impact assessment concluded:
  - the best estimate of total compliance cost savings is a present value of £1.43 Million over a ten year period
  - the best estimate of the equivalent annual net cost saving to business is £0.14 Million in 2009 prices.
- 10.3 A significant benefit of Article 30 is the legal certainty it provides both to sites storing HFO and to the regulator.
- 10.4 An Impact Assessment is attached and will be published alongside this Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11 Regulating small business**

- 11.1 The legislation applies to small business. Small businesses cannot be exempted as they are not exempt from the Directive. During consultation, HSE engaged with small businesses through stakeholder groups and forums.
- 11.2 However, as the Regulations do not introduce any new duties on business and in fact relax the regulatory requirements, the impact on small businesses will be favourable. The measures are outside the scope of the moratorium on small and micro businesses and the Small and Micro Business Assessment.
- 11.3 As these measures arise from EU requirements and do not contain 'gold plating', they are outside of the scope of One-In-Two-Out (OITO).

## **12 Monitoring and review**

The Regulations will include a duty on the Minister to review the legislation (in relation to COMAH only) within five years of commencement, publish his findings and to repeat a review every five years.

## **13 Contact**

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## SCRUTINY HISTORY

Directive 2012/18/EU was the subject of scrutiny under proposal 18257/10.

The Chairman of the House of Lords European Union (EU) Committee sifted the proposal to EU Sub-Committee D (Environment and Agriculture) on 25 January 2011. Following correspondence from the Minister of 19 May 2011, 5 July 2011, 17 August 2011, 1 December 2011 and of 9 May 2012, the proposal was cleared from scrutiny by Sub-Committee D at its meeting on 22 May 2012.

The House of Commons European Scrutiny Committee considered the proposal at its meeting on 2 February 2011, and decided to retain the proposal under scrutiny, deeming it politically important. Following correspondence from the Minister of 19 May 2011, 1 December 2011 and of 9 May 2012, the Committee still deeming the proposal politically important referred it for debate in standing European Committee B. However, before that debate was scheduled the government, for reasons of policy, decided to override scrutiny and agree to the adoption of the proposal as Directive 2012/18/EU at the General Affairs Council on 26 June 2012. The debate in European Committee B was held on 23 October 2012 at which the motion welcoming the government's efforts to secure a proportionate Directive was agreed.