EXPLANATORY MEMORANDUM TO

THE CONTROL OF MAJOR ACCIDENT HAZARDS (AMENDMENT) REGULATIONS 2015

2015 No. 1393

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Instrument amends the Control of Major Accident Hazards Regulations 2015 ("the COMAH Regulations") to alter the duty holder for the preparation, review and testing of external emergency plans in Scotland from the Scottish Fire and Rescue Service to the relevant council for the local government area in which the establishment is situated.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The COMAH Regulations regulate to prevent on-shore industrial major accidents and where they cannot be prevented to limit the consequences of major accidents to people and the environment. The COMAH Regulations implement the majority of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances ("the Seveso III Directive").

4.2 This Instrument corrects an error in the COMAH Regulations by placing the duty to prepare, review and test external emergency plans in Scotland on the council for the relevant local government area in which an establishment is situated.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 The COMAH regulations require sites that pose the greater risk (known as Upper Tier) to have an 'external emergency plan', produced by local authorities, setting out measures necessary outside of the establishment in the event of a major accident. Changes in legislation concerning local government and emergency services meant that the previous regulations (COMAH Regulations 1999) needed

revision. The revised wording in the COMAH Regulations 2015 placed the duty to produce, revise and test external emergency plans on the Scottish Fire and Rescue Service. This wording was subject to the formal consultation process in May-June 2014 and no comments were received on it. It was also subject to direct consultation with the Scottish Government in January 2015 and confirmed as correct. However, after the COMAH Regulations were laid in March 2015, notification was received that, that in the case of Scotland, the duty should have been on the relevant council for the local government area in which an establishment is situated. This instrument achieves that objective.

7.2 This Instrument ensures that the public bodies in Scotland which have the capability to produce, revise and test external emergency plans are in fact given that responsibility, namely the council for the local government area.

- Consolidation

7.3 This instrument amends the Control of Major Accident Hazards Regulations 2015 (COMAH Regulations) for the first time and makes a single short amendment, therefore no consolidation is required.

8. Consultation outcome

8.1 HSE carried out a public consultation exercise on the COMAH Regulations 2015 from 2 May to 27 June 2014. The consultation document (CD266) and response form were available on the HSE website as an electronic form or download. Responses were accepted for a ninth week until 4 July 2014. A total of 145 responses were received from industry, trade associations, local government and the emergency services

8.2 All the issues raised in the consultation responses have either been addressed through minor amendments or clarifications to the Regulations or will be addressed by providing guidance. The main issue raised concerned the new requirement to release information to the public; this reflects the significant culture change that the Directive intends. Throughout the transposition process HSE has worked closely with the Home Office to ensure that national security issues and chemical substances of specific concern to the security services are dealt with appropriately.

8.3 An analysis of the responses and a formal response can be found on HSE's website.

8.4 For the purposes of this Instrument the Scottish Government, Scottish Environment Protection Agency (SEPA) and the Office for Nuclear Regulation have been consulted. Industry stakeholders have not been consulted as the 32 Local Authorities in Scotland has been instructed to maintain the emergency planning arrangements under the previous COMAH Regulations until the amending Regulation comes into force, meaning they will see no change in how they interact with the emergency planning authorities.

9. Guidance

9.1 The legal guidance supporting the COMAH Regulations will be amended to reflect the revised duty holder in advance of the amendment coming into force. The 32 Local Authorities in Scotland have been individually contacted to advise them of the change and instructing them to maintain the emergency planning arrangements in place under the previous COMAH Regulations until the amending regulation comes into force.

10. Impact

10.1 No Impact Assessment has been produced for this Instrument as there is no financial impact on business.

10.2 The impact on the public sector relates to the relevant councils in Scotland, who are the appropriate bodies to discharge the functions. This instrument amends the duty holder to maintain the situation that existed under the previous Regulations.

11. Regulating small business

11.1 The COMAH Regulations apply to small businesses and are proportionate to the risk that the site can pose to human and environmental health rather than the size of the business. It is not anticipated that this instrument will have any impact on small business as it amends the public body to which they need may need to provide information, not the duty for them to provide the information. ,.

12. Monitoring & review

12.1 The COMAH Regulations will be reviewed in line with Government policy, that is by the fifth anniversary of the Regulations. The first report of this review will be published before 1 June 2020. This report will have regard to how the Seveso III Directive is implemented in other EU Member States.

13. Contact

13.1 John Pride at the Health and Safety Executive (Tel: 0151 951 3432or email: john.pride@hse.gsi.gov.uk) can answer any queries regarding the instrument.