EXPLANATORY MEMORANDUM TO

THE PLANNING (HAZARDOUS SUBSTANCES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2010

2010 No. 329

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule 2010 No. 329 which is laid before the Northern Ireland Assembly.

1.2 The statutory rule is made under Articles 53(3) and (4), 60(3) and 129(1) of the Planning (Northern Ireland) Order 1991 and is subject to the negative resolution procedure.

1.3 The rule is due to come into operation on 22nd October 2010.

2. Purpose

2.1 These Regulations amend the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (S.R 1993 No.275) ("the 1993 Regulations") to correct an error which was introduced by the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2009 (SR 2009 No. 399) ("the 2009 Regulations"). The correction is achieved by further amendment to 1993 Regulations.

3. Background

3.1 The 2009 Regulations implemented the land-use planning provisions of Directive 96/82/EC on the control of major accident hazards involving dangerous substances as amended by Council Directive 2003/105/EC.

3.2 The 2009 Regulations substituted a new Schedule 3 to the 1993 Regulations to give a revised list of substances and quantities to which hazardous substances requirements apply. Part A of the Schedule contains named substances and qualifying thresholds. A qualifying threshold was incorrectly entered in column 3 for entry 1 in the Schedule - this should have been blank.

3.3 These Regulations correct that error and provide a transitional period of 6 months from the operative date for the making of applications for hazardous substances consent by those site operators who will require this as a result of the correction. Before the end of that period, they will not be guilty of an offence for storing substances without the need for consent in the period since the 2009 Regulations came into operation at levels which as the result of the correction will require consent. It is not considered likely that many operators will be affected.

3.4 A Transposition Note was attached to the Explanatory Memorandum accompanying the 2009 Regulations.

4. Consultation

4.1 It is not considered necessary to consult on these Regulations which simply correct an error in the 2009 Regulations.

5. Equality Impact

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1978, the Department conducted a screening exercise on the 2009 Regulations. It concluded that they did not have significant implications for equality of opportunity and that an equality impact assessment was not necessary; neither did they affect any racial group disproportionately. As these Regulations simply correct an error created by the 2009 Regulations further screening is not considered necessary.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment was completed for the 2009 Regulations and accompanies these Regulations. Further assessment is not considered necessary.

7. Financial Implications

7.1 These Regulations are not expected to lead to significant cost.

8. Section 24 of the Northern Ireland Act 1998

8.1 The Department considers that the legislation complies with the requirements of Section 24 of the Northern Ireland Act 1998.

9 EU Implications

9.1 The 2009 Regulations were introduced to make Northern Ireland legislation compliant with the amendments to Directive 96/82/EC. Infraction proceedings remain open against the UK for failure to implement the amended Directive and these Regulations will ensure compliance.

10. Parity or Replicatory measure

10.1 Each of the UK planning jurisdications is required to transpose the amended Directive and appropriate regulations have been made in England, Scotland and Wales.

11. Additional information.

11.1 Joe Torney at the Department of the Environment Tel: 028 9025 6505 or e-mail: Joe.Torney@doeni.gov.uk can answer any queries regarding the amendment regulations.

ANNEX 1

REGULATORY IMPACT ASSESSMENT

1 Title of Proposal

The Planning (Control of Major- Accident Hazards) Regulations (Northern Ireland) 2009.

2 Purpose and Intended Effect

2.1 The Objective

These regulations give effect in Northern Ireland to the land use planning requirements arising from Directive 2003/15/EC, which amends Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances ("the Seveso II Directive").

2.2 The Background

The Seveso II Directive came into force in 1999 and aims to prevent major accidents and limit the consequences of such accidents for people and the environment. It applies to establishments where specified dangerous substances, or generic categories of dangerous substances, are present at or above qualifying quantities listed in the Directive. The land use planning requirements of the Directive were implemented in Northern Ireland by the Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2000[1] ("the 2000 Regulations").

The main obligations arising under the Directive relate to health and safety and environmental measures. These are implemented through Regulations prepared by the Health and Safety Executive for Northern Ireland ("HSENI").

The Directive also requires Member States to ensure that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in their land use policies. It requires that these are pursued through controls on:

- the siting of new establishments;
- modifications to existing establishments that could have significant repercussions on major-accident hazards; and,
- new development in the vicinity of existing establishments where the siting or development are such as to increase the risk or consequence of a major accident.

Land use planning controls apply to all establishments that are within the scope of the Directive.

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[1] S.R. 2000 No. 101

We have given effect to these requirements 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 the scope of the Seveso II Directive have to obtain hazardous substances consent from the Department of the Environment ("the Department"). Once consent is issued, HSENI fixes a consultation zone around the site that serves to control future development within the vicinity of dangerous sites.

Directive 2003/15/EC 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 the scope of Seveso II. There were also some administrative changes.

These regulations amend the 2000 Regulations to reflect the changes to the Directive and ensure we continue to fulfil the land use planning requirements of the Seveso II Directive.

The Directive applies throughout the United Kingdom so these amendments will be transposed separately in England, Wales and Scotland.

2.3 Risk Assessment

Accidents involving dangerous substances have the capacity to cause serious dangers to human health and the environment. Stringent safety measures applied at a plant can minimise, but never completely eliminate, the risk. Where such accidents happen there is no guarantee the hazard can be contained on site.

We have no information about accidents at the sites that will be brought into the scope of these new regulations against which we can meaningfully assess risk. The incidents at Toulouse and Enschede with loss of life, significant environmental impact, damage to property and huge economic cost adequately demonstrate the off-site consequences that can arise in the event of a major accident.

3 Options

Option 1: Do nothing

This is not a realistic option as failure to transpose the land use planning requirements of the Directive into national legislation would result in infraction proceedings by the European Commission and the European Court of Justice which could result in the imposition of financial penalties on the UK.

Option 2: Continue to give effect through the consent procedure

A clear link between the planning requirements of the Seveso II Directive and the consent procedures in the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993[2] ("the Hazardous Substances Regulations") has been established over recent years. The list of substances and controlled quantities in the Hazardous Substances Regulations has been aligned with the list of dangerous substances and preparations and their qualifying quantities specified in the Seveso II Directive. Amending the Hazardous Substances Regulations to reflect the changes to the Seveso II Directive will involve minimum change.

4 Business Sectors Affected

The Seveso II Directive applies only to sites where dangerous chemical substances and preparations are present above defined thresholds. The sites affected by the amendments are operated by businesses in the chemical, petroleum, electricity and water supply sectors and those involved in the manufacture and storage of explosives. These regulations will affect all businesses which currently hold or propose to hold substances at or over the thresholds defined in the Directive.

5 Benefits

Option 1: Do Nothing

There are no benefits to this option. The UK is obliged to transpose the Directive into national legislation. Failure to do so would result in infraction proceedings by the European Commission.

Option 2: Continue to give effect through the consent procedure

The benefits that arise are in providing members of the public with extra reassurance that adequate controls are being exercised over the use and storage of hazardous substances and preparations and the establishments where they are present, and that such controls are effective in maintaining public health and safety, and in protecting the environment. The controls complement other regulations that give effect to the requirements of the Seveso II Directive that are implemented jointly by HSENI and Northern Ireland Environment Agency (NIEA). Land use planning controls cannot themselves prevent a major accident. However, by ensuring that proposed development within the vicinity of dangerous establishments is authorised only after the public health, safety and environmental issues have been fully

[2] S.R. 1993 No.275

taken into account, they mitigate the consequences of any major accident by minimising damage that may be caused to property or injury to persons or loss of life.

It is difficult to quantify economic benefits directly attributable to regulations that give effect to the land use planning requirements of the Seveso II Directive. However, it is expected that these changes will reduce the off-site risks associated with dangerous substances and will reduce economic damage caused as a result of a major accident. An estimate of such costs at fairly recent major accidents is given below under option 1.

6 Costs

Option: 1 Do nothing

The 'do nothing' option involves no costs to industry, business or charities. However, to "do nothing" would result in infraction proceedings against the UK for failing to implement the land use planning requirements of the Seveso II Directive. Continued failure to implement the Directive could result in costs to the UK through fines imposed by the European Court of Justice.
It is difficult to estimate the social or environmental costs of this option, which would only become apparent in the event of a major accident of the type that the Directive aims to prevent. The costs of fairly major accidents at Toulouse (2001) and Enschede (2000) have been estimated at €2,066 million and €170 million, respectively. These costs include reconstruction and lost production, but it's not clear how much is due to 'off-site' costs. It is clear, however, that major accidents can have substantial social and environmental costs.

Option 2: Continue to give effect through the consent procedure

Costs are likely to arise as follows-

(i) 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 some 6 to 9 sites across Northern Ireland, of which 3 sites may require express hazardous substances consent.

The operators of these sites will need to bear the costs of applying for express consent including an application fee of between £311 and £391 and the associated administrative process. Currently, for applications where no one substance exceeds twice the controlled quantity, the fee is £311. For proposals involving the presence of a substance in excess of twice the controlled quantity, the fee is £391.Total costs to these additional sites are likely to range from approximately £2,000 to £3,000 depending on the fee paid. This is a one-off cost.

(ii) *Department of the Environment*
The Department will face the costs of processing the express consent applications. As the amendments are thought to apply to just 3 sites across Northern Ireland, this is not expected to amount to a significant burden.

(iii) *Health and Safety Executive for Northern Ireland*
Once consent is granted HSENI would need to undertake an assessment and configure the appropriate consultation distances. This would have an affect on the resources of HSENI. However, as the number of additional sites that would require an assessment is relatively low, the costs are not thought to be significant.

(iv) *Northern Ireland Environment Agency*
NIEA is responsible for assessing measures to protect the environment under the regulations. This includes examining operators' safety reports and carrying out inspections on establishments covered by the regulations. In light of the low number of affected sites the additional costs to the Agency are not thought to be significant.

(v) 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 €20 million, plus €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.

7 Consultation with small business: the Small Firms' Impact Test

Based on discussions with HSENI, we estimate that 3 sites in Northern Ireland would come within the scope of planning controls for the first time as a result of the proposed changes to the Hazardous Substances Regulations to fully accord with the Seveso II Directive.

8 Competition Assessment

We do not consider that these proposals will have any differential impact on operators, affect the market structure, penalise new firms or place restrictions on the services or products that firms provide.

9 Environmental Impact

The regulations have the potential to improve environmental protection. There is also the health and safety benefit of fully adopting the requirement of the Directive.

10 Equality Impact Assessment

The Seveso II Directive applies only to sites where dangerous chemical substances and preparations are present above defined thresholds. 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.

An Equality Impact Assessment screening carried out in respect of the proposed legislative amendments found no evidence of any additional impact on any of the Section 75 categories.

11 Rural, health and other social effects

We do not consider that there would be any disproportionate impact to different groups from this proposal in terms of rural, health or other social effects.

12 Human Rights

The Department considers that the proposed amendments are fully compliant with the Human Rights Act 1998.

13 Enforcement and Sanctions

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

14 Monitoring and Review

HSENI and NIEA are consultees for all applications made for hazardous substance consent. HSENI contributes to the assessment process for consents and uses the outputs in determining consultation zones for land use planning advice, while NIEA provides advice on measures to protect the environment under the regulations. We will be reviewing with HSENI and NIEA to ensure the consent procedure continues to provide a balance between the need to provide the public with reassurance on health, safety and environmental issues and the need to minimise burdens on industry.

15 Consultation

(i) Within Government

- The Health and Safety Executive for Northern Ireland which has responsibility for hazardous substances legislation.
- The Northern Ireland Office which has responsibility for explosives legislation.
- The Northern Ireland Environment Agency which has responsibility for environmental issues.
- Representatives of the other UK planning administrations in England, Scotland and Wales were consulted during the drafting of the implementing regulations.

(ii) Public Consultation

The Department carried out a consultation on its proposals for implementing Directive 2003/105/EC during the period November 2005 to January 2006. However, at that time the proposals, in common with the rest of the UK, did not make any provision for transitional arrangements so that a company would not be committing an offence if it did not have consent for a substance newly subject to consent on the first day that the new regulations came into operation. No comments supporting the introduction of such arrangements were received from consultees in response to the Department's invitation to comment on their omission

However, following feedback to the consultation in England which favoured transitional provisions further discussions on the issue took place between the UK planning authorities, particularly on the potential delay to full implementation of the Directive which such provisions would entail. Accordingly, it was decided to include transitional provisions only for operators that have existing consents where the substances in question are re-named or re-categorised under the new regulations, but to require 'express' hazardous substances consent from the appropriate hazardous substances authority for those operators who would be brought into the consents regime as a result of these Regulations.

16 Summary and Recommendation

These regulations are necessary in order to transpose the specific land use planning requirements of Directive 96/82/EC, as amended by Directive 2003/15/EC.

The proposed means of giving effect to these regulations is by way of amendment to the Hazardous Substances Regulations and to the Development Plans Regulations. This will continue the procedure introduced in 2000

The costs to businesses will be small. We estimate that the businesses affected are large enough to absorb this cost without damaging their competitiveness, and enabling them to provide extra reassurance that they are responsibly managing their health and safety obligations.

17 Declaration

Signed by a Senior Officer of the Department of the Environment



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