EXPLANATORY MEMORANDUM TO

THE PLANNING (HAZARDOUS SUBSTANCES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2014

2014 No. 190

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule 2014 No. 190 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 28th July 2014.

2. Purpose

2.1 These Regulations amend the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 (S.R 1993 No.275) ("the Hazardous Substances Regulations") to insert Heavy Fuel Oils (HFO) as a named substance into the heading Petroleum Products in Part A of Annex 3. The amendment gives effect to Article 30 of Council Directive 2012/18/EU ("the Seveso III Directive") on the control of major-accident hazards involving dangerous substances in respect of land-use planning. Article 30 of the Seveso III Directive amends Directive 96/82/EC ("Seveso II") by adding heavy fuel oil (HFO) to the named substance 'Petroleum products' in Part 1 of Annex 1, rather than categorising it as 'Dangerous for the environment' (DFE).

2.2 Seveso II is implemented in Northern Ireland through the Control of Major Accident Hazards Regulations (Northern Ireland) 2000 (S.R. 200 No. 93) which have been amended in respect of Article 30 by the responsible Department, the Department of Enterprise, Trade and Investment (DETI)). The land-use planning requirements of Seveso II are met through planning legislation, including the Hazardous Substances Regulations.

3. Background

3.1 Consent for the storage and processing of hazardous substances must be obtained from the Department of the Environment as the hazardous substances authority under the Planning (Northern Ireland) Order 1991 ("the 1991 Order") and the Hazardous Substances Regulations. Schedule 3 to the Hazardous Substances Regulations sets out the list of hazardous substances and controlled quantities of these substances to which the consent regime applies. That Schedule reflects the content of Annex 1 of Seveso II and therefore requires amendment to reflect the insertion of HFO to Annex 1.

3.2 HFO's classification as DFE had led to establishments being brought into scope of Seveso II unnecessarily because the threshold was only 100 tonnes which was disproportionate to the major-accident threat posed by the substance. The amendment introduced by Article 30 raises the threshold for the total amount of Petroleum products to 2,500 tonnes.

4. Consultation

4.1 The Department carried out a consultation on its proposals for implementing Article 30 of the Seveso III Directive between November 2013 and January 2014. Draft Regulations were made available as part of that consultation. A total of 2 substantive responses were received while three respondents offered nil returns/no comments. Although no operators or industry representative bodies responded, this may indicate the non-contentious nature of the amendment and industry's willingness to see it adopted.

4.2 As a result of consultation feedback on the proposed amendments to the equivalent English planning legislation, the NI Regulations now address the matter of transitional arrangements to ensure that there is no disadvantage to any NI operators. This will enable the smooth operation of the hazardous substances consent regime for existing consents and for the determination of any applications made prior to the operational date of the Regulations.

5. Equality Impact

5.1 In accordance with its duty under Section 75 of the Northern Ireland Act 1978, the Department has conducted a screening exercise on the legislative proposals and has concluded that they do not have significant implications for equality of opportunity. The measures will not affect any racial group disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1 A Regulatory Impact Assessment accompanies this memorandum at Annex 1.

7. Financial Implications

7.1 These Regulations will affect all businesses which currently hold or propose to hold HFO at or over the thresholds defined in the Directive. HSENI estimate that 2 or 3 sites in NI will be affected by the amendment to the Directive. These sites might need hazardous substances consent.

Charities or the voluntary sector are unlikely to be impacted.

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 Regulations are being introduced to implement an amendment to Annex 1 of Directive 96/82/EC ("the Seveso II Directive"). They ensure that the land-use planning element of a minor technical amendment to that Directive is effected in Northern Ireland. In these circumstances a transposition note is not required.

10. Parity or Replicatory measure

10.1 Equivalent Regulations have been made in each of the UK planning jurisdications. The English regulations came into force on 20th February 2014, the Welsh on 14th March and the Scottish on 29th March.

11. Additional information.

11.1 Joe Torney at the Department of the Environment Tel: 02890 823535 or e-mail: Joe.Torney@doeni.gov.uk can answer any queries regarding the new regulations.

ANNEX 1

Regulatory Impact Assessment

1. Title of Proposal

The Planning (Hazardous Substances) (Amendment) Regulations (Northern Ireland) 2014.

2. Purpose and Intended Effect

(i) The Objective

The objective is to amend the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 ("the 1993 Regulations") to implement Article 30 Heavy Fuel Oils (HFO) of Directive 2012/18/EU. Article 30 re-categorises Heavy Fuel Oils under Petroleum products in Schedule 1 of Directive 96/82/EC from 14th February 2014.

(ii) The Background

The 1993 Regulations apply Directive 96/82/EC[1] on the control of major-accident hazards involving dangerous substances, ("the Seveso II Directive"), to the planning process in Northern Ireland. The main aim of the Seveso II Directive is the prevention of major accidents which might result from certain industrial activities and the limitation of their consequences for human health and the environment.

Directive 96/82/EC will be replaced by Council Directive 2012/18/EU in June 2015, but before that is firstly amended in respect of Article 30. The earlier transposition of Article 30 is intended to provide legal certainty for stakeholders and regulators on the qualifying inventory thresholds for HFO which has been amended to be more proportionate to the major accident hazard that the substance represents. Previously HFO was classified as dangerous to the environment (DFE) and had a much lower threshold but various Member States, including the UK have considered that to be unreasonable.

[1] O.J. L.10, 14.1.1997,p.13 Directive 96/82/EC was amended by Directive 2003/105/EC O.J L 345, 31.12.2003, p.97

(iii) The proposed change

The change that is being proposed is an amendment to the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 as below:

- "(d) heavy fuel oils" is inserted to the item 36 "Petroleum products" in the table in Part A of Schedule 3.

(iv) Risk assessment

Failure to amend the legislation would mean that we would no longer be fully compliant with the Seveso II Directive as amended by Article 30 of the Seveso III Directive.

3. Options

Option 1: Do Nothing

This is not a realistic option. Failure to make the amendment would mean that NI planning legislation would not comply with Directive 96/82/EC as amended by Council Directive 2012/18/EU. The UK as the Member State could then be subject to infraction proceedings by the EU and ultimately by the European Court of Justice which could result in financial penalties on the UK to be met by the NI Executive.

Option 2: Amend the Regulations

This is the preferred option because it will ensure that Article 30 of the Seveso III Directive is transposed in respect of land-use planning in Northern Ireland.

4. Costs & Benefits

Option 1: Do Nothing

There are no benefits to this option. Costs could be substantial as failure to amend the Regulations would eventually result in infraction proceedings and subsequent heavy fines by the EU for non-compliance.

Option 2: Amend the Regulations

This is the preferred option. Making the necessary amendments will avoid EU infraction fines.

The costs to business associated with this option would be minimal.

5. Business Sectors Affected

These regulations will affect all businesses which currently hold or propose to hold HFO at or over the thresholds defined in the Directive. HSENI estimate that 2 or 3 sites in NI will be affected by the amendment to the Directive. These sites might need hazardous substances consent.

6. Small Firms Impact Test

The need for hazardous substances consent at the higher qualifying quantity is unlikely to bring any small firms into scope for the first time. DOE records indicate that there are no sites that already hold hazardous substances consent for HFO below the new limit. In the initial RIA which was annexed in the consultation document, the Department welcomed the views of consultees on this and on the assumptions made and undertook to conduct further work to fully assess any unidentified impacts or consequences on small businesses that might have emerged during consultation. No such issues were raised and the Department considers that small firms will not be impacted by the amendment.

7. Enforcement and Sanctions

Part 5 of the Planning (Hazardous Substances) Regulations (Northern Ireland) 1993 as amended and Part V (Article 81) of the Planning (Northern Ireland) Order 1991 as amended have existing provisions for enforcement and sanctions.

8. Equality Impact Assessment

An Equality Impact Assessment screening carried out in respect of this proposal found no evidence of any additional impact on any of the

Section 75 categories.

9. Health Impact

HSE has not identified any likely change in health impact due to the increase in HFO thresholds as the increase brings the threshold into better proportion to the risk posed by the substance. DOE does not anticipate any change in risk to health.

10. Human Rights Assessment

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

11. Monitoring and Review

Due to the limited scope of the change and the wider implementation of the Seveso III Directive by 1 June 2015 the Department does not intend to undertake any formal monitoring of this change.

12. Consultation

(i) Within Government

These proposals have been drawn up in discussion with the HSENI and colleagues from the other UK planning administrations in England, Scotland and Wales

(ii) Public Consultation

A full public consultation on the policy to deliver option 2 was carried out between 26th November 2013 and 20th January 2014 and included an early draft of the Regulations. The Consultation Paper was sent to a wide range of bodies on the Department's standard consultation list as well as to operators and industry representative bodies. It was also advertised in local newspapers and on the Department's website.

A total of 2 substantive responses were received while three respondents offered nil returns/no comments. There was a general

acknowledgement by respondents of the need for the amendment and no objections were raised.
Although no operators or industry representative bodies responded this may indicate the non-contentious nature of the amendment and industry's willingness to see it adopted.

Following analysis of the responses to the consultation the Department finalised the Regulations to take forward Option 2 above. As a consequence of consultation feedback on the equivalent English planning legislation, the NI Regulations now addresses the matter of transitional arrangements to ensure that there is no disadvantage to any NI operators. This will enable the smooth operation of the hazardous substances consent regime for existing consents and for the determination of any applications made prior to the operational date of the Regulations.

13. Summary and Recommendation

Option 2 is the recommended option as it is the only option which ensures full compliance with the Seveso II Directive as amended by Article 30 of the Seveso III Directive.

14 Declaration

Signed by a Senior Officer of the Department of the Environment



Angus Kerr

Date 26th June 2014