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Llywodraeth Cymru
Welsh Government

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Consultation Document

Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2014

Date of issue: 23 September 2013

Responses by: 18 November 2013

Overview

This consultation document seeks your views on our proposals to ensure the land use planning system in Wales is amended to comply with the requirements of article 30 of the Seveso III Directive (2012/18/EU).

Article 30 inserts 'heavy fuel oils' as a specific named substance within Annex 1 of the Seveso II Directive (96/82/EC).

The Welsh Government therefore proposes to reflect this European requirement in Welsh legislation by inserting 'heavy fuel oils' within the category 'Petroleum Products' included within Part A of Schedule 1 to the Planning (Hazardous Substances) Regulations 1992.

How to respond

The consultation paper includes specific questions upon which the Welsh Government would welcome your views.

The closing date for replies is 18 November 2013.

You can reply in any of the following ways:

E-mail: Please complete the consultation response form (at Annex 2) and send it to: planconsultations-b@wales.gsi.gov.uk

(Please include 'Hazardous Substances Regulations Consultation – WG19312' in the subject line).

Post: Please complete the consultation response form (at Annex 2) and send it to the address provided under the 'Contact Details' section.

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The proposals detailed in this paper are primarily informed by Seveso III Directive of which information is available at: www.ec.europa.eu/environment/seveso/

The consultation paper is also accompanied by a draft partial Regulatory Impact Assessment at Annex 1, which should be read in conjunction with this paper.

Contact details

If you have any queries regarding this consultation, e-mail:

planconsultations-b@wales.gsi.gov.uk

or telephone Owen Struthers on 029 2082 1715

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Contents Page

1.	INTRODUCTION.....	2
2.	BACKGROUND NOTE: THE SEVESO DIRECTIVE AND THE PLANNING (HAZARDOUS SUBSTANCES) REGULATIONS 1992....	2
3.	CHANGE PROPOSED	4
4.	THE EVIDENCE FOR CHANGE.....	4
5.	THE EFFECT OF THE CHANGE	5
6.	THE CONSULTATION PROCESS	5

ANNEX 1 DRAFT REGULATORY IMPACT ASSESSMENT

ANNEX 2 CONSULTATION RESPONSE FORM

ANNEX 3 LIST OF BODIES/ORGANISATIONS INFORMED OF THE CONSULTATION

1. Introduction

- 1.1 This consultation paper sets out proposals for amending the Planning (Hazardous Substances) Regulations 1992 in Wales to implement Article 30 of the Seveso III Directive.
- 1.2 Section 2 sets out the background to the Seveso Directive and the impact it has on Member States, including the effect on land-use planning in Wales through the Planning (Hazardous Substances) Regulations 1992 (as amended).
- 1.3 Section 3 outlines the change proposed by the Welsh Government. It sets out the reasons we are undertaking the measures outlined, primarily to reflect the change to Annex 1 of the Seveso II directive. As a legislative change is proposed, the potential impact of the change will be assessed through a regulatory impact assessment.
- 1.4 In light of our proposed changes to the regulations, comments are invited on the following issues:
 - Whether the proposed amendment is appropriate; and
 - Whether the draft partial regulatory impact assessment properly identifies the costs and benefits associated with making the draft regulations.
- 1.5 Please note that responses to this consultation document should be **received no later than 18 November 2013**, so that the deadline set by the directive is met.

2. Background Note: The Seveso Directive and the Planning (Hazardous Substances) Regulations 1992

The Seveso II Directive

- 2.1 The Seveso Directive obliges member states to ensure that operators have a policy in place to prevent major accidents. The Seveso II Directive (96/82/EC) is implemented in Great Britain through the Control of Major Accident Hazards Regulations 1999 (COMAH) as well as specific planning legislation in the form of the Planning (Hazardous Substances) Act 1990 ('the 1990 Act') and the Planning (Hazardous Substances) Regulations 1992 ('the 1992 Regulations'). These aim to prevent on-shore industrial major accidents and limit the consequences of accidents to people and the environment.
- 2.2 The COMAH regulations regulate on site manufacturing and storage safety systems. The controls and requirements of the regulations vary depending on the quantity of chemicals present.

- 2.3 The COMAH regulations seek to minimise the risk of harm to people and the environment to as low as reasonably practicable. As the risk of an accident with the potential to cause harm is not completely eliminated, the land use planning system is therefore used to ensure it is less likely that people and the environment would be harmed by the hazard. This is done by managing the location of a new development, in particular restricting how close a development is built to the installations where its occupants would be vulnerable to harm in the event of an accident.
- 2.4 The 1990 Act and 1992 Regulations establish the need for hazardous substances consent. This controls the amount and location within a site of the hazardous substances listed in the regulations.
- 2.5 The quantity thresholds set out in the Seveso II Directive and 1992 Regulations mean that petrochemical and chemical manufacturing industries are routinely required to obtain hazardous substances consent for their operations. Other sectors such as large scale fuel, gas and chemical storage and distribution and metal manufacturing can also be subject to the controls.

The Seveso III Directive

- 2.6 The Seveso III Directive (2012/18/EU) will amend and subsequently repeal the Seveso II Directive. The changes address the consequences from changes to EU legislation on the classification, packaging and labelling of chemical substances and mixtures.
- 2.7 The directive as replaced will be strengthened in a number of areas such as public access to information and will continue to ensure a high level of protection to human health and the environment from major accidents involving dangerous substances.
- 2.8 Most of Seveso III will be implemented in the UK by 1 June 2015, but Article 30 requires implementation by 15 February 2014 and is the subject of this consultation.
- 2.9 Article 30 re-categorises Heavy Fuel Oil. It currently falls within the generic 'Dangerous to the Environment' category in Part 2 of Annex 1 of the Seveso II Directive. Article 30 requires it to be a specifically named substance under the heading 'Petroleum Products' within Part 1 of Annex 1.

Planning (Hazardous Substances) Regulations 1992

- 2.10 The Planning (Hazardous Substances) Regulations 1992 ensures that hazardous substances can be kept or used in significant amounts only after the hazardous substances authority has had the opportunity to assess the degree of risk arising to persons in the surrounding area, and to the environment.

- 2.11 This consent procedure allows control to be exercised over the presence of hazardous substances whether or not associated development requiring planning permission is involved. The consent system is intended to regulate the acceptability of hazardous substances being present at a site depending on the sensitivity of both the built and natural environments surrounding it.
- 2.12 The hazardous substances that are subject to controls and the amounts at or above which hazardous substances consent is required (known as the controlled quantities) are set out in Schedule 1 to the 1992 Regulations, as amended.

Heavy Fuel Oil

- 2.13 Heavy fuel oil (HFO) is a generic term used to describe a range of blended products based primarily on the residues from distillation or cracking units in oil refinery processes. HFO is a viscous liquid petroleum residue used predominantly in power stations, manufacturing and marine transport; it is also used as a primary fuel for industry in remote off-grid locations, as well as a back up fuel elsewhere, for example for boilers in hospitals.
- 2.14 Following changes in 2009/10 to its hazard classification (to 'very toxic to aquatic organisms'), HFO became classified as 'Dangerous for the environment'. This meant that the presence of more than 100 tonnes at a site required hazardous substances consent.

3. Change Proposed

- 3.1 To implement article 30 in respect of town and country planning in Wales we propose to insert '(d) heavy fuel oils' under the heading '36. Petroleum Products' within Part A of Schedule 1 to the Planning (Hazardous Substances) Regulations 1992 (as amended).
- 3.2 A copy of the existing schedule is available from:

<http://www.legislation.gov.uk/wsi/2010/450/contents/made>
- 3.3 Health and safety legislation is not devolved so the required changes to COMAH will be made by the Health and Safety Executive across Great Britain. Similar changes to town and country planning legislation will be made in England, Scotland and Northern Ireland.

4. The Evidence for Change.

- 4.1 The thresholds set under Seveso II, and outlined in 2.14 for HFO are considered to be much lower than would be justified by the major accident hazard the substance presents. This lower threshold

increases the range and number of sites coming into scope of the regulations, including sites not usually considered to represent a major accident hazard, such as hospitals and industrial laundries.

- 4.2 The amendment in the directive follows recognition in Europe that the qualifying inventory thresholds are unreasonable and need to be rationalised to reflect the potential impact of the sites encompassed by the regulations. The change proposed will in effect remove those sites not considered to form a major accident hazard for the scope of the directive.

5. The Effect of the Change

- 5.1 The effect of the proposed change has been considered within the draft partial regulatory impact assessment at Annex 1 of this paper. Based on the analysis undertaken on all options, it is considered on balance that the insertion of HFO as a named petroleum product with a controlled quantity of 2,500 tonnes in the 1992 Regulations will:

- provide consistency over the impact that HFO is considered to have, providing greater certainty to stakeholders as to when the regulations apply
- provide a level playing field for industry located in Wales compared to that situated in other UK and European administrations
- allow a proportionate and graded approach to regulating HFO as the current level is considered inappropriate, reducing unnecessary time and expense for industry and LPAs.

- 5.2 Not making the change to the 1992 Regulations in Wales would mean that the qualifying quantity for HFO would become different to that used for COMAH. This is anticipated to lead to legislative confusion and maintain an unnecessary regulatory burden. Should the amendment not be undertaken, Wales would operate a stricter system of control than other UK and European administrations, putting Welsh businesses at a disadvantage.

6. The Consultation Process

- 6.1 In outlining the proposed change to the regulations, comments are invited on the following questions.
- Are the proposed amendments to insert Heavy Fuel Oils as a named petroleum product with a controlled quantity of 2,500 tonnes appropriate to transpose the requirements of article 30 of the Seveso III Directive?

- Does the draft partial regulatory impact assessment properly identify the costs and benefits associated with making the draft regulations?

6.2 These questions are asked in a formal consultation response form which is provided at Annex 2.