

ANNEX 1: DRAFT REGULATORY IMPACT ASSESSMENT

1. Options

The following options are considered:

Option 1: Introduce Heavy Fuel Oils as a named petroleum product with a controlled quantity of 2,500 tonnes in the Planning (Hazardous Substances) Regulations 1992 [as detailed in the consultation paper] – To apply the provisions of the Seveso III in order to introduce a lower threshold for Heavy Fuel Oil (HFO) in line with levels being set in COMAH and adjacent administrations.

Option 2: Do nothing - Continue to operate the current threshold for HFO making it a requirement for sites to apply for hazardous substances consent and regulatory authorities to enforce compliance.

Option 3: Transpose Article 30 of the Directive within the 'whole' transposition process - Continue to operate the current threshold for HFO and undertake the transposition for 1 June 2015 in-line with the directive as a whole.

2. Cost Benefit Analysis

2.1 The sectors most likely to be affected by the proposals for amending the threshold for HFO include:

- **businesses/industry** who require consent
- **local authorities** (LAs) who determine applications for hazardous substances consent, and
- **the public** who may be affected by the change.

2.2 The following cost and benefit analysis has been undertaken for each of the above sectors.

Cost Analysis for Option 1 – Introduce Heavy Fuel Oils as a named petroleum product with a controlled quantity of 2,500 tonnes in the Planning (Hazardous Substances) Regulations 1992

2.3 Indirect and direct costs to:

Businesses/industry

- Business will need to ensure that they conform to the appropriate regime. It has been identified by HSE that, due to uncertainty, not all sites are currently compliant and as such would see an increase in costs when amounting to full compliance with the new standard. However, the number of sites subject to compliance will reduce under this regime and a current position of non-compliance should not be taken as an appropriate baseline, as their non-compliant position could

also remain under the new regulations. This negative point is therefore discounted.

Local authorities

- The amendment will reduce the revenue generated through the number of consents that are required. The amendment is limited to heavy fuel oil only, and as such the impact on income is likely to be limited.

Public

- The reduction in thresholds increases the risk to the public and the environment.

Benefit Analysis for Option 1: Introduce Heavy Fuel Oils as a named petroleum product with a controlled quantity of 2,500 tonnes in the Planning (Hazardous Substances) Regulations 1992

2.4 Indirect and direct benefits to:

Businesses/industry

- Setting the standards in the hazardous substances regulations at the level set within COMAH provides legislative clarity. Setting equal standards will establish a clear threshold in which HFO is considered to form a potential hazard and what approval is required. Whereas dual standards could lead to confusion over what regulations are appropriate to a scheme or site.
- The reduction of the threshold for HFO will reduce burden on industry, and specifically exclude certain sectors that are not considered a major hazard. England have identified that the proposed level will likely remove Hospitals and industrial laundries from the requirements.
- The Directive applies on an EU basis and it is understood that all nation states will comply with the 15 February 2014 deadline. Amendment of the regulations will ensure competition between industries located in Wales and other areas occurs on a level playing field.

Local authorities

- The setting the standards in the hazardous substances regulations at the level set within COMAH provides legislative clarity. Setting equal standards will establish a clear threshold in which HFO is considered to form a potential hazard and what approval is required. Whereas dual standards could lead to confusion over what regulations are appropriate to a scheme or site.
- The potential reduction in applications could lead to a reduction in processing costs of the LA.

Public

- There are no identifiable public benefits.

Cost Analysis for Option 2: Do nothing

2.5 Indirect and direct costs to:

Businesses/industry

- Should Wales retain the threshold, significant disparity will occur between industry located in Wales and other areas. This will compromise fair competition to the detriment of business located in Wales.
- The COMAH regulations, and as they apply to England the Hazardous substances Regulations, are due to be amended to reflect the new threshold. Retention of the current standard in Wales will create regulatory confusion as stakeholders may be uncertain which regulation or standard applies in their context. This confusion could lead to the additional time and expense to industry in understanding the requirements.
- Should Wales retain the thresholds, they remain extant in law and industry and regulators are subject to them. Although the thresholds are perceived as inappropriate, industry may be subject to enforcement costs.

Local authorities

- The COMAH regulations, and as they apply to England the Hazardous substances Regulations, are due to be amended to reflect the new threshold. Retention of the current standard in Wales will create regulatory confusion as stakeholders may be uncertain which regulation or standard applies in their context. This confusion could lead to additional time and expense to understand or explain the requirements.
- Should Wales retain the thresholds, they remain extant in law and industry and regulators are subject to them. Although the thresholds are perceived as inappropriate, the regulator may, in certain circumstances, face demands to 'enforce the law' under DFE thresholds. This could add additional enforcement costs to the regulator.

Public

- There are no identifiable public costs.

Benefit Analysis for Option 2: Do nothing

2.6 Indirect and direct benefits to:

Businesses/industry

- There are no identifiable business/industry benefits

Local Authorities

- The LA will retain the same level of revenue generated through Hazardous Substances Consents.

Public

- This option would bring a potential benefit to Wales. The regulations would be 'gold plated' as they would require industry to go significantly beyond the minimum standard specified by Europe. The higher standard could lead to enhanced protection of people and the environmental.

Cost analysis for Option 3: Transpose Article 30 of the Directive within the 'whole' transposition process

2.7 Indirect and direct costs to

Businesses/Industry

- The identifiable costs will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.

Local authority

- The identifiable costs will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.

Public

- The identifiable costs will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.

Benefit analysis for Option 3: Transpose Article 30 of the Directive within the 'whole' transposition process

2.8 Indirect and direct benefits to:

Businesses/industry

- The identifiable benefits will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.
- Further positive action is found in combining the work as this may reduce confusion amongst stakeholders over the process of consultation and deadlines for complying with the new directive.

Local Authority

- The identifiable benefits will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.
- Further positive action is found in combining the work as this may reduce confusion amongst stakeholders over the process of consultation and deadlines for complying with the new directive.

Public

- The identifiable benefits will replicate those under Option 2, until transposition in which case they will transfer to those identified under Option 1.

3. Analysis of Other Effects and Impacts

Voluntary Sector

- 3.1 The proposals are likely to have a no impact on the voluntary sector. The sites affected by the amendments are operated by businesses primarily in the chemical, petroleum and marine transport sectors.

Equality

- 3.2 The Seveso Directive applies only to sites where dangerous chemical substances and preparation are present. The sites affected by the amendments are operated by businesses in the chemical, petroleum and marine transport sectors.
- 3.3 We do not consider that these regulations will affect any racial group disproportionately, or have any adverse effects on health. We do not consider they will impact unfairly on people in rural or remote areas.

Sustainable Development

- 3.4 The proposals will not have any significant adverse impact on sustainable development.
- 3.5 The introduction of a new threshold will remove some businesses out of the requirement to obtain hazardous substances consent. This will provide greater regulatory freedom for businesses and may also assist in bringing forward development proposals more quickly.
- 3.6 The reduced threshold will potentially have some impact on the public and environment as the 'risk' of some sites will not be considered through the process.

The Welsh Language

- 3.7 The proposals do not have any adverse implications for the Welsh language.

4. Summary

4.1 Based on the analysis undertaken on all options, it is considered on balance that Option 1, which inserts Heavy Fuel Oils as a named petroleum product with a controlled quantity of 2,500 tonnes in the Planning (Hazardous Substances) Regulations 1992. This option is preferred in order to:

- Provide consistency over the potential impact HFO is considered to have, providing greater certainty to both LPAs and applicants as to when an application is required.
- Provide level playing field for industry located in Wales to that situated in other UK and European administrations.
- Allow a proportionate and graded approach to HFO as the current level is considered inappropriate, reducing unnecessary time and expense for industry and LPAs.

5. Consultation

[This section will be completed following the completion and analysis of the consultation].

6. Competition Assessment

6.1 A competition filter test has been applied to the proposed amendments. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.

7. Post Implementation Review

7.1 Due to the limited scope of the change and the wider implementation of Seveso III by the 1 June 2015 the Welsh Government will undertake no formal monitoring of this change.