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Consultation Document

Consultation on transposing the land use planning requirements of the Seveso III Directive on the control of major-accident hazards

Date of issue: **11 February 2015**

Action required: Responses by **8 April 2015**

Overview

This consultation relates to implementation of the land use planning elements of European Directive 2012/18/EU (the Directive) on the control of major accident hazards involving dangerous substances (referred to as hazardous substances in domestic legislation) – also known as the Seveso III Directive. The Directive aims to reduce the risks and consequences of such accidents. The land use planning elements relate to taking account of the aims of the Directive in planning policies and decisions, including maintaining appropriate safety distances between major hazard sites (referred to as establishments) and other development and protecting areas of natural sensitivity.

How to respond

The consultation paper includes a set of specific questions to which the Welsh Government would welcome your response.

The closing date for replies is **8 April 2015**. 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-j@wales.gsi.gov.uk

Post:

Please complete the consultation response form (at Annex 2) and send it to the address specified under the heading 'Contact details'.

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

The current The Planning (Hazardous Substances) Regulations 1992 Regulations is available at:
www.legislation.gov.uk/uksi/1992/656/made

This consultation paper is also accompanied by a draft set of Regulations at Annex 1, which should be read in conjunction with this paper.

Contact Details

For further information

All responses should be sent by **8 April 2015** to:

Seveso III Consultation
Development Management Branch
Planning Division
Welsh Assembly Government
Cathays Park
Cardiff
CF10 3NQ

Or by e-mail to:

planconsultations-j@wales.gsi.gov.uk

If you have any queries regarding this consultation please use the e-mail address above or phone Alan Groves on 02920 825362 or Owen Struthers on 02920 826430.

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

Introduction.....	1
Delivering Seveso III objectives through land-use planning policies	4
Planning controls on hazardous substances	5
Protecting areas around hazardous establishments	10
Public participation and access to justice	11

Introduction

- 1.1 This consultation sets out how we propose to transpose the land-use planning requirements of European Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (the Seveso III Directive¹).

Period of consultation

- 1.2 The consultation will run for a period of 8 weeks and not the standard 12 weeks. A shorter period is considered appropriate for a number of reasons:
- The main stakeholders who will be interested in this consultation are businesses and industry dealing with hazardous substances, and local planning authorities who help regulate the system. Businesses and industry are aware of the issues as consultation papers on transposing the land use planning elements of the Directive have already been issued by the department of Communities and Local Government, and the Scottish Government. Further the Health and Safety Executive have undertaken a UK wide consultation on amending the COMAH Regulations in order to implement the majority of the Directive. These regulations build on those proposals.
 - The impact of the proposed changes for local planning authorities (LPAs) is expected to be limited – we expect the annual number of hazardous substances consent applications that LPAs need to determine will be similar. Overall, there will be limited changes to the hazardous substances consent application process from the perspective of the LPA.
 - The control of hazardous substances is very specialised, and as such the stakeholders who may be affected by the consultation are small in number.
 - The Directive has set a timescale for transposition into domestic legislation. A shorter consultation period will help towards meeting this deadline.

Background

- 1.3 The Seveso III Directive (“the Directive”) and its predecessors (Seveso I and II) set out a list of substances that are classified as hazardous and set thresholds (controlled quantities) for the amount stored that trigger various requirements for safety measures and land use planning requirements. The main reasons for the new Directive are to address

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0001:0037:EN:PDF>

changes that have been made to the classification of hazardous substances and to strengthen requirements for public access to information and participation in decision making.

- 1.4 The Directive became European law in August 2012. The Health and Safety Executive lead on transposing most of the Directive's requirements across Great Britain. The Executive consulted on new controls on major accident hazard regulations in May and June 2014². The Welsh Government is responsible for transposing the land-use planning requirements in Wales.

Main Changes from Seveso II

- 1.5 Seveso III makes a number of changes relating to land-use planning, in particular:

Scope – the Directive changes the list of hazardous substances it controls reflecting the new way they are classified. The list reflects new internationally recognised standards set out in separate EU legislation on classification, labelling and packaging. These changes were supported by industry and bring trade benefits through improved integration;

Public consultation about decisions – the Directive now includes specific requirements on public consultation relating to decisions where hazardous substances are to be located and on development around those locations. These are intended to bring the Directive in line with the provisions of the Aarhus Convention³.

The proposed approach to implementing Seveso III

- 1.6 We already have a robust system in place for managing the risks and consequences resulting from major accident hazards through land-use planning, and therefore propose to transpose the land-use planning requirements of Seveso III using the existing hazardous substances consent regime and the wider planning system where relevant. We need to transpose a limited number of new requirements in the Directive, but as several existing requirements are now expressed differently in Seveso III we will also have to make further changes to the domestic regulatory framework. In doing so we are taking the opportunity to streamline current processes where consistent with the Directive and industry practice.
- 1.7 We want to minimise burdens on business and ensure they are not put at a disadvantage relative to their European competitors. In a few areas, existing domestic legislation is more onerous than the requirements of

² <http://www.hse.gov.uk/consult/condocs/cd266.htm>

³ <http://ec.europa.eu/environment/aarhus/>

Seveso III. We are therefore proposing changes in a number of areas where domestic controls exceed the Directive's requirements and changes can be made without affecting safety.

- 1.8 We intend to consolidate the existing hazardous substances regulations as part of the transposition of Seveso III. Our aim is to provide a single, coherent set of regulations regarding hazardous substances consent.
- 1.9 Our proposals are set out in this document in the following four sections.
 - Delivering Seveso III objectives through land-use planning policies
 - Planning controls on hazardous substances
 - Protecting areas around hazardous establishments
 - Public participation and access to justice
- 1.10 Draft regulations are provided at Annex A. The regulations will be subject to change in response to this consultation, which will include consultation with relevant sectors within the Welsh Government, and for technical reasons.

Delivering Seveso III objectives through land-use policies

- 2.1 The Seveso III Directive, Article 13(1), requires the objectives of preventing major accidents and limiting the consequences of such accidents to be taken into account in planning and other relevant policies. The Directive also requires controls on new establishments and developments around establishments to deliver those objectives. Article 13(2) sets out additional matters that need to be taken into account, including separating hazardous establishments and other land uses. The previous Seveso II Directive (Article 12) included similar requirements, which are reflected in the current regulations.
- 2.2 We propose to transpose Seveso III in the same way⁴. In addition to updating the objectives, we will expressly apply the updated Regulations to the Wales Spatial Plan; and any land-use planning, or transport route or fishery harbour policy⁵.

Question 1

Do you agree with the proposed approach to deliver Seveso III objectives through land-use planning policies?

⁴ See draft schedule 4

⁵ See draft regulation 25

Planning controls on hazardous substances

Controls on the siting of new hazardous establishments

- 3.1 Article 13(1)(a) of the Directive requires controls on the siting of new hazardous establishments. Seveso II contained a similar obligation, but there are a number of changes that need to be transposed.
- 3.2 Existing controls on the siting of new hazardous establishments are delivered primarily by the hazardous substances consent regime. Operators are required to apply for consent for the presence of hazardous substances on their site, when they would be present above certain quantities. The hazardous substances authority (usually the local planning authority) will consider the suitability of the location, consulting the Health and Safety Executive, Natural Resources Wales and various other consultees⁶. The controls are also delivered by the development management regime when planning permission for new establishments is sought⁷.

Aligning controlled hazardous substances with European standards

- 3.3 Annex I of Seveso III lists both named and generic categories of hazardous substances and sets quantities at or above which a hazardous substance should be controlled. One of the main changes introduced by Seveso III is an updated list of these controlled substances. The new list is intended to reflect changes to international standards⁸.
- 3.4 For a limited number of substances, our current domestic regulations have stricter controls than the requirements in either Seveso II or Seveso III. In contrast with Seveso III, domestic regulations name a number of substances specifically (they would fall within generic categories under the Directive), and we control some substances at lower quantities than required by the Directive. Requiring operators to obtain consent when not required by the Directive adds to their costs. Aligning our domestic land-use planning controls with the Directive's requirements would also bring benefits and lower costs for business because it increases consistency with the control of major accident hazards regime and the European standards they work to.
- 3.5 In developing our proposals we have considered whether the additional domestic regulation we have inherited is justified in terms of public safety. Subject to the limited exceptions below, and on the advice of the Health and Safety Executive, we consider that aligning the planning

⁶ See draft regulation 10

⁷ See draft regulation Schedule 4, Regulation 13

⁸ The 'Globally Harmonised System' as implemented by European Regulation (EC) No. 1272.2008 on classification, labelling and packaging of substances and mixtures

controls with those in the Directive, and reflected in the control of major accident hazards regime, would not have any significant implications for public safety.

- 3.6 We do however consider, again on the basis of advice from the Health and Safety Executive, that, for now, retaining the existing levels of control in the hazardous substances consents regime for liquefied petroleum gas (LPG), liquefied natural gas (LNG) and hydrogen are justified in terms of public safety. In light of the developing UK fuel market for these substances, the Health and Safety Executive's advice is precautionary and reflects the reduction in risk relating to where these substances are held if the proposed location is controlled. We would particularly appreciate views on the intention to maintain existing controls for these three substances. The draft regulations⁹ set out a list of the controlled hazardous substances.

Question 2

Do you agree with the principle of aligning the list of controlled hazardous substances which require hazardous substances consent with the Seveso III Directive subject to the exceptions for liquefied petroleum gas (LPG), liquefied natural gas (LNG) and hydrogen?

- 3.7 The existing Regulations also set out how substances that could be generated by the loss of control of an industrial chemical process should be controlled. Because of a change introduced by Seveso III we propose these controls will apply where it is reasonable to foresee that a hazardous substance may be generated during loss of control of a process. The Health and Safety Executive will prepare further guidance on when it is reasonable to foresee that a hazardous substance may be generated.

Changes to exemptions

- 3.8 Seveso III, Article 2, provides a number of exemptions to the Directive which can be applied. We are proposing to apply these in full by amending the exemptions for when hazardous substances consent will be required¹⁰. This maximises the flexibility allowed by the Directive and provides a better alignment with the draft control of major accident hazard regulations.

Establishments changing tier

- 3.9 Seveso III categorises establishments as upper or lower tier establishments based on the quantity of substances present. This categorisation affects the way establishments are managed under the control of major accident hazards regime. Seveso III requires land-use

⁹ See draft Part 2 Schedule 1

¹⁰ See draft regulation 4

planning controls on tier changes as a result of modifications to installations or activities affecting inventories, but there is no difference in the land-use planning requirements to be applied to upper and lower tier establishments.

3.10 Although the hazardous substances consents regime does not currently make any distinction between upper and lower tier establishments, we believe it already delivers the objectives of Seveso III in an effective way and additional regulation relating to movement between tiers should not be necessary. This is because, for example:

i. hazardous substances consent sets the maximum amount of substances that can be present at an establishment and it is this maximum amount that underpins the consultation distances, notified by the Health and Safety Executive. These consultation distances and the allied controls ensure the Directive's objective for long-term separation of establishments and other land-uses is delivered;

ii. the assessment of an application for hazardous substances consent will consider the implications for land use up to the maximum amount of substances applied for and in doing so assume that within these parameters the inventory will not be static (as establishments respond flexibly to business needs);

iii. where an establishment wants to update the consented amount of a substance that can be present (i.e. change the terms of their consent) a new consent will be required, including where the change would be to hold a smaller amount of substances and move the establishment from upper to lower tier.

Businesses coming into scope of the Directive for the first time

3.11 Because of changes to the list of hazardous substances controlled by the Directive, we expect that a small number of establishments will come into its scope for the first time. The Seveso III definitions (Article 3) categorise these establishments as either an 'other establishment' (if the establishment is already operational and simply comes into scope on or after 1 June 2015) or as a 'new establishment' (if it is constructed or comes into operation or is the subject of certain modifications on or after 1 June 2015). The Directive requires controls on 'new establishments'.

3.12 We will apply the existing approach for requiring hazardous substances consent to 'new establishments'. Establishments operating lawfully and which simply come into scope on 1 June 2015 (the Directive's 'other establishments'), will not be required to apply for a consent¹¹.

¹¹ See draft regulation 29

Establishments with an existing consent

3.13 Seveso III does not require establishments which already have consent to apply for a new consent simply because, for example, there have been changes to the way a hazardous substance is classified in the Directive. We propose to make this clear in the new regulations, setting out the circumstances in which operators with an existing consent can continue to operate in the same way without needing to apply for a new consent. To avoid any ambiguity, we will also make it clear that operators with an existing consent, where there has been no change to the way the Directive requires the consented substances to be controlled, can continue to operate in the same way using their existing consent¹².

Controls on modifications to establishments

3.14 Seveso III, Article 13(1)(b), requires controls on modifications to establishments. Modifications are defined in Article 11 of the Directive as changes between tiers (see paragraphs 3.10-3.11) and modifications which “could have significant consequences for major accident hazards”. Modifications are currently controlled by requiring a new hazardous substances consent (and, where appropriate, planning permission). The effect of our domestic regime is that any change to a consent (and not just those with significant consequences) will require an application and new consent for any modification and are therefore more onerous than strictly required by the Directive.

3.15 We therefore propose to align the new regulations¹³ with Seveso III and only require an operator to apply for a new consent when a modification to an existing consent could have significant consequences for major accident hazards (or involve a tier change). Operators would not have to apply for consent to make modifications to the consented amount and type of hazardous substances stored, if the modification would not have significant consequences for major accident hazards and would not result in a change of tier of the establishment.

3.16 Operators will be expected to confirm with the control of major accident hazards competent authority that the proposed modification would not have significant consequences for major-accident hazards. The test would be that there would be no extension of the consultation zones associated with the existing hazardous substances consent. Operators would also be expected to inform the hazardous substances authority of their proposed modifications. Further details on how operators obtain confirmation from the control of major accident hazards competent authority, and the kind of minor modifications for which this process is likely to apply, will be set out in guidance.

¹² See draft regulation 31

¹³ See draft regulation 4(14) and 4(15)

Changes on how to apply for consent

- 3.17 Seveso III, Article 6(3), requires competent authorities to accept equivalent information from operators submitted to meet a requirement set out in other EU legislation. To deliver this we propose to make amendments to how operators make an application for hazardous substances consent.
- 3.18 We propose to replace the prescribed form for making an application for consent with a short list of the essential information required¹⁴, and make clear that applicants can refer to information provided for other purposes, provided the information was provided for purposes consistent with the Directive.
- 3.19 At present, applications can be delayed because insufficient information is available to the Health and Safety Executive and Natural Resources Wales to advise on granting consent. This can be because it is not clear to applicants or hazardous substances authorities what information will be required. We will therefore set out in planning guidance further advice on what information is needed for the most common types of application. We will also encourage operators to apply using the electronic 'smart form' being developed by the Health and Safety Executive and industry representatives. The form design will ensure essential information is not accidentally omitted when making an application for consent. Alongside these reforms, the Health and Safety Executive and Natural Resources Wales will offer a pre-application advice service for operators.

Taking additional technical measures into account

- 3.20 Seveso III, Article 13(2)(c), includes a requirement to take into account the need for additional technical measures so as not to increase the risks to human health and the environment. The previous Seveso II requirement on technical measures focussed on not increasing the 'risk to persons'.
- 3.21 Technical measures are currently applied in a number of ways, in particular through conditions on a hazardous substances consent. Examples may include limiting the size of a storage vessel, or fitting additional technical infrastructure to reduce the risk of an accident occurring. At present the Health and Safety Executive can require conditions on a consent about how substances are kept or used. Natural Resources Wales can also advise hazardous substances authorities on the need for conditions to be attached to a consent. We are therefore not proposing any regulatory change to transpose the new requirements for technical measures relating to the environment as we consider that we already comply with the new requirements of the Directive.

¹⁴ See draft regulation 5

Question 3

- (a) Do you agree with how we propose to implement controls on new establishments?
- (b) Do you agree with our proposed amendments for modifications to establishments?
- (c) Do you agree with our proposals relating to how an application for consent is made?
- (d) Do you agree with how we propose to address obligations on additional technical measures in relation to the environment?

Protecting areas around hazardous establishments

Controlling development in the vicinity of establishments

- 4.1 Seveso III, Article 13(1)(c), requires controls on certain new developments in the vicinity of establishments which hold controlled amounts of hazardous substances. Seveso II contained a similar obligation, which has been implemented through controls on the location of development primarily through the development management system.
- 4.2 We propose to retain the existing approach but because of the way the controls are described in Seveso III we will need to expand the consultation arrangements to include 'developments that may be the source of a major accident'.
- 4.3 Additionally, because there will be a small number of existing establishments coming into the Directive's scope for the first time as 'other establishments', we will need a mechanism to draw them to the attention of the planning system. Otherwise there is a risk that the presence of the establishment will not be taken into account when considering proposals for development in the vicinity until they are notified under control of major accident hazard regulations. Our aim, if possible, is to avoid specific requirements in regulations relating to this interim period and therefore we have not included specific provision in the draft regulations. We would welcome views on appropriate mechanisms, but, in any event, we will, through planning guidance, encourage operators of these establishments to advise local planning authorities that they have come within scope. We will also work with the industry and the Health and Safety Executive to reach these establishments, bearing in mind that it is in their interest to make themselves known to the local planning authority so as to avoid the encroachment of incompatible development.

Protecting areas of natural sensitivity

- 4.4 Seveso III, Article 13(2)(b), requires Member States to take account of the need, in the long term, to protect areas of particular natural sensitivity or interest in the vicinity of establishments. The requirement in Seveso II relating to areas of natural sensitivity was to maintain appropriate distances when considering new establishments.
- 4.5 Although there has been this change in how the requirement is described we believe the current arrangements are adequate. Existing domestic legislation, which includes requirements for consultation with Natural Resources Wales where an area of particular natural sensitivity or interest may be affected allow areas of natural sensitivity and their level of protection to be identified and handled appropriately in planning decisions.

Question 4

Do you have any comments on the proposals for controlling development around establishments, and the use of current arrangements to deliver protection to areas of natural sensitivity?

Public participation and access to justice

Public participation on decisions relating to hazardous establishments and nearby developments

- 5.1 Seveso III, Article 15, adds consultation and participation requirements which are more extensive than those in Seveso II. These new requirements are intended to bring the Directive into line with the Aarhus Convention.
- 5.2 Existing domestic legislation already provides for public participation in planning decisions. In certain cases that public participation is enhanced, for example where a project is subject to the environmental impact assessment Directive. In a similar way to developments requiring Environmental Impact Assessment, Article 15 contains specific public participation requirements for projects where hazardous sites are involved or affected. For example, there are specific things the public must be informed about both before and after a decision is taken.
- 5.3 We are proposing to integrate these detailed requirements into the hazardous substances consent regime¹⁵. For other relevant decisions,

¹⁵ See draft regulations 6, 7, 10, 11(2) and 21

we are proposing generic provisions ensuring that these obligations are complied with in appropriate cases¹⁶.

Public participation on plans and programmes

5.4 Seveso III, (Article 15(6)), sets out public participation requirements in relation to plans and programmes in line with the Strategic Environmental Assessment Directive. We propose a specific requirement to address this obligation¹⁷ although most relevant plans and programmes will already meet these obligations because of existing requirements for strategic environmental assessment.

Access to justice

5.5 Seveso III, (Article 23(b)), requires Member States to ensure the public have access to the review procedures required by the Environmental Impact Assessment Directive for relevant projects. This is delivered through judicial review and statutory review procedures.

Question 5

Do you agree with how we propose to deliver Seveso III requirements on public participation on specific individual projects and on plans and programmes?

Question 6

Do you have any additional comments on the consultation paper or the draft Regulations?

¹⁶ See draft regulation 27

¹⁷ See draft regulation 26