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Llywodraeth Cymru  
Welsh Government

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## Consultation – summary of responses

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

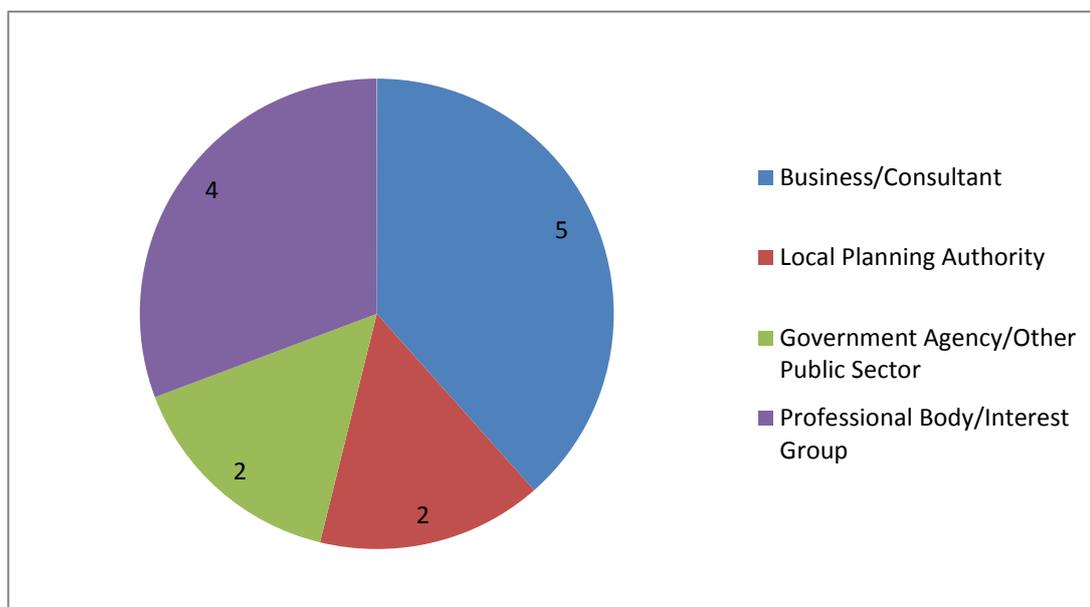
Date of issue: August 2015

## 1. Introduction

- 1.1 The 'Consultation on transposing the land use planning requirements of the Seveso III Directive on the control of major-accident hazards' document was launched on 11 February 2015 and was open for responses until 08 April 2015.
- 1.2 A total of six questions were set out in the consultation document, with a standardised form provided for ease of response. The following document provides a summary of responses received and a brief explanation of how the Welsh Government intends to respond to the views expressed.

## 2. Responses

- 2.1 In total, 13 responses were received to this consultation paper. The sectors represented by the respondents is provided below:



## 3. Question 1 - Do you agree with the proposed approach to deliver Seveso III objectives through land-use planning policies?

	Yes	Yes with comments (W/C)	No	N/A
<b>Business / Consultant</b>	4	0	0	1
<b>LPA</b>	0	1	0	1
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	3	1	0	0

<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>8</b>	<b>2</b>	<b>0</b>	<b>3</b>
<b>Percentage:</b>	<b>62%</b>	<b>15%</b>	<b>0%</b>	<b>23%</b>

3.1 Ten of the respondents answered this question and all agreed with the proposed approach to delivering Seveso III objectives through land-use planning policies. Three issues were raised alongside the overwhelming support for the proposed approach:

- The consultation should have taken the opportunity to review the principle of placing the responsibility of considering hazardous substances issues through the land use planning system.
- The proposal to ensure that updated objectives are expressly applied to the Wales Spatial Plan is unexpected. As it is likely to be superseded by proposals to create a National Development Framework (NDF) and Strategic Development Plans (SDP).
- In addition to legislation, advice and information should be provided to businesses and consultancies on the topic matter.

3.2 Of the three respondents that did not directly answer the question, one welcomed the proposed changes, particularly in relation to linking land use planning policies and hazardous substances consent with Seveso III and the revision to the relevant application forms.

### **Welsh Government response**

3.3 Stakeholders agree with our proposed approach so we will make regulations as proposed. The proposed provisions reflect the existing plan framework across Wales, which is currently the Wales Spatial Plan and Local Development Plans. Consideration of hazardous substances consent issues will be included within NDF and SDP procedures when the relevant parts of the Planning (Wales) Act 2015 are commenced.

3.4 It is acknowledged that a lack of staff with skills and experience in the field of hazardous substances can affect how the consent system operates across Wales. However, there was insufficient time to undertake a comprehensive review of how the consent regime operates while also complying with the transposition deadline. Therefore reform of the regime will be considered at a later date.

3.5 It is our intention to produce guidance document to assist with implementing the regulations.

**4. 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?**

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	3	2	0	0
<b>LPA</b>	1	1	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	0	2	1	1
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>5</b>	<b>5</b>	<b>1</b>	<b>2</b>
<b>Percentage:</b>	<b>38%</b>	<b>38%</b>	<b>8%</b>	<b>16%</b>

- 4.1 Most respondents were supportive of the principle outlined in the consultation question, with 76% responding positively and only one respondent disagreeing. Although supportive, many respondents considered that clarification was necessary in respect of a number of issues.
- 4.2 For example, concerns were raised that where substances are re-classified under European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures (CLP) from an existing classification under Chemicals (Hazard Information and Packaging for Supply) Regulations (CHIP) about the burden to business if a new consent was required. Similarly, the view was expressed that operators should not be required to apply for a new consent if any changes occur in either the quantity of material stored, the type of material, or the type of hazard presented, if there is no resulting change of tier or no significant consequences for major accident hazards.
- 4.3 A professional body commented that further clarification is required about the implications of the status of a site (Upper or Lower tier).
- 4.4 There were mixed comments on the alignment of the quantities with the Seveso III Directive. A LPA sought reassurance that there would be no reduction in safety standards. A business supported the proposal for LPG however considered that the LNG limit should be increased to 25Te. Another business supported the alignment of the substances being controlled under hazardous substances consent with those controlled under COMAH.
- 4.5 A professional body did disagree with the proposals, indicating that the rationale for increasing the controlled quantities does little to enhance the public's confidence in the regulatory regime. Also, there is inconsistency when applying the regulations in respect of LNG, LPG and Hydrogen

- 4.6 Some parties also thought clarification was required of the control of ‘substances that may be generated in the event of loss of control of a process’.

### Welsh Government response

- 4.7 The regulations make provision to allow establishments that hold substances that are re-classified to continue operating without the need to apply for hazardous substances consent. They also make provision to make minor changes to the type and quantity of substance, without needing to apply for consent, where this meets certain criteria.
- 4.8 The land use planning requirements of Seveso III do not differentiate between upper and lower tier sites. These terms are defined in the Directive and HSE provide guidance on this in respect for COMAH regulations
- 4.9 Health and Safety Executive has advised that liquefied petroleum gas, hydrogen and natural gas are all extremely flammable gases and have the potential to cause a major accident even under the current control quantities, which are stricter than those imposed by Seveso. There is a current drive for use of hydrogen as a ‘clean’ fuel at the point of use which may lead to more sites storing this substance. Maintaining control levels is therefore precautionary in light of the possibility of rapid proliferation of these sites. There is also current trend for liquefied natural gas fuel facilities at logistics sites (where a number of people will be present on site), and other sites which are not experienced major hazard operators, it is therefore also advisable to maintain current control standards on natural gas.
- 4.10 It is recognised that the control ‘substances that may be generated in the event of loss of control of a process’ may be difficult for businesses to identify. The guidance document provides further information on this process.

## 5. Question 3a – Do you agree with how we propose to implement controls on new establishments?

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	4	0	0	1
<b>LPA</b>	1	1	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	2	1	1	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>2</b>
<b>Percentage:</b>	<b>62%</b>	<b>15%</b>	<b>8%</b>	<b>15%</b>

- 5.1 All except one respondent who answered the consultation question agreed with the proposals to implement controls on new establishments.
- 5.2 The professional body/interest group that did not agree was concerned about the clarity of the text, asking for guidance on the issue before the regulations come into force.
- 5.3 Although in agreement with the proposal, A LPA questioned how these new establishments are to be considered if such a facility is near to or adjacent to allocations within a recently adopted Local Development Plan.
- 5.4 Other questions of clarity comments from supporters of the proposals included that ‘other establishments’ that operate lawfully at 1 June 2015 should not be required to have full HSC, but there could be a quick process to claim deemed consent. However the consultation document does not specify how or when they will be required to comply with the Directive.

**Welsh Government response**

- 5.5 The Seveso III Directive only requires land-use planning controls on “new establishments”. Therefore the proposed regulations allow “other establishments”, which are operating lawfully and simply come into scope on 1 June 2015, to continue operating without the need to apply for hazardous substances consent. Unless they amend practices then there is no additional requirements placed on the operator.
- 5.6 The consideration of a ‘new’ establishment against an adopted development plan has not changed.
- 5.7 A guidance document is being produced.

**6. Question 3b – Do you agree with our proposed amendments for modifications to establishments?**

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	2	2	0	1
<b>LPA</b>	2	0	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof’l Body / Interest Group</b>	2	1	1	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>Percentage:</b>	<b>54%</b>	<b>23%</b>	<b>8%</b>	<b>15%</b>

- 6.1 Responses to the consultation question were favourable, with only one respondent disagreeing with the proposed amendments for modifications to establishments.
- 6.2 One Business commented that the consultation paper suggests that a tier change would require a new consent but does not specify that this would only apply to a move from lower to upper tier.
- 6.3 Another Business agreed with the principle of reducing the need for unnecessary consents for modifications. However, it read the proposals as if there will still be significant and potentially time consuming work required by operators.
- 6.4 One respondent did disagree with the proposal, highlighting concern that the requirement in Regulation 15(a)(iii) could negate any benefit of a “relevant minor change”. For example, where a product needs to be moved to an adjacent tank to allow cleaning HSC should not be required.

#### Welsh Government response

- 6.5 Seveso III, Article 13(1)(b), requires controls on modifications to establishments as defined in Article 11 of the Directive as changes between tiers and modifications which “could have significant consequences for major accident hazards”. It is accepted that the consultation proposal, while allowing changes, would not allow the full extent of changes as allowed by the Directive. This has been modified to take account of comments received.
- 6.6 We do not accept that the process is complicated. To ensure that any changes comply with the requirements the applicant only has to seek confirmation from the Control of Major Accident Hazards competent authority that the change is acceptable. This process is significantly simpler than the current system of making amendments.

### 7. Question 3c – Do you agree with our proposals relating to how an application for consent is made?

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	3	1	0	1
<b>LPA</b>	0	2	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	2	2	0	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0

<b>TOTAL:</b>	<b>6</b>	<b>5</b>	<b>0</b>	<b>2</b>
<b>Percentage:</b>	<b>46%</b>	<b>39%</b>	<b>0%</b>	<b>15%</b>

- 7.1 Of those respondents who provided a response, 100% agreed with the proposals relating to how an application for consent is made, including the need for improvement and streamlining the process to ensure the correct information is delivered first time.
- 7.2 A Professional Body agreed with the proposals, but suggested that a HSE 'SMART form' and COMAH notification act as triggers for a HSC application.
- 7.3 An LPA also supported the proposals, providing guidance on requirements is made available. Similarly, a Professional Body noted that any guidance will address the information required for the most common types of application.
- 7.4 Although in agreement with the proposals, one respondent felt unsure whether Regulation 5(c) (viii) is absolutely necessary and unsure of the level of detail that would be required.

**Welsh Government response:**

- 7.5 The respondents support the proposals. The Health and Safety Executive are developing an interactive 'SMART form' for use by applicants and can advise what information is required under this section 5(c)(viii). As a body with expertise in these matters the information required is only going to be that necessary for the determination of the application.

**8. Question 3d – Do you agree with how we propose to address obligations on additional technical measures in relation to the environment?**

	<b>Yes</b>	<b>Yes W/C</b>	<b>No</b>	<b>N/A</b>
<b>Business / Consultant</b>	4	0	0	1
<b>LPA</b>	1	1	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	3	0	1	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Percentage:</b>	<b>69%</b>	<b>8%</b>	<b>8%</b>	<b>15%</b>

- 8.1 The majority of respondents agreed that no specific amendments to the current system of hazardous substances consent are required to address the

need for additional technical measures so as not to increase the risk from existing establishments.

- 8.2 However, a Professional Body disagreed with the approach indicating that further justification should have been given as to why technical changes which are proposed to address impacts upon the environment have not been made.

**Welsh Government response:**

- 8.3 We consider that legislation already complies with the new requirements of the Directive as Natural Resources Wales advise hazardous substances authorities on technical measures relating to the environment.

**9. 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?**

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	0	3	2	0
<b>LPA</b>	0	1	1	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof'l Body / Interest Group</b>	0	2	2	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0
<b>TOTAL:</b>	<b>1</b>	<b>6</b>	<b>4</b>	<b>1</b>
<b>Percentage:</b>	<b>8%</b>	<b>46%</b>	<b>38%</b>	<b>8%</b>

- 9.1 Responses to the consultation question were mixed, although the majority of respondents did agree with the proposals. Of those who did support the proposals, many raised some concerns.
- 9.2 One LPA felt that the arrangements for drawing LPA attention to “other establishments” seems vague and could lead to incompatible developments in close proximity to these establishments and that Natural Resources Wales must be adequately resources to undertake this work.
- 9.3 Concern over the issue of encroachment and the ability of the planning system to prevent it was shared by a number of respondents. It was suggested that the LPA should be obligated to inform the hazardous substances site operator if any development is proposed with the public information zone (PIZ) around such sites as the process appeared one way, i.e. major hazard sites are required to attempt to communicate with

neighbouring developments but there is no requirement for them to respond, nor to initiate important information in the other direction in the first place. It was also unclear by what is meant by “developments that may be a source of a major accident”

- 9.4 A respondent outlined their experiences where LPAs have previously ignored HSE advice and there is concern over incremental development around sites that could then impact detrimentally on future revisions to the establishment’s own consent.

**Welsh Government response**

- 9.5 The notification process for ‘other establishments’ has been amended. This now provides duties on the LPA and HSE in respect of these developments. It is also considered that operators will notify LPAs as this will ensure that inappropriate development is not constructed around the site as should encroachment occur, the operator may be required to implement more stringent measure under the COMAH regime.
- 9.6 The existing consultation arrangements with Natural Resources Wales will continue and so the regulations do not provide any additional burden on their resources.
- 9.7 Consultation on development around existing establishments is set out in the Town and Country Planning (Development Management Procedure) (Wales) Order 2012. This has specific requirements where development is located within a HSE consultation zone.
- 9.8 Where a LPA seeks to grant permission against the advice provided by HSE our guidance documents state they should notify HSE of their intention before granting permission. The notification of a proposal to grant permission is a procedure that has operated for some time and provides HSE the opportunity to pursue its concerns about the development with the Welsh Ministers.

**10. Question 5– Do you agree with how we propose of deliver Seveso III requirements on public participation on specific individual projects and on plans and programmes?**

	Yes	Yes W/C	No	N/A
<b>Business / Consultant</b>	4	0	0	1
<b>LPA</b>	2	0	0	0
<b>Gov. Agency / Other Public Sector</b>	1	0	0	1
<b>Prof’l Body / Interest Group</b>	2	1	1	0
<b>Voluntary Sector</b>	0	0	0	0
<b>Other / Individual</b>	0	0	0	0

<b>TOTAL:</b>	<b>9</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>Percentage:</b>	<b>69%</b>	<b>8%</b>	<b>8%</b>	<b>15%</b>

- 10.1 Respondents were supportive of the proposals with all but one of those who answered the consultation question responding positively.
- 10.2 A Professional Body did not agree with the proposals because it considered that the public participation, as described within the consultation paper, would add extra time to the planning process and make it even more bureaucratic. Similarly, another Professional Body queried how HSE will provide information to the public during the planning application process.

#### **Welsh Government response:**

- 10.3 The consultation process is not substantially different to the current process. In line with current regulations, the draft regulations require the applicant to publicise the application, while the local authority undertake consultation with stakeholders, including HSE.
- 10.4 In addition, the draft regulations also require the LPA to make the information submitted by the applicant and consultees available to the public. This will not create additional burden or delay on the system as this is already the practice of authorities.

### **11. Question 6– Do you have any additional comments on the consultation paper or the draft Regulations?**

- 11.1 There were a number of other comments made on the consultation paper and draft regulations.
- 11.2 An LPA commented that the consultation/regulations assume a level of expertise in LPAs handling HSC applications, but that this is not the case.
- 11.3 Government Agencies raised queries regarding explosives and temporary storage. It was commented that licenses granted under the 2015 explosives regulations and Dangerous Substances in Harbour Areas follow a similar process to HSC and so for the avoidance of duplication, can be exempt from HSC. The response also highlighted the possibility of under-implementing the Directive within the draft regulations in that they would appear to make temporary storage 'inside' the establishment exempt.
- 11.4 Concern was made that the consultation did not raise the issue of unimplemented or redundant consents. There is reference to 'deemed consent', however, there is no reference to supporting guidance or regulations

which describe the process for applying for deemed consent. Similarly, regulation 29 should provide a time window to allow for a re-application of HSC following reclassification of a substance which will allow a site to continue operating under its existing HSC.

- 11.5 There is also a concern that domestic standards are being lowered to comply with the European Directive and minimise the burden on business to the detriment of the environment and land use planning.
- 11.6 Comments were also received relating to the consultation document stating that it was not easy to understand and that the consultation process should have extended to the full 12 weeks.

### **Welsh Government response**

- 11.7 The draft regulations have been amended to exclude explosives that are granted a license under the explosives regulations 2015 or the Dangerous Substances in Harbour Areas Regulations 1987. They have also amended the exemption to ensure temporary storage is only exempt outside an establishment.
- 11.8 There is no intention to vary unimplemented or redundant consents at this time. The provisions that ensure that sites that come into scope for the first time, or where substances have changed classification, do not require an application to be made or have a timeframe.
- 11.9 We do not accept that the standards are to the detriment of the environment or land use planning. The proposal takes into account UK experience and approaches and has not identified justification for retaining existing levels. This will increase flexibility to business without an increase in risk to the public.
- 11.10 Health and Safety Executive has advised that liquefied petroleum gas, hydrogen and natural gas are all extremely flammable gases and have the potential to cause a major accident even under the current control quantities, which are stricter than those imposed by Seveso. There is a current drive for use of hydrogen as a 'clean' fuel at the point of use which may lead to more sites storing this substance. Maintaining control levels is therefore precautionary in light of the possibility of rapid proliferation of these sites. There is also current trend for liquefied natural gas fuel facilities at logistics sites (where a number of people will be present on site), and other sites which are not experienced major hazard operators, it is therefore also advisable to maintain current control standards on natural gas.
- 11.11 Hazardous substances are a technical subject, the consultation paper endeavoured to present the information in an accessible format. Points of contact were also provided to those who required further information. The

reasons for the shorter consultation period was set out in the consultation paper.