

 Regulatory Policy Committee	Opinion	
Impact Assessment (IA)	Amending COMAH 1999 to align the thresholds for Heavy Fuel Oil with those of Petroleum Products.	
Lead Department/Agency	Health and Safety Executive	
Stage	Final	
IA Number	Not provided	
Origin	European	
Expected date of implementation (and SNR number)	SNR7	
Date submitted to RPC	07/11/2013	
RPC Opinion date and reference	20/12/2013	RPC13-HSE-1785(2)
Overall Assessment	GREEN	
<p>RPC comments</p> <p>The IA is fit for purpose. The IA estimates an equivalent annual net cost to business (EANCB) of -£0.14 million for this European measure, which is out of scope of One-In Two-Out. The costs and benefits underlying these cost-savings to business are identifiable, and the resultant estimate is reasonable.</p>		
<p>Background (extracts from IA)</p> <p>What is the problem under consideration? Why is government intervention necessary? <i>The UK is required to implement Article 30 of the new Seveso III Directive (replacing Seveso II Directive) into UK law by 15 February 2014. We propose doing this by minor amendment to the Control of Major Accident Hazards Regulations 1999 (COMAH). This amendment will take a significant number of sites out of scope of COMAH. The EC classification ('dangerous for the environment' - DFE) of Heavy Fuel Oil (HFO) causes problems for industry under consequential requirements of COMAH. UK lobbied and secured Article 30 in the Seveso III Directive, enabling HFO to be treated under COMAH as 'petroleum products'; relaxing significantly the demands on UK industry.</i></p> <p>What are the policy objectives and the intended effects? <i>(i) Implement the change proposed in the Seveso III Directive to the classification of HFO into UK law; (ii) Enable many UK industry stakeholders to be removed completely from legislative requirements and others to have simpler compliance duties (iii) Giving clarity and legal certainty to UK businesses on how HFO should be treated; (iv) Deliver a 'level playing-field' in the EU where the same thresholds will be used; and (v) Ensure no gold plating and that British businesses are not put at a competitive disadvantage; (vi) Avoid infraction and associated costs for failure to implement Article 30 of the Directive.</i></p>		
<p>Comments on the robustness of the OITO assessment</p>		

The IA says the “.. *proposal is out of scope of One in, Two Out (OITO). The proposed amendment implements a European Directive; it does not “gold-plate” by going beyond its provisions or fail to adopt available derogations*”. Therefore, as the proposal is of European origin and there is no evidence that the increase in regulation would go beyond minimum requirements, or of a failure to take available derogations which would reduce the costs to business [and civil society organisations], it is out of scope of One-in, Two-out (Better Regulation Framework Manual - paragraph 1.9.8. ii).

The IA estimates the EANCB on 2009 prices at - £0.14 million which appears reasonable. The EANCB was calculated by assessing familiarisation costs to 50 or so sites expected to be affected by policy and by estimating compliance cost savings due to less stringent thresholds for the Heavy Fuel Oil relative to the counterfactual. The IA adequately recognises that the full extent of compliance cost savings to business would only be achieved if under the baseline scenario there had been full compliance with the current thresholds. Although HSE has evidence of sites that have been preparing to comply with the existing thresholds, other sites might have taken a lighter touch approach to compliance because of uncertainty with respect to regulatory requirements. As a result, the IA assumes that only about 25% of business sites are compliant under the baseline. This is reflected in the above EANCB figure.

Familiarisation costs are expected to be low as affected businesses are likely to be aware of the forthcoming policy change following the consultation period and therefore are only expected to spend a limited time on familiarising themselves with policy.

A reasonable attempt was made to identify main business groups by threshold level and whether they would be affected by policy. Compliance cost savings have been monetised based on available evidence on compliance costs for businesses depending on their threshold level.

Quality of the analysis and evidence presented in the IA

The issues raised in our Opinion (28/06/2013) on the consultation stage IA have been adequately addressed. In particular, the IA sets out clearly the baseline used for comparing the costs and benefits and therefore the impacts of the proposed measure. The counterfactual in this case is the continued application of the 'dangerous for the environment' thresholds for Heavy Fuel Oil to any sites storing more than 100 tonnes of Heavy Fuel Oil.

The IA also provides greater clarity about the implications of the proposed changes for the environment. In particular that *“it is not expected there will be any loss in environmental protection because there are existing environmental laws under which the standards of environmental protection afforded by the lower 'DFE thresholds' will be regulated and maintained”* (paragraph 41).

Signed



Michael Gibbons, Chairman

