



Department for
Communities and
Local Government

Government response to technical consultation on the role of planning in preventing major-accident hazards involving hazardous substances



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Introduction

A number of accidents across Europe involving hazardous substances, notably at Seveso in Italy, prompted European legislation to prevent major accidents. This European legislation has been in place since 1982, and was updated in 1996 ('Seveso II') to add expectations on land-use planning. The most recent update ('Seveso III') was agreed in 2012 and has to be transposed¹ by 31 May 2015.

Domestic planning legislation to safeguard against accidents involving hazardous substances in England predates the planning requirements of the Seveso II directive and has been amended to reflect European requirements. There have been amendments to the Planning (Hazardous Substances) Regulations 1992 and we have a Red Tape Challenge commitment to consolidate them. Alongside the regulations, Seveso II requirements are also met through local plans and development management regimes.

In October 2014, the Government launched a technical consultation on how we proposed, in England², to transpose the land-use planning requirements of Seveso III and otherwise improve the regulatory framework on planning for hazardous substances. The consultation ran from 20 October 2014 until 1 December 2014.

Summary of responses to consultation

There were a total of 43 responses to the consultation document with the majority coming from the chemicals industry and industry representatives. Some responses were also received from local authorities and members of the public. The consultation asked 13 specific questions.

The remainder of this document sets out the Government's response. It is split into five sections, mirroring the consultation document. It should be noted that in considering the responses to this consultation, the Government gives more weight to the arguments put forward in support of, or against, any particular proposal rather than the absolute number who were for or against.

¹ EU directives are a form of EU legislation and contain deadlines for the implementation ("transposition") of the rights and obligations in the directive in Member States.

² The devolved administrations are responsible for implementing in Scotland, Wales and Northern Ireland.

Delivering Seveso III objectives through land-use planning policies

The consultation document explained how the new 'Seveso III' objectives of preventing major accidents would be delivered through existing land use planning policies. The proposed approach would minimise burdens on business, but without compromising the overall objectives of the directive and build on the current arrangements where sensible while looking for opportunities to streamline where possible. We also asked about the benefits of a more radical overhaul.

The consultation document set out the Government's proposals to transpose Seveso III by updating the objectives in the current legislation, and expressly applying the regulations to policy issued by the Secretary of State (such as the National Planning Policy Framework and national policy statements under the major infrastructure planning regime).

Summary of consultation responses

There was wide support from respondents (35 out of total of 43 responses) for the proposed approach.

Some respondents commented that they broadly supported the proposal but that further improvements could be made. Suggestions included the need for more guidance on the practical operation of the hazardous substances regime and setting out clearly in the National Planning Policy Framework the requirements relating, for example, to consultation with emergency planners.

Government response

The Government intends to proceed with proposals set out in the consultation. While we do not consider it necessary to make changes to the National Planning Policy Framework, we will update planning guidance (<http://planningguidance.planningportal.gov.uk/blog/guidance/hazardous-substances>), so as to ensure it fully reflects the new expectations arising from Seveso III and that these are clear to users.

Planning controls on hazardous substances

Controls on the siting of new hazardous establishments

The consultation document explained that Seveso III requires controls on the siting of new hazardous establishments and one of the main changes is an updated list of controlled hazardous substances requiring consent. The Government proposal in the consultation document is to align the planning controls with the directive, the exception being to retain the existing levels of liquefied petroleum gas, natural gas and hydrogen for reasons of public safety.

Controls on modifications to establishments

The consultation document set out the new controls required by the directive for modifications to establishments which could have significant consequences for major accidents and noted that current controls on modifications are more onerous than required by the directive. The Government proposal in the consultation document was to better align the current system and the directive, 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) i.e. the expectations set out in the directive.

Changes on how to apply for consent

The consultation document explained the requirement of Seveso III for competent authorities to accept relevant information from operators that they have already provided to meet another requirement set out in other European legislation. To deliver this the Government proposal in the consultation document was to make amendments to how operators apply for consent and to set out in planning guidance further advice on what information is needed for the most common types of application. The consultation document explained that the Government will encourage operators to apply for consent using the electronic 'smart form' being developed by the Health and Safety Executive and industry representatives.

Taking additional technical measures into account

The consultation document set out the requirements of Seveso III to take into account additional technical measures so as not to increase the risks to human health and the environment. The consultation document explained that the Government considers that these requirements are already complied with and therefore the Government is not proposing any regulatory change to transpose the new requirements for technical measures.

Summary of consultation responses

There was wide agreement (91.5%) with the proposal to align the list of controlled

hazardous substances with the substances controlled by Seveso III. Some specific points were raised about public safety being paramount when determining how hazardous substances are controlled.

The majority of respondents (35 out of total of 43 responses) supported retaining the existing controls for liquefied petroleum gas, natural gas and hydrogen. There were a few comments on the proposal, for example suggesting the limits controlled could be raised and requests for clarity on some of the terminology in the draft regulations.

There was wide agreement (96.5%) with the proposals relating to new establishments and modifications to establishments. Some respondents were concerned about the level of detail needed in applications and how the 'smart form' application would work with application management systems used by local authorities.

Government response

Controls on the siting of new hazardous establishments

The Government intends to proceed with proposals set out in the consultation, including aligning the current planning controls on hazardous substances with those in the directive. The existing levels of control for liquefied petroleum gas, natural gas and hydrogen will be retained for public safety reasons for now and the Government will keep the levels under review.

Controls on modifications to establishments

The Government intends to proceed with proposals set out in the consultation, which include deregulation of current controls on modifications where more onerous than required by the directive. In response to suggestions from industry we will make further adjustments to the minor modifications process so as to increase flexibility without affecting safety. We will work with the Health and Safety Executive³ to develop guidance on minor modifications to help businesses take advantage of the opportunity to make minor modifications.

Changes on how to apply for consent

The Government has considered the consultation responses and support from industry for the proposed approach on how to apply for hazardous substances consent. Use of the 'smart form' will be encouraged through guidance, but is not required by regulations. Guidance will also make clear how relevant 'equivalent information' can be used in making an application.

³ The control of major accident hazards regime, is enforced by the Health and Safety Executive and the relevant environment agencies – in England the Environment Agency, in Scotland the Scottish Environment Protection Agency, and in Wales Natural Resources Wales - working together as the control of major accident hazards competent authority (known as the COMAH competent authority).

Taking additional technical measures into account

No changes are proposed but guidance will be updated to support the consideration of the additional technical measures. The Government plans to make guidance available ahead of regulations coming into force.

Protecting areas around hazardous establishments

Controlling development in the vicinity of establishments

The consultation document explained the current approach to implementation would be retained but, because of the way the controls are described in Seveso III, the consultation arrangements would need to also include '*developments that may be the source of a major accident*'.

The consultation document also considered how 'other establishments' newly coming into the directive's scope could be addressed.

Protecting areas of natural sensitivity

The consultation document explained that Seveso III 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 Government's proposal is to retain the current arrangements, which include requirements for consultation with Natural England, as these are considered to be adequate.

Summary of consultation responses

The majority of those who responded (82%) were in agreement with the proposals for controlling development around establishments and the use of the current arrangements to deliver protection to areas of natural sensitivity. Of those that did not agree with the proposals (18%) there was concern about encroachment of development around hazardous establishments and the need for stronger controls on land use including requiring new development close to a hazardous establishment to take account of the activities on that site. Some respondents wanted further assurances on how controls will be ensured around establishments that are already operational and come into the scope of the directive on or after 1 June 2015.

Government response

The Government intends to proceed with proposals set out in the consultation and will prepare guidance to support the revised process. In response to concerns raised by a number of respondents, the Government will ensure the consultation requirements around major hazards⁴ are applied when an operator notifies the local authority that their establishment is within the scope of the directive and this has been confirmed by the Health and Safety Executive.

⁴ <http://planningguidance.planningportal.gov.uk/blog/guidance/hazardous-substances/handling-development-proposals-around-hazardous-installations/>

Public participation and access to justice

Public participation on decisions relating to hazardous establishments and nearby developments

The consultation document explained that Seveso III includes consultation and participation requirements where hazardous sites are involved and that existing domestic legislation already provides for public participation in planning decisions. The Government proposal is to integrate the Seveso III requirements into the hazardous substances consent regime and, for other relevant planning decisions, to set generic provisions to deliver the obligations.

Public participation on plans and programmes

The consultation document explained that Seveso III sets out public participation requirements in relation to plans and programmes in line with the strategic environmental assessment directive⁵. Although most relevant plans and programmes will already meet these obligations because of existing requirements for strategic environmental assessment⁶ the Government proposed a specific regulatory measure to address this obligation.

Access to justice

The consultation document explained that the expectations set out in Seveso III are delivered through judicial review and statutory review procedures and therefore no additional requirements were proposed.

Summary of consultation responses

The majority of respondents were in agreement (82%) with the proposals to deliver Seveso III requirements on public participation on specific individual projects, plans and programmes. The main concerns raised about this proposal were that public consultation would slow down the hazardous substances consent regime and how national security issues on access to hazardous substances consent applications will be dealt with.

⁵ Article 2(2) of Directive 2003/35/EC

⁶ Regulation 13 of the Environmental Assessment of Plans and Programmes Regulations 2004. See <http://www.legislation.gov.uk/ukxi/2004/1633/contents/made>

Government response

The Government intends to proceed with proposals set out in the consultation.

Taking account of the consultation responses the Government will continue working with the industry, the Health and Safety Executive and local authorities on improving performance of the planning process, including the development of further measures to reduce the likelihood of delays.

The Government has taken account of responses regarding the sensitive information contained in consent applications and has amended the requirement on public participation to ensure that the requirements of the directive are met while taking account of the fact that certain sensitive information is contained in consent applications.

Scope for further reform

The consultation document explained that the Government considers there to be scope for further reform looking beyond the immediate need to implement Seveso III and invited views to shape this future reform.

Avoiding unnecessary restrictions on development while protecting the needs of industry

The consultation document explained that the Government's aim is to avoid any unnecessary restriction on development proposals arising from the presence of hazardous substances consent, but also to protect the needs of the business benefitting from a consent. Views were invited in particular on the scope to reform the impact of unimplemented consents and redundant consents.

Improving Seveso III planning controls

The consultation document explained the potential for further improvements in the longer term to better align the implementation of the land-use planning controls required by the directive with those delivered by the Control of Major Accident Hazards regime. Views were invited on the scope for improvement.

Summary of consultation responses

The majority of respondents provided comment on how to shape future reform. There was a range of views relating to unimplemented hazardous substances consents and redundant consents largely reflecting the perceived benefit or impact of a live consent to the respondent's interests. Many of the responses supported better alignment between the planning controls and the Control of Major Accident Hazards regime and provided suggestions on how this could be achieved and suggestions for future reform.

Government response

The Government welcomes the responses on future reform. These provide useful evidence and will be taken into account in considering the scope and shape of any future reform.