

SYNOPSIS OF RESPONSES TO THE PUBLIC CONSULTATION ON THE DRAFT PLANNING (HAZARDOUS SUBSTANCES) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2015

Introduction

1. The above consultation paper was published on 1st May 2015. Responses were invited from a wide range of organisations and individuals by 11th June 2015. The consultation paper was also advertised in the local press, on the Department's website and the NI Direct website.

2. A total of 5 substantive responses were received while 2 respondents welcomed the opportunity to respond but had no further comment. The respondents are considered to represent a reasonable cross-section of interested opinion. Details of respondent groupings in respect of substantive responses are set out in the table below –

Category	Responses	% of Total
Business and development interests	1	20
Agents/architects/professional bodies/legal	1	20
Elected representatives, including local govt	2	40
Other	1	20

3. This synopsis summarises and responds to the key issues raised by respondents. It is not intended to provide a comprehensive report on every comment received or made. Copies of the substantive responses can be found on the Planning NI website at http://www.planningni.gov.uk/index/policy_legislation/completed_consultations.htm

Overview of Responses

4. There was general approval and acceptance for the proposed approach to transposition of the land-use planning requirements of the Seveso III Directive. The need for guidance on the changes to be made available was emphasised by several respondents. No comments were received concerning the Regulatory Impact Assessment or Equality Impact Assessment Screening analysis.

Analysis of responses

Delivering Seveso III objectives through land-use planning policies

5. The Department's proposed approach to delivering the Directive's objectives through land-use planning policies and amendment to the Local Development Plan Regulations was supported by all of the substantive respondents and the need for guidance and advice was highlighted.

Department's response

6. The Department has implemented the proposals and will provide guidance on the Regulations.

Planning controls on hazardous substances

7. The Department's proposed approach of copying out the substances and thresholds in the Directive with the exception of Liquid Petroleum Gas (LPG), Liquid Nitrogen Gas (LPG) and Hydrogen was supported by 3 of the 5 substantive respondents. A council commented that it made sense to align with the Directive and to follow the advice from the Health and Safety Executive (HSE) with regard to the 3 exceptions.

8. The Royal Town Planning Institute (NI), (RTPINI) disagreed with the proposal commenting that it would not enhance public perception of the regulatory control regime. They also would have preferred to see a clearer rationale for the exceptions.

Department's response

9. The Department has implemented the proposal and is content that the exceptions were adequately explained in paragraphs 5.4 and 5.5 of the consultation document.

Transitional arrangements

10. The Department proposed that sites operating lawfully that did not require consent (but which would from 1 June 2015 because of changes to the list of hazardous substances controlled by the Directive), would not be required to apply for consent. It also proposed that operators with an existing consent could continue to operate in the same way using that consent. These proposals were agreed by 4 of the 5 substantive respondents and considered to have avoided unnecessary burdens on companies and authorities. The need for guidance was highlighted.

Department's response

11. The Department has implemented these proposals.

Changes on how to apply for hazardous substances consent

12. The Department proposed replacing the prescribed form for applications for hazardous substances consent with a list of essential information to be included on the application and allowing applicants to refer to information already provided for other purposes consistent with the Directive. This approach was approved by 3 of the 5 substantive respondents while the other 2 had no preference.

13. The Department has implemented these proposals.

Taking additional technical measures into account

14. The Department had proposed no regulatory change to meet the requirement in Article 13(2) of the Directive to take into account the need for additional technical measures so as not to increase the risks to human health or the environment. The rationale was that the transposition of the former requirement in the Seveso II

Directive for “additional technical measures so as not to increase the risk to persons” already ensured compliance with the new Seveso III requirement.

15. Two of the substantive respondents agreed and 3 had no preference. The UK Petroleum Industry Association (UKPIA) agreed but had concerns that uncontrolled development near sites could possibly impact on sites Safety Reports, bringing costs due to the need for additional safety measures, which they said should be made a responsibility for the developer and not the site operator. RTPINI would have liked to see more detail on the proposal.

Department’s response

16. The Department has amended the Planning (Local Development Plans) Regulations 2015 to reflect the new wording in Article 13(2) of the Directive. Costs are not a matter for planning legislation. The Department considers that paragraph 5.25 of the consultation document adequately explained its approach to additional technical measures.

Protecting areas around hazardous establishments

17. The Department proposed to expand existing consultation requirements in respect of development in the vicinity of establishments to include “developments that may be the source of a major accident” as set out in the Directive. The Department also sought views on mechanisms by which the Directive’s “other establishments” could be drawn to the attention of the planning system without making specific legislative provision.

18. One substantive respondent agreed with the proposals and one disagreed. The remainder had no preference. A council suggested that the Department should conduct market research to identify sites that that would become “other establishments” and RTPINI were concerned that if such sites remained unidentified, incompatible or uncontrolled development could result.

Department’s response

19. The Department has implemented the expanded consultation requirements. The Regulations clarify that where HSENI receive and confirm notification of “other” establishments they will notify the planning authorities so that these consultation requirements will apply to any development within the vicinity. The Department does not propose to carry out market research as it is considered that such establishments are highly unlikely to be operating outside the law since they benefit from the consultation zone requirements that apply to development proposals within the vicinity when they identify themselves to hazardous substances authorities.

Public participation and access to justice

20. The Department’s proposed enhancement of the hazardous substances consent regime to meet the more extensive public participation requirements of the Directive was supported by 4 of the substantive respondents and the other had no preference.

Department’s response

21. The Department has implemented the proposals

Other issues

22. RTPINI would have liked an explanation for the reduced consultation period and stated that there was a presumption throughout the consultation document that all readers would be familiar with the existing guidance.

Department's response

23. The Department acknowledges that the reason for the reduced consultation period could have been more clearly set out rather than alluded to. Given the technical nature of the document and subject matter, some familiarity with the existing process was assumed and the Department notes that the respondent acknowledged the attempt to make the document as user-friendly as possible.

24. As a separate issue to its transposition proposals, and with no amendment being considered at this time, the Department had asked respondents for information on unimplemented consents and their views on their effects, and for views on dealing with redundant consents.

Unimplemented consents

25. No information, views or evidence was provided.

Redundant consents

26. The Department had asked respondents for views on dealing with redundant consents where sites are decommissioned, permanently closed or abandoned.

27. Two substantive respondents offered views. A council suggested that the Department should ensure that there was no increased risk to human health or the environment by virtue of the abandonment of sites and that appropriate persons should be identified and made accountable for on-going steps to address such risks. UKPIA favoured rescinding of consents for closed or abandoned sites but would want unused or underused consents at ship import sites to remain unchanged to provide flexibility for importing goods.

Department's response

28. No actions are proposed in relation to the regulations but these comments have been noted by the Department and will be given further consideration.

Conclusion

29. Having considered the consultation responses, the Department has made the Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015, S.R. 2015 No. 344 which come into operation on 16th October 2015. Copies of the Rule may be purchased from the Stationery Office at www.tsoshop.co.uk or by contacting TSO Customer Services on 0870 600 522 or viewed online at <http://www.legislation.gov.uk/nisr/2015/344/contents/made>

The Department initially proposed to transpose the Seveso III Directive by amending the Planning (Hazardous Substances) Regulations (Northern Ireland) 2015 which came into operation on 1st April 2015 on the transfer of planning functions to

councils. Having since considered the extent of textual amendment necessary to effect transposition, the Department has instead revoked and replaced those Regulations (this approach reflects best legislative practice and promotes accessibility).