

**EXPLANATORY MEMORANDUM TO**  
**THE CONTROL OF MAJOR ACCIDENT HAZARD REGULATIONS 2015**  
**2015 No. 483**

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Control of Major Accident Hazard (COMAH) Regulations (“the Regulations”) are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. The Regulations lay down rules for the prevention of major accidents which might result from certain industrial activities sites involving the production, use or storage of dangerous substances at or above certain thresholds, and the limitations of their consequences.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 The Regulations implement the majority of Directive 2012/18/EU (“[the Directive](#)”) of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/98/EC (“[the Seveso II Directive](#)”). The Regulations replace the Control of Major Accident Hazard Regulations 1999 as amended ([SI 1999/743](#)) (“the 1999 Regulations”) in Great Britain, which had implemented the Seveso II Directive.

4.2 Articles 13 and 15 of the Directive relate to land use planning and will be implemented by separate planning legislation, by the Department for Communities and Local Government (DCLG) for England and the Scottish and Welsh Governments in their respective jurisdictions. Article 30 of the Directive concerning the classification of Heavy Fuel Oil had an earlier implementation date of 14 February 2014 and was transposed into domestic legislation on 20 February 2014 by the Heavy Fuel Oil (Amendment) Regulations 2014 ([SI2014/162](#)) which also made an amendment to planning legislation in England. The amendment to the 1999 Regulations will be replaced by the 2015 Regulations.

4.3 The Regulations are made under powers conferred by the Health and Safety at Work etc. Act 1974 ([HSWA](#)), the Energy Act 2013 ([Link](#)) and the European Communities Act 1972 ([ECA](#)).

4.4 The Transposition Note is at Appendix 1 and the Scrutiny History at Appendix 2.

4.5 The Directive was subject to scrutiny under EM 18257/10. The House of Commons European Scrutiny Committee considered the proposal on 2 February

2011 and held it under scrutiny, deeming it politically important. The Committee recommended the proposal for debate in European Committee B. However, before the debate could be held, the proposal came before the European Council for agreement and the government decided to override scrutiny and agree the proposed Directive at the General Affairs Council meeting on 26 June 2012. The debate in European Committee B was subsequently held on 23 October 2013 and the motion proposed by the government was agreed. The proposal was cleared from scrutiny by the House of Lords European Scrutiny Committee on 22 May 2012.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

5.2 Northern Ireland will introduce equivalent legislation to transpose the Directive.

## **6. European Convention on Human Rights**

6.1 This instrument is subject to the negative resolution procedure and does not amend primary legislation. However, there are two non-contextual amendments; on these, the Minister for Welfare Reform, Lord Freud, has agreed there is no impact on human rights.

## **7. Policy background**

- What is being done and why

7.1 As an EU Member State the UK is required to transpose the requirements of the Directive by its implementation date, 31 May 2015.

7.2 The reason the new Directive is needed is to take account of the new European system for classifying dangerous substances which will come into force on 1 June 2015 due to Regulation (EC) 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packing of substances and mixtures amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation (EC) No. 1907/2006 ([CLP Regulation](#)). The Directive is also aligned with the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (known as the [Aarhus Convention](#)) of which GB is a signatory.

7.3 The Regulations apply to defined establishments where dangerous substances are present or likely to be present at or above specified thresholds. Establishments may be either “lower tier” or “upper tier” which is dependent on the type and quantity of dangerous substances kept at the establishment and attract different duties. Upper tier establishments attract more stringent duties. The Regulations do not apply in certain specified circumstances. The general duty of the Regulations requires the operator of an establishment to take all measures necessary to prevent major accidents and to limit their consequences for human health and the environment.

- Consolidation

7.4 This instrument implements a European Directive and revokes the previous regulations, therefore no consolidation is required.

## **8. Consultation outcome**

8.1 HSE carried out a public consultation exercise on the proposed COMAH Regulations 2015 from 2 May to 27 June 2014. The consultation document ([CD266](#)) and response form were available on the HSE website as an electronic form or download. Responses were accepted for a ninth week until 4 July 2014. This consultation document built on extensive informal consultation carried out since the Directive came into force in 2012. During informal consultation HSE estimate its staff spoke to over 3500 people at 45 events, involving all the main trade associations and industry forums.

8.2 A total of 145 responses were received from industry, trade associations, local government and the emergency services. The responses were positive, and both industry and local authority stakeholders were supportive of the proposals made in the consultation document to retain and build upon the existing world class regulatory regime. From the responses it was clear that many industry responders had read the consultation package, and draft Regulations in detail. This provided specific comments in support of the ‘gold plating’ and gave confidence overall in the proposals.

8.3 All the issues raised in the consultation responses have either been addressed through minor amendments or clarifications to the Regulations or will be addressed by providing guidance. The main issue raised concerned the new requirement to release information to the public; this reflects the significant culture change that the Directive intends. Throughout the transposition process HSE has worked closely with the Home Office to ensure that national security issues and chemical substances of specific concern to the security services are dealt with appropriately.

8.4 An analysis of the responses and a formal response can be found on HSE’s [website](#).

## **9. Guidance**

9.1 New legal guidance will give advice on how to comply with the Regulations. This guidance will replace the existing legal guidance to the COMAH Regulations 1999. It has been developed in conjunction with stakeholders and will be available on HSE’s website at the time the Regulations are laid before Parliament, i.e. about twelve weeks before the Regulations come into force on 1 June 2015. The need for further subject specific guidance will be considered after the Regulations have come into force.

## **10. Impact**

- 10.1 HSE carried out a final stage impact assessment which was cleared by the Regulatory Policy Committee on 2<sup>nd</sup> December 2014. It gives a total best estimate net cost to society of approximately £40.23m in present values over ten years. The best estimate net cost to business is around £39.30m in present values over ten years. This gives a best estimate equivalent annual net cost to business of around £3.69m, of this, around £0.1m constitutes an 'IN'.
- 10.2 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

- 11.1 The legislation applies to small businesses. There is no scope in the Directive to exclude small businesses, and the hazards covered by these Regulations exist regardless of the size of the business. The final stage Impact Assessment estimated that approximately 13% of establishments covered by the COMAH Regulations 1999 can be classed as small.
- 11.2 Responses to the consultation were received from a cross section of industry and trade associations, including the Chemical Industries Association (CIA) and the Chemical Business Association (CBA) who represent a significant number of small and medium sized companies. These Regulations apply in a proportionate manner based on the hazard profile of a site.
- 11.3 As these Regulations are an EU derived measure it was not necessary to complete a separate SaMBA (Small and Micro Business Assessment) within the Impact Assessment.

## **12. Monitoring & review**

- 12.1 The Regulations will be reviewed in line with Government policy, that is by the fifth anniversary of the Regulations. The first report of this review will be published before 1 June 2020. This report will have regard to how the Directive is implemented in other EU Member States.

## **13. Contact**

- 13.1 Sandra Ashcroft at the Health and Safety Executive (Tel: 0151 951 3531 or email: [sandra.ashcroft@hse.gsi.gov.uk](mailto:sandra.ashcroft@hse.gsi.gov.uk)) can answer any queries regarding the instrument.