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HEALTH AND SAFETY COMMISSION

Implementation of Directive 2003/105/EC amending Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances

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Issue

1. Proposed strategy for implementing Directive 2003/105/EC that amends Council Directive 96/82/EC (the Seveso II Directive).

Timing

2. Routine.

Recommendation

3. That the Commission:
- i) endorses the implementation proposals below; and
 - ii) agrees that the opportunity should be taken to make a small number of minor changes to the Control of Major Accident Hazards Regulations (COMAH), through which the Seveso II Directive was implemented in 1999.

Background

(a) The Directives

4. Seveso II aims to prevent major accidents and limit their consequences to human health and the environment. Most provisions were implemented through COMAH which are enforced by a competent authority (HSE and the Environment Agency in England and Wales, and HSE and the Scottish Environment Protection Agency in Scotland). Land-use planning aspects were implemented through separate legislation¹, and Northern Ireland implemented all aspects of the Directive through its own legislation.

5. Seveso II (and COMAH) applies where the presence of dangerous substances at establishments exceeds set qualifying quantities. There are two levels of regulatory control: the lower level requires notification, a major accident prevention policy, land-use planning and inspection; the upper level, in addition, requires a safety report, emergency plans and provision of information to the public.

¹ Legislation on land-use planning and hazardous substances consents is the responsibility of the Office of the Deputy Prime Minister (ODPM) and the Scottish Executive (SE)

(b) Changes introduced by the amending Directive

6. Directive 2003/105/EC, attached at Annex A, is a broadening of Seveso II rather than a major revision. It takes account of recent major accidents and the results of studies on carcinogens and substances dangerous for the environment carried out by the European Commission. The key features are:

- a broadening of scope in respect of mining/quarrying;
- on ammonium nitrate, a redefinition to cover lower percentage composition, and new classes covering self-sustaining decomposition and reject material;
- new thresholds for potassium nitrate fertilisers;
- seven new carcinogens and raised threshold limits for all carcinogens;
- a new definition of automotive petrol to include diesel and kerosene, with thresholds that have been halved;
- the redefinition of classes for explosives;
- lower thresholds for substances dangerous for the environment;
- a change to the aggregation rule to be applied to all substances classified as toxic, dangerous for the environment, flammable and oxidising; and
- administrative provisions for establishments newly covered by the Directive to have a period of time to comply. Although not explicitly provided for in the Directive, but in accordance with it, we propose that the implementing regulations should specify a time for completion of safety reports.

(c) Timescale

7. The Directive must be implemented by 1 July 2005.

(d) Other proposed changes to COMAH

8. The competent authority has identified a small number of changes that need to be made to COMAH to clarify or make explicit certain requirements. These are minor, and do not impinge on implementation of either Directive. They concern clarification of the method of notification, and disclosure/freedom of information issues in connection with the provision of information by the competent authority.

9. A further change proposed would place a requirement on the COMAH operator to provide, in cases approved by the competent authority or Secretary of State, a copy of the safety report that excludes matters of e.g. commercial, or national security, and is suitable to be made available to the public. This was provided for in Seveso II but was not implemented in 1999.

10. Also, the competent authority's policy regarding the review and revision of safety reports is currently under development. This may require further minor revisions which can be incorporated later in the implementation programme.

Argument

11. The Government's policy for the transposition of EC measures into law is:

- transposing so as to achieve the objectives of the EC measure;

- transposing on time;
- implementing Government policy goals, and minimising burdens on business;
- inviting Ministers to articulate clear policy goals for the transposition; and
- options for transposition to be described to Ministers with an assessment of the risks to the achievement of the objectives, including legal risks.

12. The amendment provisions are such as to require implementation through legislation; implementation through an Approved Code of Practice or guidance would be insufficient and could lead to infraction proceedings. There are no provisions that we wish to either over or under-implement for domestic reasons.

13. There are two ways to introduce the legislative changes:

- a set of regulations that would amend and sit alongside COMAH; or
- a new set of consolidated COMAH regulations.

14. Option (i) is preferred. This is the first time that COMAH has been amended and, given the straightforward nature of the Directive and the small number of other changes proposed, there are no special considerations that mitigate in favour of consolidating COMAH at this time (as a general rule, consolidating regulations are usually produced when a set of regulations has already been amended three times). Annex B summarises the timetable and key milestones.

Guidance

15. We will consider the possibility of publishing a revised version of 'A guide to the Control of Major Accident Hazards Regulations' (L111). This would clarify existing guidance to reflect experience of the operation of COMAH and include revised guidance on, in particular, the review and revision of safety reports.

Evaluation

16. HSE is currently reviewing the assumptions made in the Regulatory Impact Assessment (RIA) for the 1999 COMAH regulations. We will discuss the evaluation of the amendment regulations with HSE economists and prepare an evaluation plan.

Consultation

17. The EA and SEPA suggested that consolidating regulations could provide greater clarity but both support the proposed approach. Extensive internal and external consultation with other interested parties² indicated support for a set of amendment regulations. The implementation project will involve a high degree of inter-HSE and Government working that will benefit from the HSE values such as cooperation, coordination and open communication. HSC will be asked to agree the publication of a consultation document later in the year.

Presentation issues

18. None has been identified at this stage.

² Internally, HSE solicitors, economists, Policy Group, PEFD, HID, FOD, and DIAS. Externally, the Advisory Committee on Dangerous Substances and its Major Hazards Subcommittee, ODPM, SE, National Assembly for Wales, DEFRA, DTI, Cabinet Office, and relevant N. Ireland Departments.

Costs and benefits

19. A partial RIA is attached at Annex C. This is still being developed to fully reflect the adopted text and the estimated costs and benefits may need to be amended. The current draft points out significant uncertainties in the estimates but overall concludes that the benefits of risk control would be of approximately the same order as the implementation costs. A partial RIA will be included in the CD.

Financial/resource implications for the Competent Authority/HSE

20. Implementation costs to the competent authority are estimated at around £81,000. Training and familiarisation costs have not yet been estimated but are likely to be low in view of the straight forward nature of the regulatory changes. HSE costs for additional COMAH activities (which are the subject of charges to industry) are estimated at £984,000 - £1.3m per year (based on current HSE rates).

Environmental implications

21. The environmental implications of the Directive are expected to be positive.

Other implications

22. Consequential changes to land-use planning legislation in England and Wales and Scotland (see paragraph 4) will be required. HSE has already contacted ODPM and the Scottish Executive. Northern Ireland will need to amend their respective legislation.

Action

23. The Commission is asked to agree the proposals above.