

Health and Safety Executive Board		Paper No: HSE/09/03	
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Trim reference:			
<b>Strategy for negotiating changes to the Seveso II Directive</b>			

## Purpose of the paper

1. Work underway at European Commission (EC) level is expected to lead to a proposal in 2010 to amend EC Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (the Seveso II Directive). The Directive is implemented in Great Britain through the Control of Major Accident Hazards Regulations 1999 and planning legislation. This paper updates the Board and seeks a steer on a UK negotiating strategy.

## Background

2. Seveso applies at sites where dangerous substances (including preparations) are present, or may be generated, at or above specified qualifying quantities. For a substance to be dangerous under Seveso it must either:

- fall into one or more of 10 specified categories of danger when classified under EC Directives on the classification and labelling of dangerous substances and preparations (DSD/DPD<sup>1</sup>), regardless of whether or not the substance is required to be classified under those Directives, or
- be included in a list of 'named' substances that have higher or lower qualifying quantities than would otherwise apply.

Further background to Seveso and UK implementation arrangements is in [Annex 1](#).

3. A new EU Regulation on the classification, labelling and packaging of substances and mixtures (CLP), through which the EU will adopt the UN Globally Harmonised System of Classification and Labelling (GHS), is expected to enter into force in late January 2009.

4. CLP will introduce new requirements for classification that will differ slightly from those in DSD/DPD. It will be phased in over a transitional period: substances must be classified under CLP from 1 December 2010 (and classified under DSD/DPD as well between this date and 1 June 2015 i.e. dual classification), and from 1 June 2015 CLP must be used to classify mixtures (currently called preparations)<sup>2</sup>. CLP will replace DSD/DPD in 2015 and break the legislative link between Seveso and DSD/DPD. A new method of determining the scope of Seveso will need to be found which will necessitate an amendment to the Directive. This work must be concluded and transposed into national legislation by 1 June 2015.

5. The EC has set up a Technical Working Group (TWG) to collect information and advise on the impact of CLP on Seveso with a view to maintaining, as far as

<sup>1</sup> DSD – Council Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances. DPD – Council Directive 1999/45/EC on the classification, packaging and labelling of dangerous preparations.

<sup>2</sup> Suppliers may, however, choose to classify according to CLP before the mandatory deadlines apply

possible, the scope of the Directive. The UK is taking an active role. The EC is expected to publish a proposal to amend the Seveso II Directive during 2010.

6. Two reviews being carried out by the EC on the effectiveness of the Seveso Directive and administrative costs on businesses may also influence the proposal. Additionally, Member States may take the opportunity to seek changes to Seveso.

## **Argument**

### ***Seveso and the CLP Regulation***

7. The aim of the EC has not been clearly set out but appears to be (i) not to extend the current scope of Seveso and (ii) ensure the same level of protection for man and the environment. Formal negotiations will start when the EC publishes its proposal but the UK needs to develop a strategy that will inform our contribution to the TWG and be further developed at the proposal stage. The TWG has considered two approaches.

#### *Approach 1 – Do nothing*

8. The EC would retain the classification system in DSD/DPD beyond 2015 as stand-alone legislation or integrate it into Seveso. Existing site operators are familiar with the current classifications, and the scope of Seveso would be unchanged. However, the EC would have to retain the current criteria solely for Seveso purposes, and potentially manage two classification systems. Seveso operators would continue to use DSD/DPD to determine the scope of Seveso but would use CLP for chemical marketing and supply purposes. Such 'dual classification' could cause confusion for industry and regulators and may lead to increased costs. The EC is no longer actively considering this approach.

#### *Approach 2 – Align Seveso with CLP*

9. This would link Seveso with CLP across all relevant hazard categories. Although CLP classification is broadly similar to the existing system, a straight forward substitution of the most hazardous classes of DSD/DPD with those in CLP would mean that some substances may be classified more or less severely creating potential for changes to:

- the scope of the Directive i.e. where sites move into or out of Seveso, and
- the regulatory attention sites receive i.e. movement of sites between the lower and top tier requirements.

10. Much of the TWG work so far has focused on the classification criteria for acute toxicity, which has the greatest lack of alignment between DSD/DPD and CLP. Options are being developed (including one by the UK) and these are now converging.

11. A feature common to each option is that not all substances currently classified as 'very toxic' would equate to the most severe category under CLP. This brings a concern that there may be a reduction in the scope/regulatory effect of Seveso, and the EC has asked Member States to identify the impact of this potential shift. From work done so far we are not aware of any UK sites where there would be a change of status. This is because those concerned would still be within scope either because they have properties that are relevant to more than one category of dangerous substance, or because of the way quantities of substances are 'aggregated' to determine application.

12. The EC appears to be taking a precautionary approach in the TWG and has asked Member States to identify other possible options. They have identified a consultant who will undertake an impact assessment study into the options in 2009.

### **EC Reviews**

13. Separately, the EC is reviewing the effectiveness of Seveso to identify possible improvements. A first study sought information from competent authorities (CA)<sup>3</sup>, industry and other organisations on the main requirements on operators. Senior CA staff agreed the UK response, which HSE collated on behalf of the UK CA. The findings showed no real need for legislative change, including provisions relating to land-use planning (Article 12), but identified inconsistent implementation. A summary of the overall findings and the UK response are at [Annex 2](#). A second study will look at the effectiveness of requirements on public authorities.

14. Additionally, Seveso is one of over 40 pieces of legislation included in an EC review of administrative costs incurred by businesses in meeting legal obligations to provide information. Existing UK data is being used in a large-scale measurement exercise. The results are expected in early 2009 along with proposals to meet an overall reduction target of 25% by 2012.

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### **Presentation**

16. Linking Seveso with the CLP Regulation is likely to lead to some changes in the scope and/or regulatory effect of Seveso. It is too early to estimate the extent of these but the EC aim is intended to keep them to a minimum. We have developed a plan to engage stakeholders (including industry, trade unions, local authorities, emergency services) and are already working with them to assess the implications of the different approaches. Internally, a group of senior managers is providing advice and a strategic steer. We plan to brief the Minister on this work in March 2009, and will share the submission with the Board.

### **Consultation**

17. The work is being taken forward with our CA partners in collaboration with Northern Ireland and Gibraltar. It has also been presented to HSE's Chemical and Downstream Oil Industries Forum and the Chemical and Pipelines Emergency Planning Liaison Group. A Trade Union representative has indicated preference for a precautionary approach to the Seveso-CLP issue.

### **Resource implications**

18. HSE costs, including HSL costs, are affordable within current budgets for 2008/9 and indicative allocations for 2009/10 (estimates are available from the author on request). Costs for 2010/11 and beyond, together with an impact assessment, will be developed when more is known about the likely content of the EC proposal.

### **Action**

19. The Board is asked to:

- (i) note the implications of the CLP Regulation and options being considered,

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<sup>3</sup> The UK CA comprises: HSE and the Environment Agency in England and Wales; HSE and the Scottish Environment Protection Agency in Scotland; the Department of the Environment Northern Ireland and the Health and Safety Executive Northern Ireland; and Gibraltar. In GB, HSE leads on occupational health and safety issues and the EA and SEPA lead on environmental aspects.

- (ii) note that outcomes from EC reviews may influence the EC proposal to amend Seveso, and
- (iii) advise on whether the strategy proposed in paragraphs 15-16 is appropriate.

**Paper clearance**

20. This paper was produced by Elizabeth Schofield and Sandra Ashcroft and cleared by the SMT.

**Contact**

Sandra Ashcroft  
Major Hazards Policy  
Tel: 0151 951 3531 (VPN 523)  
E-mail: [sandra.ashcroft@hse.gsi.gov.uk](mailto:sandra.ashcroft@hse.gsi.gov.uk)

## Seveso II and UK arrangements for implementation and enforcement

### The Seveso Directive

1. EC Directive 92/82/EC<sup>4</sup>, commonly known as the 'Seveso' Directive (following a dioxin disaster in Italy in 1976), aims to prevent major accidents involving dangerous substances and limit the consequences to people and the environment of any that do occur. It was amended in 2003 to reflect lessons learned from more recent accidents, notably a cyanide spill that polluted the Danube in Baia Mare, Romania, a fireworks accident in Enschede, Netherlands that killed 22 people and an explosion at a fertiliser plant in Toulouse, France in which 30 people died, and also to reflect EC studies on carcinogens and substances dangerous for the environment.

### Application through the classification system

2. Seveso applies where dangerous substances, including dangerous preparations, are present at or above specified quantities or may be generated during loss of control of an industrial chemical process.

3. For a substance to be 'dangerous' it must:

- fall into one or more of ten specified categories of danger when classified under EC Directives on the classification, packaging and labelling of dangerous substances and dangerous preparations (DSD/DPD), regardless of whether or not the substance is required to be classified under those Directives. These categories relate to human toxicity, physico-chemical hazards, and the danger for the environment; or
- be included in a list of 'named' substances that have higher or lower qualifying quantities than would otherwise apply. For example, the toxic substances phosgene, phosphine and arsine all have lower qualifying quantities as named substances because of their potential to cause a major accident. The named list takes precedence over the generic categories.

4. A site with no single substance present at its threshold quantity could still come within scope under a rule which requires smaller quantities of substances with similar hazards to be aggregated. Many UK sites come into scope in this way. Also many sites come into scope because they meet the threshold quantities for more than one dangerous category of substance.

5. The Directive doesn't just apply to chemical companies. With a limited number of exceptions, any site having relevant quantities of dangerous substances is within scope e.g. surface engineers using chromium or brick manufacturers storing LPG.

### Key requirements

6. There are two tiers of regulatory control depending on the quantity of dangerous substances present. The main lower tier duties require:

- site operators to:
  - take all necessary measures to prevent major accidents and limit the consequences for people and the environment of any that do happen
  - notify specified site etc information to the competent authority

<sup>4</sup> Directive 96/82/EC <http://mahbsrv.jrc.it/downloads-pdf/Seveso2-LEG-EN.pdf> amended by Directive 2003/105/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:345:0097:0105:EN:PDF>

- prepare and implement a major accident prevention policy
  - plan for emergencies
  - notify major accidents to the competent authority,
  - the operation of a land-use planning policy, and
  - a programme of inspection by the competent authority.
7. In addition, under the top tier controls:
- site operators must:
    - produce a safety report and review it to reflect changes that could have repercussions for major accident safety, or at least every five years
    - provide information to people liable to be affected by a major accident, and review it at least every three years
  - local authorities must prepare off-site emergency plans and review, test and where necessary revise them at least every three years
  - the competent authority must:
    - examine the safety report and communicate conclusions to the operator, and
    - designate 'domino groups' i.e. groups of sites within sufficiently close proximity such that an incident at one may trigger an event at another.

### **UK implementation and enforcement arrangements**

8. In Great Britain, most provisions have been implemented through the Control of Major Accident Hazards Regulations 1999 (COMAH)<sup>5</sup>. COMAH is enforced by a competent authority comprising the HSE and the Environment Agency in England and Wales, and HSE and the Scottish Environment Protection Agency in Scotland (with the Agencies leading on environmental aspects of the legislation). Information recently supplied to the EC showed there are 1147 COMAH sites in Great Britain – 736 lower tier and 411 top tier.

9. Seveso also contains land-use planning controls. These are implemented through separate legislation which is the responsibility of Communities and Local Government and the devolved administrations.

10. N. Ireland and Gibraltar have corresponding legislation.

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<sup>5</sup> SI 1999/743 amended by SI 2005/1088

### EC review of the effectiveness of Seveso

1. The EC is carrying out a review of Seveso to assess its effectiveness and identify possible improvements. The outcome will complement information provided by Member States in their triennial reports on implementation. The first study, carried out by consultants during 2008, focussed on:

- the adequacy of the requirements imposed on operators of Seveso sites and the objectives to prevent major accidents and mitigate their consequences
- the real impact of the requirements and the most effective way to measure it, and
- the effectiveness of implementation, in terms of compliance in the various Member States and industrial sectors, and the assessment of possible market distortions.

2. A second study will look at the effectiveness of requirements on public authorities. The EC will consider the findings and include any proposals for change in the 2010 proposal to amend Seveso.

#### Summary of EC findings

3. The [report](#)<sup>6</sup> on the first study was published in September 2008. It reflected views expressed in 155 completed questionnaires (102 industry, 33 Competent Authorities, 20 other organisations) and 23 interviews.

4. The main findings are that Seveso is appropriate and fit for purpose. There is no real need for legislative change but implementation is inconsistent. Responses showed:

- all targeted groups consider that Seveso is appropriate to prevent major accidents and mitigate their consequences and has led to recognisably higher standards of safety in comparison with non-Seveso sites
- the approach complements other directives, but there are areas of overlap
- there are no unnecessary provisions
- the two-tier approach implementing the precautionary principle is appropriate, but a very small number suggest some provisions could be extended to the lower tier
- implementation is inconsistent within the EU and even within a given country, and the different authorities within some Member States should be better coordinated
- the scope should be extended to include the transport of dangerous substances and pipelines
- there should be greater consistency with IPPC (Integrated Pollution Prevention and Control), and
- a need for new guidance and a review of existing guidance.

#### UK response

5. The UK Competent Authority responded to the study and a number of our comments are evident in the report. Our main recommendations, agreed with senior CA managers, were for:

- (i) an improved method of defining the application of Seveso to avoid substances and preparations (mixtures) with no major hazard potential coming into scope as a result of CLP

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<sup>6</sup> [Annex 1A](#) and [Annex 1B](#) are published separately.

- (ii) clarification and removal of overlaps with other legislation, such as IPPC
- (iii) removing anomalies for preparations. Illustratively, as a result of changes to 2nd ATP (Adaptation to Technical Progress) of the Dangerous Preparations Directive, 99 tonnes of biocide would not attract Seveso, but 100 tonnes of the same product diluted with only ½ tonne (if present at 0.5%) of biocide would
- (iv) proportionality in respect of work needed for a dispensation (derogation) to limit the information in a safety report. The process is burdensome (for industry and regulators) and would benefit from a simplified approach or clarification on what is considered an adequate application
- (v) also on the dispensation rule, consideration of an extension to include other areas of the Directive in cases where the substances present are incapable of creating a major-accident hazard
- (vi) clarification on the uncertainty over application to gas storage in depleted oilfields
- (vii) consideration of the need to extend Seveso to include CO<sub>2</sub> sequestration and storage activities
- (viii) consideration of whether Seveso might move towards a more hazard/risk-based approach in future with less reliance on threshold quantities, and
- (ix) additional guidance covering:
  - terminology of the Directive
  - emergency planning
  - information on safety measures
  - basic investigation techniques i.e. how to approach inspection (this, in particular, may help new Member States)
  - scope and application
  - dispensation rule (derogations), and
  - possible use of benchmarks to help determine the 'all measures necessary' that could be applied across sites/industries operating similar procedures.