

Background to the proposals

Directive 96/82/EC – the Seveso II Directive

1. Seveso II aims to prevent major accidents and limit their consequences to human health and the environment. It 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.

2. In Great Britain the health, safety and environment aspects of the Directive were implemented through the Control of Major Accident Hazards Regulations 1999 (COMAH) which are enforced by a competent authority (CA - HSE and the Environment Agency in England and Wales, and HSE and the Scottish Environment Protection Agency in Scotland). Land-use planning provisions were implemented through separate legislation¹, and Northern Ireland implemented all aspects through its own legislation.

Directive 2003/105/EC – the Amendment Directive

3. The new Directive, 2003/105/EC ([Appendix 1](#)), 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 named and raised threshold limits for all carcinogens;
- a new category for petroleum spirits to include diesel and kerosene, with thresholds that are half of those for the current automotive petrol category;
- 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.

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

5. The regulatory impact assessment estimates that up to 158 sites will be brought into the scope of COMAH by proposed changes to the categorisation or threshold limits of certain dangerous substances (up to 140 at the lower tier and 18 at top tier), increasing the number of sites subject to the Regulations by around 14%.

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)

Additionally, between 83 and 91 lower tier sites will move to the top tier. Further information about the sites likely to be affected is given in paragraphs 25-31 of the regulatory impact assessment (Annex F).

Other proposed changes to COMAH

6. The CA 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, disclosure of information in connection with the provision of information by the CA, and reflect work done by the CA on the review and revision of safety reports.

7. A further change proposed would place a requirement on the COMAH operator to provide, in cases approved by the CA 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.

Previous HSC involvement

8. HSC agreed in February 2004 that the health, safety and environment aspects of the new Directive should be implemented through amendments to the COMAH Regulations and that the changes requested by the CA should be incorporated (HSC/04/26).

9. HSC considered implementation proposals on 8 June 2004 and agreed to the publication of a consultation document (HSC/04/46).

Guide to COMAH

10. The guide to COMAH (L111) is also being updated. It was not ready in time to be included in the CD but was placed on the HSE website for consultation between 6 December 2004 and 18 February 2005. Based on information related to the sale of the original guide it is intended to publish approximately 6000 copies. (The guidance will be published as early as possible, but cannot be finalised until the final text of the Amendment Regulations is confirmed.)