

| Health and Safety Executive Board | | HSE/13/97 | |
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Update on the transposition of the Seveso III Directive

Purpose of the paper

1. To update the Board on the progress made to date in transposing the Seveso III Directive into domestic legislation, to outline the emerging issues and the timetable for the remaining transposition work.

Background and timetable

2. The Seveso III Directive (2012/18/EU) was published in the Official Journal of the European Union on 24 July 2012. Member States must implement the Directive by 31 May 2015 with the exception of Article 30 (concerning Heavy Fuel Oil) which must be implemented by 15 February 2014.
3. The Seveso III Directive aims to prevent onshore major accidents and limit the consequences to people and/or the environment. The majority of the current Seveso II Directive is implemented in Great Britain by the Control of Major Accident Hazards (COMAH) Regulations 1999 made under the Health and Safety at Work etc Act 1974. Land-use planning controls around major hazard sites are implemented through planning legislation in England, Wales and Scotland. COMAH is enforced by HSE and the relevant environment agencies – the Environment Agency, the Scottish Environment Protection Agency (SEPA), and Natural Resources Wales (NRW) - working together as the COMAH Competent Authority.
4. The bulk of the Seveso III Directive will be transposed into regulations which will replace COMAH 1999, and be enforced by the Competent Authority. DCLG, the Scottish Government and the Welsh Government have responsibility to implement the Directive's land use planning controls, which are a devolved matter, within the same timescales.
5. The principal differences between Seveso II/COMAH 1999 and Seveso III are;
 - a. Public Information – Seveso III has been brought in line with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. This is reflected in the public information article of Seveso III which requires information regarding sites and their hazards to be made permanently and electronically available to the public. A discrete project within the programme is working to develop an IT platform to deliver this requirement.
 - b. Scope – Qualifying criteria for the Seveso III Directive are based on the Classification, Labelling and Packaging of Substances and Mixtures (CLP) Regulation rather than the current CHIP system of classification, and there

are some changes which will see a small movement of sites between tiers. Some sites may move out of scope entirely whilst others may become COMAH sites for the first time. There are changes in classification for some substances such as alternative fuels which takes account of advances in technology.

- c. Notifications – Changes in scope are likely to require top-tier COMAH sites to re-notify and review their Safety Reports and Emergency Plans to ensure compliance with new regulations.
 - d. The Heavy Fuel Oil (HFO) amendment in Seveso III was included following the reclassification of HFO into the Dangerous for the Environment category meaning that a site holding just 100 tonnes of HFO would be in scope of COMAH as a lower tier site. The Commission agreed with the UK and a number of other member states that this was disproportionate given the limited major accident hazard potential of the substance, and therefore HFO was moved into the Petroleum Products category of the Directive meaning that a site will require 2,500 tonnes to qualify.
6. The implementation programme team are currently drafting new regulations in conjunction with Treasury Solicitors. The timetable for the remainder of the transposition process is:

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| Now – early 2014 | Informal consultation with industry and stakeholders on regulations to replace COMAH 1999 |
| Sept – Oct 2013 | Formal consultation on Heavy Fuel Oil amendment |
| Oct – Dec 2013 (approx) | Final legal package for Heavy Fuel Oil amendment prepared |
| Early 2014 | Heavy Fuel Oil amendment laid before Parliament and guidance published |
| 15 February 2014 | Heavy Fuel Oil amendment comes into force |
| March 2014 (approx) | Formal consultation on COMAH 1999 replacement published |
| Summer 2014 | Consultation response COMAH 1999 replacement published |
| Summer 2014 – early 2015 | Final draft of new regulations produced based on consultation response and final legal package prepared |
| Early 2015 | Regulations to replace COMAH 1999 laid before Parliament |
| March 2015 (approx) | Guidance for regulators and operators on new regulations published |
| 31 May 2015 | Deadline for transposition of Seveso III |
| 1 June 2015 | New COMAH Regulations and Land Use Planning regulation changes come into force in GB |

7. The transposition work to date is on course, with the exception of the HFO amendment as described in paragraph 10, however the timescales remain challenging with the amount of work required.
8. A Programme Board has been set up to oversee the implementation of the Seveso III Directive and chaired by Gordon MacDonald. As well as Competent Authority, the Board includes representatives from the Home Office, DCLG, DEFRA, the Scottish and Welsh governments and industry. The implementation programme team has produced a detailed plan outlining the tasks required which will allow the Board to ensure that appropriate resources are in place for delivery

at the necessary times. This will be particularly critical towards the end of the transposition process when resources to update and produce guidance and deliver training will be required.

Points to note and key risks

9. The government's policy on implementing European Directives is that 'copy out' is the preferred approach. This is the starting point for the work of comparison between the Directive and the current COMAH 1999 Regulations that will be required in order to draft new regulations. Agreeing an approach that fulfils both the government's and the Directive's requirements as well as providing a regulatory system that maintains effective and appropriate safety standards will be the key measure of success for the transposition work.
10. The programme team is working closely with the BRE Focus on Enforcement Chemicals (COMAH) Review implementation team to seek overall to minimise unnecessary or additional change for industry given the timetables for the implementation of the Review's recommendations and Seveso III will run closely together. A position paper was delivered to the COMAH Strategic Forum on 20 August outlining the main points of change between the current COMAH regime and the new Directive, and both groups are seeking to ensure that changes and improvements to the regime are coordinated and do not present duplication or unnecessary burdens for business.
11. Transitional arrangements for a number of the Seveso III provisions are being considered by the programme team and will be included as part of the formal consultation. Stakeholders are being invited, via a dedicated inbox on the Seveso III webpage, to register their interest in participating in pre-consultation activities which may include contacting selected groups to seek opinions on a particular issue via short questionnaires. These questions are also being asked in the informal consultation that is currently being carried out via industry and stakeholder events hosted by bodies such as the Tank Storage Association, IChemE and Humber Chemical Focus allowing the team to develop the approach to transposition of particular points in response to emerging issues.
12. Any key concerns will be included in our formal consultation package, planned for March 2014, where all interested parties including industry and sector groups, trade unions and local authorities will be invited to give their views and opinions. The team is also providing regular updates to interested parties by way of our Seveso III e-bulletin service which as of 5 August has over 14,500 subscribers from a wide variety of interest groups.
13. The RPC took longer than anticipated to provide an answer to HSE's proposal for the transposition of Article 30 (Heavy Fuel Oil) meaning the start of the consultation period was delayed until the beginning of September. There is now a possibility that the timescales for implementation may be missed by several weeks, though it is not anticipated that this will pose any significant problems with the European Commission.
14. Engagement is ongoing with the Home Office and security services to consider the implications of the enhanced public information requirements that have been incorporated into the Directive and to make decisions about what information could fall under the 'national security' exemptions in the Aarhus Convention. The

Home Office will also be involved in the development of the IT system for providing public information. The change in requirements is a key feature of the informal consultation work ongoing to ensure that duty-holders are aware of the changes as early as possible and have the opportunity to give their views and input.

Devolved Administrations

15. SEPA and NRW are involved in the transposition process and representatives from both bodies have been invited to act as part of the programme team.
16. A meeting was held with the Scottish Government in May with a further event with Scottish industry planned for November. A meeting with the Welsh Government has been arranged for early October and it is hoped that a similar event involving Wales-based industry can be arranged before the publication of the formal Consultation Document.
17. The programme team holds regular calls with HSENI and the Government of Gibraltar, who are responsible for their own transposition, with guidance and input from the programme team in HSE as required.

Action

18. To note the implementation team's planned approach for the transposition of Seveso III into domestic legislation.
19. To note that the Impact Assessment and Draft Consultation Document will be submitted to the Board in January 2014 with the consultation period planned for March – May 2014.

Paper clearance

20. This paper has been cleared for submission to the HSE Board by the Senior Management Team on 2 October 2013.