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TO:

All Staff in SPD D2

All Staff in CI 1, 2, 3,4 ; SI2 and 3; CI5 (Band 1-4 For Information)

## **LAND USE PLANNING - CALL-IN POLICY AND PROCEDURE WHEN A PLANNING AUTHORITY IS MINDED TO GO AGAINST HSE ADVICE ON LUP AND CONSENT CONSULTATIONS**

### **PURPOSE**

This SPC sets out HSE's policy for dealing with potential call-in cases when Planning Authorities (PAs) have indicated that they are minded to go against the advice given by HSE when we have been consulted on planning and consent applications. It introduces a modified procedure that integrates with the PADHI process (Planning Advice for Developments at Hazardous Installations). It allows Land Division staff to make an initial assessment and response in many cases.

### **BACKGROUND**

1. PAs and Hazardous Substances Authorities (HSAs) consult HSE for advice on the risks associated with proposals for development near to major hazard sites and pipelines and also on applications for consent for new major hazard sites. PAs may be minded to grant planning permission for a development against HSE's advice. In most cases HSE will not pursue the matter further as long as we are satisfied that the PA understands the reasons for our advice. The issues related to call-in for England, Wales and Scotland are set out in the following planning circulars- DETR Circular 4/2000 Annex A, National Assembly for Wales Circular 20/01 Annex A and Scottish Office Environment Department Circular 5/93 Annex B. Note that the Scottish policies on call-in, and consequent procedures, differ from those in England and Wales.
2. HSE can request that the case be "called in" for a decision by the relevant Secretary of State in England and Wales. Call-in should be an exceptional course of action for the following reasons:

- a. It is the PA's responsibility taking account of all the circumstances to make planning decisions. HSE should not be seen as usurping those powers;
- b. The ODPM/Scottish Executive/Welsh Assembly policy is not to interfere with the jurisdiction of PAs unless absolutely necessary;
- c. Call-in action is very expensive and resource intensive for HSE. Therefore HSE will only consider recommending call-in action in exceptional cases where there is serious concern about development proceeding or where important policy issues are at stake. This course of action will only be taken with the agreement of the HSE Board.

### **RELEVANT FACTORS IN DECIDING WHETHER TO CALL-IN**

- 3. The following factors are relevant in deciding whether a case where an HSA/PA is minded to grant an application against HSE's advice is an exceptional case:
  - a. Any significant residential development or development for vulnerable populations in the inner zone (this is the determining test for hazard based assessments).
  - b. The risk of death exceeds the Tolerability of Risk (TOR) tolerability limit for a member of the public.
  - c. There are substantial numbers of people exposed to the risk. The Methodology and Standards Development Unit (MSDU) of HSE has developed a method of assessing the degree of societal risk associated with a proposed development, the Scaled Risk Integral (SRI). In appropriate cases MSDU will apply SRI. Where the SRI is between 500,000 and 750,000, HID will consider recommending call-in. If the SRI exceeds 750,000 HID will recommend call in.
  - d. The endangered population is particularly sensitive, e.g. the development is a hospital, school or old people's home. .
  - e. Have there been previous call-ins in similar circumstances.
  - f. There are issues of national concern as opposed to merely of local importance.
  - g. Clear evidence that the case concerned is being used to challenge HSE's risk criteria for land-use planning and failure to meet that challenge would damage HSE's credibility. Or where a decision against HSE's advice could, by precedent, set aside parts of the legislation.

This procedure sets out how these factors can be taken into account. In practice, call-in action initiated by HSE is likely to be very rare.

## **PROCEDURE FOR ENGLAND AND WALES**

4. Under the Planning (Hazardous Substances) Act 1990 s.20 and Town and Country Planning legislation, the Secretary of State for the Environment in England and the First Secretary in Wales can require that an application for consent/planning permission be referred to him for his own determination
5. Under the Town and Country Planning (General Development Procedure) Order 1995 Article 14, the SoS can direct a PA not to grant planning permission without specific authorisation (a Stop notice). This 'stop' buys time for all parties but does not obviate the need for efficiency and speed in determining HSE's position. Everyone dealing with a possible call-in case must act promptly to ensure that a 'stop' can be applied for within the time limit and that cases are not unduly delayed thereafter.
6. Where an HSA/PA is minded to grant an application for consent or planning permission against HSE's advice they are required to give HSE 21 days notice so that HSE has time to consider whether to recommend that the SoS call in the application.
7. Each case should be considered on its merits and certain preliminary checks need to be carried out before a Stop Notice is applied for. If a PA is minded to go against HSE's advice to turn down a planning application they will normally inform the Land Division office. The LD office will initiate the call-in procedure set out below.

## **CALL-IN PROCEDURE FOR PLANNING APPLICATIONS**

### **PROCEDURE IN LAND DIVISION**

8. An initial screening check will be done in the LD office based on the PADHI assessment of the application. This is intended to screen out those cases that are very unlikely to satisfy sufficient of the criteria to merit further consideration.
  - a. Check the PADHI audit of the case to find out the Sensitivity Level (SL) and Zone that went into the PADHI Advise Against (AA) decision. Ensure that the worst combination of zone and SL is identified. This check is particularly important where there are multiple developments or multiple hazardous installations/pipelines involved in the consultation.
  - b. If the AA decision was based on a combination of SL and Zone that just gives an AA decision i.e. SL2 and IZ, SL3 and MZ or SL4 and OZ (shaded light grey in the decision matrix below) a standard reply should be sent to the LPA using the wording set out in Annex 1 indicating that HSE will not ask for the case to be called in. No further action is required.

- c. For cases where the potential risks to people may be significantly greater i.e. the AA decision for the development involved combinations of SL3 and IZ, or SL4 and MZ or IZ (shaded dark grey in the decision matrix), all the relevant papers and correspondence related to the application and the PADHI assessment should immediately be copied to MSDU with a covering memo.
- d. A record should be kept of all cases where the PA goes against HSE advice so that the follow up action in para 17 can take place.

### **PADHI Decision Matrix**

Level of Sensitivity	Development in Inner Zone	Development in Middle Zone	Development in Outer Zone
1	DAA	DAA	DAA
2	AA	DAA	DAA
3	AA	AA	DAA
4	AA	AA	AA

### **PROCEDURE IN MSDU**

- 9. MSDU will carry out a second screening assessment of the case to determine if it is an exceptional case of serious concern. The nominated MSDU Inspector will calculate an SRI. This should be based on the best information, estimates and judgement from the information on file, forwarded from LD, or otherwise readily available. If necessary, risk levels should be interpolated from the inner and middle zone boundaries. If this scoping calculation gives an SRI less than 100 000 and an individual risk level less than 100cpm risk of death (or 'dangerous dose or worse' if risk of death is not calculated) the MSDU Inspector dealing with the case may send a standard letter as set out in Annex 1 indicating that HSE will not ask for the case to be called in. For hazard based assessments the test will be if there is any significant residential development or development for vulnerable populations in the inner zone. The reply should go via the LD office.

### **CASES NOT SCREENED OUT IN LD OR MSDU**

- 10. For those cases not screened out the MSDU inspector will complete the form in Annex 2 and forward it immediately to MSDU HoU, OPU HoU and SPD D2. HID and SPD D2 will together determine whether the case is suitable for call-in action. If call-in is proposed, the DG and the Heads of SPD and HID Central Division will be notified and SPD D2 will contact the Government Office for the Regions to seek a Section 14 Stop Notice. This imposes a delay on the planning process and gives HSE more time to prepare the necessary papers. SPD D2 with HID assistance will draft a paper setting out the issues for a decision by the HSE Board. If the HSE Board agrees that a

recommendation should be made to the SoS to call in the development, the project to prepare the HSE case for the call-in hearing will be led by SPD D2.

## **CALL-IN PROCEDURE FOR CONSENT CASES**

11. If a Hazardous Substances Authority advises LD that it is minded to go against HSE advice to not grant consent or to impose conditions on a consent, then MSDU should immediately be informed.

## **PROCEDURE FOR SCOTLAND**

### **CALL-IN PROCEDURE FOR PLANNING APPLICATIONS**

12. The planning process for call-in in Scotland differs from England and Wales, although call-in is still exceptional. When a PA wishes to grant planning permission against HSE advice, the application is automatically referred to the First Minister for Scotland. The Town and Country Planning (Notification of Applications) (Scotland) Direction 1998 Annex D of SDD Circular 29/1998 requires PAs to notify the Secretary of State and allow 28 days from that notice for him to decide whether to call in the application for his own determination. The First Minister has 28 days to decide whether to call in the application. (SOEnD Circular 5/93 Planning Controls for Hazardous Substances para B15 and the Town and Country Planning (Notification of Application) (Scotland) Direction 1997). The Scottish Executive then inform HSE of the PA's view and asks for a reaffirmation of HSE's position.
13. LD and MSDU will follow the procedure as for England and Wales. For those cases that are screened out the standard reply will be sent to the Scottish Executive and will normally be in the terms set out in the standard letter at Annex 1.
14. If on receipt of HSE's reaffirmation and other relevant information, SOEnD do not recommend that the application be called in, it is referred back to the PA for decision. If however SOEnD decide to recommend that the First Minister call in the application, HSE may be asked to produce a more detailed submission to be considered by him if necessary. LD will forward all the papers to MSDU who will prepare the HSE submission in consultation with SPD D2, OPU and the relevant HID FMU and will supply it to SOEnD to incorporate into their submission to the First Minister.

### **CALL-IN PROCEDURE FOR CONSENT CASES**

15. In Scotland SOEnD circular 5/93 paras A31-34 and the Planning (Hazardous Substances) (Scotland) Act 1997 s.18 apply. The decision to go against HSE advice is not automatically referred to the First Minister for Scotland. HSE would have to initiate the call-in process by

contacting SODD. Therefore in these cases the procedure for England and Wales should be followed (see para 11).

## **PREVIOUS ADVICE NOT WITHDRAWN**

16. It should be emphasised that an HSE decision not to recommend call-in action, should not be construed as withdrawing earlier advice. Once HSE is satisfied that the relevant parties understand HSE's position, unless the factors outlined in para 3 apply, HSE will not recommend call-in. HSE accepts that its role is advisory and that other issues may influence a PA/HSA to grant permission/consent against HSE's advice.

## **LPAS THAT REPEATEDLY IGNORE HSE ADVICE**

17. There are a number of PAs who frequently ignore HSE advice. Even though HSE will rarely recommend call-in, we should take steps to ensure the PA is aware of the implications of their action. If there are repeated examples e.g. more than 3, where the PA grants planning permission against our advice the relevant HID LD FMU should discuss the situation with the MSDU Inspector and make arrangements to meet with or otherwise contact the PA to explain HSE's position and to establish reasons for the PA's stance.

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## **ANNEX 1**

### **STANDARD REPLY FOR SCREENED OUT POTENTIAL CALL-IN CASES IN ENGLAND AND WALES**

1. HSE is a statutory consultee for developments in the vicinity of major hazard sites by virtue of Article 10 of the Town and Country Planning (General Development Procedure) Order 1995. We consider our statutory role to be discharged when we are satisfied that the Planning Authority is acting in full understanding of the advice received and the consequences that could follow.
2. The resolution of the Planning Committee to approve the application, and the offered opportunity to have the application called in, has been considered by HSE. HSE would not wish to pursue the matter further.
3. In coming to this conclusion HSE was mindful, among other factors, of the views expressed in Chapter 5 of the First Report of the Advisory Committee on Major Hazards (ACMH) and Chapter 4 of the Second Report of ACMH. In these reports it was stated that:
4. "..... the siting of developments should remain a matter for planning authorities to determine, since the safety implications, however important, could not be divorced from other planning considerations."

5. "..... local authorities are well placed to take proper account of the full range of local factors, including safety issues, which are relevant to a planning decision."

## **STANDARD REPLY FOR SCREENED OUT POTENTIAL CALL-IN CASES IN SCOTLAND**

6. HSE is a statutory consultee for developments in the vicinity of major hazard sites by virtue of Article 15 of the Town and Country Planning (General Development Procedure) (Scotland) Order 1992. We consider our statutory role to be discharged when we are satisfied that the Planning Authority is acting in full understanding of the advice received and the consequences that could follow.
7. As statutory consultees our role in land use planning is an advisory one and our advice should not be taken as a formal objection. Nevertheless we are satisfied that the risks in this case are such that we cannot advise the Planning Authority that there are no grounds for refusing planning permission. If it is highly recommended to the First Minister that he should determine a case himself, we will of course be prepared to explain the nature of our advice in more detail if necessary.

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### **ANNEX 2**

[Click here for a printer friendly version of Annex 2](#)

### **FORM FOR CALL-IN DECISIONS**

1. Date case sent to i. LD ii. MSDU	
2. Name of MSDU Officer	
3. Details of Hazardous Installation	
4. Details of PA/HSA (Name/Address)	
5. Details of Proposed	

Development (Name Address)	
6. PADHI Consultation reference	
7. What is the PADHI development type, sensitivity level and Zone used in the initial consultation?	
8. Details of any residential or vulnerable populations in the inner zone	
9. Is it a sensitive population (e.g., School, hospital, old folk's home) ?	
10. SRI Value of Development	
11. Level of Risk (cpm DD or RoD) or hazard level	
12 Is the risk assessment specific or generic	
13. Is the installation active or not (if known)	
14 Are these	

circumstances similar to previous call-ins?	
15. Is it an exceptional case, i.e. is it more than local concern or does it raise issues of national concern?	
16. Does this case challenge HSE's risk criteria for land-use planning or could it by precedent set aside parts of the legislation?	
17. Date of discussion/decision	
18. Decision to proceed/call-in	
19. Name of HSE officers agreeing decision	

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