

**Annex EF6** of Dr E J Fordham      Interested Party – Unique Reference: 20030698  
EN010106 – Sunnica Energy Farm

Explanatory Memorandum to the Planning (Hazardous Substances) Regulations  
2015 No. 627

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**EXPLANATORY MEMORANDUM TO**  
**THE PLANNING (HAZARDOUS SUBSTANCES) REGULATIONS 2015**  
**2015 No. 627**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations amend planning procedures in relation to sites where hazardous substances are held and land near those sites.
  - 2.2 These amendments are required, in part, to implement land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (referred to as “**Seveso III**”).
  - 2.3 The Regulations also deliver the Government’s Red Tape Challenge<sup>1</sup> commitment to consolidate existing regulations in this area.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 A consenting regime for hazardous substances was introduced by the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992 (S.I. 1992/656) (“**the 1992 Regulations**”).
  - 4.2 European land-use planning requirements relating to hazardous substances were adopted in 1996 under Directive 96/82/EC (known as “**Seveso II**”).
  - 4.3 The land-use planning requirements under Seveso II were transposed by the Planning (Control of Major-Accident Hazards) Regulations 1999 (S.I. 1999/981), which amended the 1992 Regulations and related planning legislation.
  - 4.4 Seveso III, adopted in 2012, will replace Seveso II from 1 June 2015.
  - 4.5 One of the changes to land-use planning requirements brought about by Seveso III relates to controls on heavy fuel oils. That change has already been transposed<sup>2</sup> in accordance with Article 30 of the directive.

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<sup>1</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/planning-administration/>

4.6 These Regulations implement the remainder of the land-use planning requirements under Seveso III. These Regulations also consolidate the regulations in this area.

4.7 A transposition note is attached as Annex 1 to this memorandum. Northern Ireland, Wales and Scotland are transposing separately requirements in Seveso III that relate to devolved land-use planning matters. The non-planning aspects of Seveso III are being transposed through regulations prepared by the Health and Safety Executive.

## **5. Territorial Extent and Application**

This instrument applies to England. It also applies to Wales and Scotland to the extent that it relates to certain planning decisions that are not devolved<sup>3</sup>.

## **6. European Convention on Human Rights**

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 Both Seveso II and Seveso III are aimed at reducing the risks and consequences of major accidents from hazardous substances.

7.2 The need for Seveso III came about primarily as a result of changes in the European chemical classification system<sup>4</sup>. Seveso III therefore includes an updated list of controlled substances based on the new European classification system. Seveso III also changes and supplements existing procedural requirements in relation to planning for sites where hazardous substances are held and land near those sites. Some of those requirements are aimed at bringing procedures into line with the public participation requirements of the Aarhus Convention<sup>5</sup>.

7.3 These Regulations transpose those updates and changes under Seveso III. The policy objective in transposing Seveso III is to meet the directive's

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<sup>2</sup> See the Heavy Fuels (Amendment) Regulations 2014 (SI 2014/162). The heavy-fuels amendments were transposed separately in relation to devolved planning matters.

<sup>3</sup> See Regulation 1 of Planning (Hazardous Substances) Regulations 2015.

<sup>4</sup> On 1 June 2015, the existing hazard-based classification system for chemicals upon which the scope of Seveso II is based will be replaced by new direct-acting European Classification, Labelling and Packaging Regulation (Regulation 1272/2008). This new classification system brings greater alignment with the United Nations international chemicals classification (Globally Harmonised System), and as such is expected to bring trade benefits to industry.

<sup>5</sup> The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. For further information on the Aarhus Convention, please see

<http://ec.europa.eu/environment/aarhus/>

requirements whilst minimising costs to business and administrative burdens on the regulatory bodies responsible for implementing the directive.

7.4 Opportunities have been identified to reduce existing domestic controls where these go beyond the requirements of Seveso III without good reason. In that regard, these Regulations enable minor changes to be made to the types and quantities of substances held where such changes would not result in significant consequences for major accident hazards and would ensure that public safety controls are maintained.

7.5 In certain cases the controls under these Regulations go further than Seveso III. In relation to liquefied petroleum gas, natural gas and hydrogen, existing controls are more stringent than the requirements under Seveso III. Those domestic controls are being maintained to ensure there is not a reduction in public safety.

7.6 These Regulations also revoke, in relation to England, the 1992 Regulations and the various amendments to them. This will result in a single set of consolidated Regulations in relation to England. This delivers a Government Red Tape Challenge commitment to consolidate existing regulations in this area. A table of destinations setting out the differences in the numbering of provisions in the 1992 Regulations and these Regulations is attached as an Annex 2 to this Explanatory Memorandum.

## **8. Consultation outcome**

8.1 The proposals were the subject of a technical consultation which ran from 20 October 2014 until 1 December 2014. There were 43 responses to the consultation, with the majority coming from the chemicals industry and industry representatives. Some responses were also received from local authorities and members of the public. The consultation document was published at: <https://www.gov.uk/government/consultations/the-role-of-planning-in-preventing-major-accident-hazards-involving-hazardous-substances>.

8.2 The majority of responses supported the consultation proposals. A limited number of changes are being made in the light of the comments received. These changes include making it simpler to make minor modifications to the quantity and type of substances held, and providing an additional mechanism for ensuring that local planning authorities take into account, in their planning decisions, all establishments within the directive's scope. The Government response to the consultation was published at: <https://www.gov.uk/government/consultations/the-role-of-planning-in-preventing-major-accident-hazards-involving-hazardous-substances>.

## **9. Guidance**

Guidance on planning for hazardous substances forms part of the Planning Practice Guidance issued by the Department for Communities and Local

Government<sup>6</sup>. The guidance is being updated to take account of these Regulations.

## **10. Impact**

10.1 There will be cost and time saving to business. There is not expected to be any impact on charities or voluntary bodies.

10.2 The impact on the public sector is expected to be a reduction in the number of applications that hazardous substances authorities will receive.

10.3 A Validation Impact Assessment will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **11. Regulating small business**

These Regulations apply to small business and in relevant cases will bring cost savings and reduce the time taken to make a planning application.

## **12. Monitoring & review**

The Regulations require the Secretary of State to undertake a review within five years of the date on which the Regulations come into force. The European Commission will assess the need to amend the scope of the Directive by 30 September 2020.

## **13. Contact**

Erika Newman at the Department for Communities and Local Government (Tel: 0303 444 2074 or email: [erika.newman@communities.gsi.gov.uk](mailto:erika.newman@communities.gsi.gov.uk)) can answer any queries regarding the instrument.

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<sup>6</sup> <http://planningguidance.planningportal.gov.uk/blog/guidance/hazardous-substances/>

## **Annex 1**

### **TRANSPOSITION NOTE**

#### **LAND-USE PLANNING PROVISIONS IN DIRECTIVE 2012/18/EU ON THE CONTROL OF MAJOR-ACCIDENT HAZARDS INVOLVING DANGEROUS SUBSTANCES**

This transposition note explains how the land-use planning requirements (articles 13 and 15) of Directive 2012/18/EU are implemented in relation to England and in relation to Wales and Scotland for non-devolved planning matters. Devolved administrations are separately implementing the land-use planning requirements of the Directive in relation to devolved planning matters. A transposition note on the remaining provisions of the Directive is attached to the Explanatory Memorandum for The Control of Major Accident Hazards Regulations 2015.

| <b>Article</b> | <b>Objective</b> | <b>Implementation</b> | <b>Responsibility</b> |
|----------------|------------------|-----------------------|-----------------------|
|----------------|------------------|-----------------------|-----------------------|

|                       |                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                  |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 13(1) First paragraph | To ensure the objectives of preventing and limiting the consequences of major accidents are taken into account in planning and other relevant policies | Regulation 10 of The Town and Country Planning (Local Planning) (England) Regulations 2012, Regulation 6 of The Town and Country Planning (London Spatial Development Strategy) Regulations 2000 (both as amended by Schedule 5 to The Planning (Hazardous Substances) Regulations 2015 (“ <b>the 2015 Regulations</b> ”)), Regulation 24 of the 2015 Regulations.                                                                              | Local Planning Authorities, Secretary of State, Mayor of London                                                  |
| 13(1)(a)              | To pursue the above objectives through controls on new hazardous establishments                                                                        | Section 4 of the Planning (Hazardous Substances) Act 1990, Regulation 3 of, and Schedule 1 to, the 2015 Regulations, Regulation 13 of the Explosives Regulations 2014, Regulation 36 of the Dangerous Substances in Harbours Regulations 1987, Section 57 of the Town and Country Planning Act 1990, and Schedule 4 (zb) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“ <b>Procedure Order</b> ”). | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State, Health and Safety Executive    |
| 13(1)(b)              | To pursue the above objectives through controls on modifications to hazardous establishments                                                           | Section 4 of the Planning (Hazardous Substances) Act 1990, Regulation 3 of, and Schedule 1 to, the 2015 Regulations, Regulation 13 of the Explosives Regulations 2014, Regulation 36 of the Dangerous Substances in Harbours Regulations 1987, section 57 of the Town and Country Planning Act 1990, and Schedule 4 (zb) of the Procedure Order.                                                                                                | Hazardous Substances Authorities and Local Planning Authorities, Secretary of State, Health and Safety Executive |

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|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| 13(1)(c) | To pursue the above objectives through controls on developments in the vicinity of hazardous establishments                                                                                        | Section 57 of the Town and Country Planning Act 1990, Schedule 4 (e), (f) and (zb) of the Procedure Order, Article 6 of The Town and Country Planning (Mayor of London) Order 2008 (as amended by Schedule 5 of the 2015 Regulations), Regulation 26 of the 2015 Regulations.                                                                                                                                                               | Local Planning Authorities, Secretary of State, Mayor of London                                   |
| 13(2)(a) | To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of the need for safety distances between hazardous establishments and other land uses | Regulation 10 of The Town and Country Planning (Local Planning) (England) Regulations 2012, Regulation 6 of The Town and Country Planning (London Spatial Development Strategy) Regulations 2000, Article 6 of The Town and Country Planning (Mayor of London) Order 2008 (all as amended by Schedule 5 of the 2015 Regulations), Regulation 9, 10, 24 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order. | Local Planning Authorities, Hazardous Substances Authorities, Secretary of State, Mayor of London |

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|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| 13(2)(b) | To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of the need to protect areas of natural sensitivity          | Regulation 10 of The Town and Country Planning (Local Planning) (England) Regulations 2012, Regulation 6 of The Town and Country Planning (London Spatial Development Strategy) Regulations 2000, Article 6 of The Town and Country Planning (Mayor of London) Order 2008 (all as amended by Schedule 5 of the 2015 Regulations), Regulations 9, 10, 24 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order.                                                         | Local Planning Authorities, Secretary of State, Hazardous Substances Authorities, and Mayor of London |
| 13(2)(c) | To ensure land-use and other relevant policies, and procedures for implementing those policies, take account of additional technical measures for existing establishments | Regulation 10 of The Town and Country Planning (Local Planning) (England) Regulations 2012, Regulation 6 of The Town and Country Planning (London Spatial Development Strategy) Regulations 2000, Article 6 of The Town and Country Planning (Mayor of London) Order 2008 (all as amended by Schedule 5 of 2015 Regulations), Regulations 9, 10, 24 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order, section 14 of The Planning (Hazardous Substances) Act 1990. | Local Planning Authorities, Secretary of State, Hazardous Substances Authorities, Mayor of London     |

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|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 13(3)    | To ensure that appropriate consultation procedures are established to provide information on the risks arising from an establishment and that operators provide sufficient information on risks arising for land-use planning purposes | Regulations 5, 9, 10, 26 and 32 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order, Schedule 5 of The Transport and Works (Applications and Objections Procedure) Rules 2006 (as amended by Schedule 5 of the 2015 Regulations). | Hazardous Substances Authorities, Secretary of State, Local Planning Authorities, Operators |
| 13(4)    | To clarify that the obligations above apply without prejudice to the Environmental Impact Assessment and Strategic Environmental Assessment directives and to allow Member States to provide coordinated or joint procedures           | No specific transposition of this provision is necessary.                                                                                                                                                                                                  |                                                                                             |
| 15(1)(a) | To ensure the public concerned is given an early opportunity to give its opinion on individual projects on planning for new establishments                                                                                             | Regulations 6, 7, 8, 10 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order.                                                                                                                                               | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State, Operators |

|          |                                                                                                                                                               |                                                                                                           |                                                                                             |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| 15(1)(b) | To ensure the public concerned is given an early opportunity to give opinion on individual projects on significant modifications subject to planning controls | Regulations 6, 7, 10 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order. | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State, Operators |
| 15(1)(c) | To ensure the public concerned is given an early opportunity to give opinion on individual projects on new developments around hazardous establishments       | Regulations 6, 7, 10 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order. | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State, Operators |
| 15(2)    | To ensure the public is informed by notices of certain specific information related to the projects in 15(1)                                                  | Regulations 6, 7 and 26 of the 2015 Regulations.                                                          | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State, Operators |
| 15(3)(a) | To ensure the main reports and advice available to the competent authority when public is notified is made available                                          | Regulations 8 and 26 of the 2015 Regulations.                                                             | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State            |
| 15(3)(b) | To ensure other information is made available in accordance with the directive on public access to environmental information                                  | Environmental Information Regulations 2004, Part 2.                                                       | Public Authorities (including Local Authorities, Secretary of State)                        |

|       |                                                                                                                                                       |                                                                                                              |                                                                                  |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| 15(4) | To ensure the public concerned is able to express comments and that the results of consultations are taken into account                               | Regulations 11 and 26 of the 2015 Regulations.                                                               | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State |
| 15(5) | To ensure that the content of, and reasons for the decision, and the results of consultations, are made available to the public                       | Regulations 11 and 26 of the 2015 Regulations.                                                               | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State |
| 15(6) | To ensure the public is given early and effective opportunities to comment on relevant plans and programmes                                           | Regulation 25 of the 2015 Regulations.                                                                       | Responsible Authorities (including Local Authorities, Secretary of State)        |
| 15(7) | To ensure that detailed arrangements for public consultation should be determined by Member States and that reasonable timeframes should be provided. | Regulations 6, 7, 8, 10 and 26 of the 2015 Regulations, Schedule 4 (e), (f) and (zb) of the Procedure Order. | Hazardous Substances Authorities, Local Planning Authorities, Secretary of State |

## Annex 2

### DESTINATIONS TABLE

| <b>Provision no. in 1992 Regulations</b> | <b>Provision in these Regulations</b> |
|------------------------------------------|---------------------------------------|
| Regulation 1                             | Regulation 1                          |
| Regulation 2                             | Regulation 2                          |
| Regulation 3                             | Regulation 3                          |
| Regulation 4                             | Regulation 4 and Schedule 2           |
| Regulation 5                             | Regulation 5                          |
| Regulation 6                             | Regulation 6                          |
| Regulation 7                             | Regulation 7                          |
| Regulation 8                             | Regulation 8                          |
| Regulation 9                             | Regulation 9                          |
| Regulation 10                            | Regulation 10                         |
| Regulation 11                            | Regulation 11                         |
| Regulation 12                            | Regulation 12                         |
| Regulation 13                            | Regulation 13                         |
| Regulation 14                            | -                                     |
| Regulation 15                            | -                                     |
| Regulation 16                            | -                                     |
| Regulation 17                            | Regulation 14                         |
| Regulation 18                            | Regulation 15                         |
| Regulation 19                            | Regulation 16                         |
| Regulation 20                            | Regulation 17                         |
| Regulation 21                            | Regulation 18                         |
| Regulation 22                            | Regulation 19                         |
| Regulation 23                            | Regulation 20                         |
| Regulation 24                            | Regulation 21                         |
| Regulation 25                            | Regulation 22                         |
| Regulation 26                            | Regulation 23                         |
| Schedule 1                               | Schedule 1                            |
| Schedule 2                               | Schedule 3                            |
| Schedule 3                               | -                                     |
| Schedule 4                               | Schedule 4                            |