

**REGULATORY IMPACT ANALYSIS (RIA)**

**Transposition of Directive 2012/18/EC ('Seveso III')**

DRAFT

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## Foreword

The Seveso III Directive 2012/18/EU of the European Parliament and Council 13 August 2012 on the control of major accident hazards involving dangerous substances<sup>1</sup> entered into force on 13 August 2012.

Member States are required to implement it into national legislation from the 1<sup>st</sup> of June 2015.

The existing Seveso II directive is implemented in Ireland by SI 74 of 2006 (European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2006). The land-use planning aspects are implemented through the Planning and Development Regulations 2001-2013.

The intention is to transpose Seveso III by way of the Chemicals Acts, however, it should be noted that primary legislation may be required. Were such an approach taken regarding transposition of the Directive, it would inevitably affect the length of time required, under a number of the options set out in this impact assessment, to make the proposed amendments to primary legislation and have them carried forward to enactment.

The main objective of Directive 2012/18/EU is to prevent major accidents involving large quantities of dangerous substances (which are listed in an annex to the Directive, either by name or by hazard category) and to limit the consequences of such accidents for human health and the environment.

This is to be achieved through tiered controls on the operators of such establishments - the larger the quantities of dangerous substances present at an establishment, the more onerous the duties on the operator.

All operators who fall within the scope of the Directive will be required to make a formal notification to the central competent authority and will have the general duty to 'take all necessary measures' to prevent major accidents and to limit the consequences of such accidents, should they occur.

There will also be obligations on public authorities relating to, inter alia, external emergency plans, public information on safety measures, domino effects, land-use planning, accident reporting and inspections.

This RIA has been prepared according to current guidelines [Department of the Taoiseach, 2009]<sup>2</sup> and it sets out the options for transposing Directive 2012/18/EU into national legislation.

June 23, 2014

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<sup>1</sup> Official Journal of the European Union, 24.7.2012, L197/1-37 [<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:197:0001:0037:EN:PDF>]

<sup>2</sup> REVISED RIA GUIDELINES (2009), How to conduct a Regulatory Impact Analysis ([www.betterregulation.ie](http://www.betterregulation.ie))

## Glossary

The following Glossary explains some of the terms and acronyms used in the document.

|               |  |
|---------------|--|
| COMAH         | Control of Major Accident Hazards (regulations), SI 74 of 2006       |
| CA            | Competent Authority  |
| CCA           | Central Competent Authority  |
| CLP           | Classification, Labelling and Packaging regulation (EC No 1272/2008) |
| EEP           | External Emergency Plan  |
| Establishment | Location to which the COMAH regulations apply                        |
| DJE           | Department of Justice and Equality                                   |
| DJEI          | Department of Jobs, Enterprise & Innovation                          |
| Domino Effect | Potential for hazard on 1 site to cause major accident at another    |
| HFO           | Heavy Fuel Oil   |
| Ops           | Operators of COMAH establishments                                    |
| IEP           | Internal Emergency Plan  |
| LCA           | Local Competent Authority  |
| LUP           | Land-use planning  |
| MAPP          | Major Accident Prevention Policy                                     |
| RIA           | Regulatory Impact Analysis   |
| SMS           | Safety Management System   |
| Seveso        | The Control of Major Accident Hazards Directive 2012/18/EU           |

# 1 BACKGROUND, CONTEXT, OBJECTIVES AND OPTIONS

## 1.1 Background and Context

Member States have until 31 May 2015 to transpose the Directive into national legislation.

One aspect, the categorisation of Heavy Fuel Oil as part of the Petroleum Products category in Annex I of the Directive, has already been implemented by SI 571 of 2013<sup>3</sup>.

The existing Directive 96/82/EC (Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances) is implemented primarily through SI 74 of 2006.

As the existing Directive also deals with matters relating to the control of developments at or in the vicinity of establishments within scope ('Land-use planning'), some requirements are also implemented through the Planning & Development Regulations 2001-2013<sup>4</sup>.

The impetus for a new Directive arose from changes to the EU system of classification of dangerous substances, the 'CLP Regulation' (to which the directive refers, especially in Annex I), which is to become fully operational by June 1st, 2015<sup>5</sup>.

The new Directive also contains a number of other changes for more effective implementation.

## 1.2 Summary of the Main Changes

Broadly, the main changes can be grouped as follows:

**Scope:** the categories of dangerous substances in annex 1 will reflect the new CLP classifications with some new additions to the named substances category. A mechanism has been introduced for the assessment of major hazards for a particular substance to determine whether it should be included or excluded from scope.

**Information to the public:** a key aim of the Directive is to improve the information provided to the public, including information reported by operators to the competent authorities. This will ensure that the public is generally aware of the activities of an

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<sup>3</sup> European Union (Control of Major Accident Hazards Involving Dangerous Substances) (Amendment) Regulations 2013

<sup>4</sup> <http://www.environ.ie/en/DevelopmentHousing/PlanningDevelopment/Planning/PlanningLegislation-Overview/PlanningRegulations/>

<sup>5</sup> [Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures

establishment and, more particularly, the appropriate action to take in the event of an accident.

**Land-use planning:** the Directive makes it clear that Land –use planning applies to both upper- and lower-tier establishments and to the protection of the environment, as well as to human health.

Other general changes include

- clarification that underground gas storage sites fall within the Directive's scope,
- the introduction of clearer references to environmental aspects,
- elimination of potential for delays in the completion of external emergency plans,
- safety management requirements for lower tier establishments have been made more explicit,
- an explicit option to use safety performance indicators (or other relevant indicators) when monitoring the performance of the SMS.

### ***1.3 Details of the main changes***

The significant changes in this Directive, to be implemented by the national Control of Major Accident Hazard Regulations ('COMAH 2015'), are addressed in this section.

#### **1.3.1 Scope**

The types of industries covered by the Directive are illustrated in appendix 1.

Due to the changes to the CLP classification criteria, there is the possibility that a small number of establishments could move between tiers. Some may move out of scope entirely whilst others may become COMAH sites for the first time.

There are also changes to the classifications for some substances, such as alternative fuels which are now categorised with petroleum products and benefit from that threshold.

The generic categories 'Toxic' and 'Very Toxic' have been replaced with Acute Toxic Categories 1-3, with reference to specific routes of exposure.

Aerosols, self-reactive substances and pyrophoric liquids and solids are now included.

Operators will have to make updated notifications to the central competent authority (CCA) to reflect the change in classification system, if it affects their inventories of dangerous substances or the major accident hazard or risk profile of their establishments.

#### **1.3.2 Public Information**

Seveso III has been brought into line with the Aarhus Convention. This is reflected in Article 14 on public information, requiring current information on establishments – both upper-tier and, for the first time, lower-tier – and their hazards to be made permanently and electronically available to the public and to be kept up to date.

Also required will be information on the date of the last site visit by the CCA and a reference to where more detailed information about the inspection and related inspection plan can be accessed, on request.

Under the new regulations, information held by a competent authority will be made available to any person who requests it, subject to the requirements of Directive 2003/4/EC<sup>6</sup>.

### **1.3.3 Safety Reports**

Scope changes mean that operators of existing establishments will have to review their safety reports and update them to reflect the CLP changes where necessary. For the majority of sites it is not anticipated that there will be any need to change actual safety management arrangements unless a new dangerous substance is added as a result of the change to CLP classification.

Operators will be required to identify information in their safety report which is personally or commercially confidential, or has public security/national defence implications so that these may be withheld from the publicly available information, subject to the public interest.

The submission and re-submission intervals for safety reports will be more clearly set out in the legislation.

Safety reports for existing establishments are to be submitted by operators to the CCA by June 01 2016 unless the report already contains the new information.

### **1.3.4 Modifications to establishments and Land-use Planning (LUP)**

Changes that will result in a lower-tier establishments becoming upper-tier will be considered a 'significant' change and will be subject to the planning system as will 'significant' modifications of the type listed in Article 11 of the Directive.

Operators will be required to provide information to the CCA in advance of the specified modifications and this will include the update of the formal notification as well as the usual documents for which this is already required<sup>7</sup>.

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<sup>6</sup> Directive 2003/4/EC of The European Parliament and of The Council of 28 January 2003 on public access to environmental information

<sup>7</sup> The MAPP, safety report, safety management system, emergency plan

The application of LUP to the environment as well as to human health will be made explicit and it will be clarified that maintaining ‘appropriate distances’ between establishments and other types of development means ‘appropriate safety distances’.

Operators will be required to provide sufficient information to the central competent authority on the risks arising from the establishment for land-use planning purposes and this will also apply to lower-tier establishments (but in that case on the request of the CCA).

**Note that the planning aspects of the Directive are to be implemented both by the COMAH 2015 regulations and by changes to the planning and development legislation (this aspect will be under the aegis of the Department of Environment, Community and Local Government).**

### **1.3.5 Inspections<sup>8</sup>**

The inspection of establishments is a function of the CCA. The definition of inspection will be expanded and will mean all actions, including site visits, checks of internal measures, systems and reports and follow-up documents, and any necessary follow-up, undertaken by or on behalf of the competent authority to check and promote compliance of establishments with the requirements of the Directive. This has implications in relation to the requirement to provide public information on ‘inspections’.

The CCA will draw up national inspection plans for all establishments. Minimum inspection frequencies will be set for all establishments.

The inspection programme for each establishment will be based on a systematic appraisal of the major accident hazards of the establishment.

Non-routine inspections will be mandatory in certain circumstances and follow-up inspections and actions will have to occur within a specified time-period of 6 months.

COMAH inspections may be combined with other inspections where appropriate.

There will be a clear obligation for operators to provide the necessary assistance and information to the competent authorities in order that they may fulfil the requirements of the Directive regarding inspection.

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<sup>8</sup> The Authority has already set in train measures to give effect to the requirements in this area



### **1.3.6 MAPP (Major Accident Prevention Policy)**

The regulations will now explicitly state that the MAPP must be in writing and proportionate to the major hazards at the establishment. In addition the MAPP must address the management role in continuous improvement and in ensuring a high level of protection.

The regulations will include a provision that the operator may now be requested by the CCA (or will routinely be required, depending on the option) to send the MAPP to the CCA.

The regulations will also specify that the MAPP will be required to be implemented by the operator through a safety management system (SMS), the elements of which will be set out in an annex to the regulations.

### **1.3.7 Competent Authorities**

The regulations will specify that the duties of the various competent authorities are to be fully coordinated by the central competent authority (CCA).

### **1.3.8 Notifications**

The changes in scope will mean that all COMAH sites are likely to have to update their notifications to the CCA because additional information, beyond that required by Seveso II, will be required. For example, additional information may be needed on the inventory and on the immediate environment.

### **1.3.9 Emergency Plans**

The Directive requires a similar emergency planning regime to that of the current COMAH Regulations, SI 74 of 2006. However Member States have discretion in how some requirements will be implemented, for example, on how the public will have an early opportunity to give an opinion on external emergency plans.

Additional information will be required in off-site emergency plans. Both upper and lower tier operators will have to provide information on how the public concerned is to be warned and how they should behave in the event of a major accident.

There will be clarifications and, potentially, changes to the timescales for the production and implementation of emergency plans (depending on the option chosen).

The changes in scope are likely to mean that the majority of COMAH sites will have to review and update their emergency plans by June 2016.

Operators will have broader duties placed on them in relation to domino effects and particularly in sharing information with neighbouring sites and in cooperating in providing information to the public and for external emergency plans.

### **1.3.10 Definitions**

There will be some changes in the definition of key terms (e.g. lower-tier establishment, upper-tier establishment, presence of dangerous substances, the public).

### **1.3.11 Penalties**

Under Article 19 (Prohibition of Use) the CCA is required to prohibit an activity where there are serious failures to take the necessary actions identified in an inspection report. This basis for prohibition must be reflected in legislation.

The penalties provided for in the regulations must be effective, proportionate and dissuasive.

## **1.4 Objectives**

Many of the changes required by the Directive will be self-evident and straightforward.

On the other hand, Member States have discretion in how some aspects, such as land-use planning, provision of public information, systems of inspection and so on, are implemented. It is up to the Member States to decide on the balance of functions between the various competent authorities and between the competent authorities and the operator.

The implementing legislation will maintain as a minimum the existing level of protection as that afforded by the current regulations.

Where possible, it is intended to

- streamline application both for the operator and the competent authorities,
- maintain consistency in the quality and availability of information to the public,
- set inspection at appropriate intervals with the right level of focus and detail,
- be clear on the timelines for the preparation and/or submission of documents required by the Directive

- ensure smooth operation of the land-use planning and external emergency planning aspects, and
- recover the reasonable costs associated with implementation, on the ‘polluter pays’ principle.

## **1.5 Legislative Options**

In this section, where particular measures clearly go beyond the precise requirements of the Directive, these are marked with an \*.

### **1.5.1 Option 1 – Maintain the status quo.**

Rely on the existing regulations SI 74 of 2006 without amendment.

### **1.5.2 Option 2 – Amend existing regulations**

Transpose the new requirements by amending the existing regulations, SI 74 of 2006 (and the relevant planning and development legislation), with the absolute minimum number of changes.

### **1.5.3 Option 3 – Minimal regulations under Chemicals Acts**

Make the new regulations under the Chemicals Acts 2008-2010 (and the planning and development legislation) with minimum alterations.

The CA will broadly retain its current role regarding inspection, safety report and MAPP assessment and technical LUP advice to planning authorities.

The notification procedure for operators will remain the same as under SI 74 of 2006 and operators will manage the new ‘information to the public’ aspects.

Cost recovery by the CCA will be structured in a fairer and more transparent manner than under current regulations, to reflect the range of services performed by the competent authority for the operators, more closely reflecting the level of service actually provided.

### **1.5.4 Option 4 New regulations under Chemicals Acts with the operator duties enhanced**

This option is an alternative to option 3 above, but with some of the technical work now carried out by the CCA moved to the operator.

Compared to option 3, the new element in this option is that the operator will develop and provide the land-use planning contours for their establishment, based on the published guidance from the HSA [March 2010]<sup>9</sup>\*

The cost recovery system will be related to the distribution of functions and duties.

### **1.5.5 Option 5 - New regulations under Chemicals Acts with CCA role enhanced.**

Additional measures over option 3 include the following:

- The CCA will provide an e-notification system editable by the operator\*.
- Notifications will be valid for a period of one year\*
- The CCA will filter and host the information to the public for all establishments and provide a highly secure CCA-internal system to store information identified as confidential\*.
- The CCA will make a formal assessment of the notification for CLP consistency and to ensure the appropriate threshold has been declared \*.
- The operator will supply sufficient information with the notification\* for land-use planning purposes, to aid the competent authority in preparing technical LUP advice.
- Operators of lower-tier establishments will provide the MAPP as part of the notification process \*
- The CCA will establish a screening and consultation system so that only significant modifications to establishments (of the type covered by Article 11 of the directive) will be required to go through the planning process.
- The existing timeframe for the preparation of external emergency plans (which is shorter than that required by the Directive) will be retained\*.

Option 5 provides many improvements over option 3 and will allow the CCA to recover reasonable costs for all the functions discharged under the Directive, in a fair and transparent manner.

The options 3 to 5 are summarised, for the main topic areas, in the table below:

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<sup>9</sup> Policy & Approach of the Health & Safety Authority to COMAH Risk-based Land-use Planning (19 March 2010)  
[http://www.hsa.ie/eng/Your\\_Industry/Chemicals/Control\\_of\\_Major\\_Accident\\_Hazards/Approach\\_to\\_LUP\\_under\\_Comah\\_Regs.pdf](http://www.hsa.ie/eng/Your_Industry/Chemicals/Control_of_Major_Accident_Hazards/Approach_to_LUP_under_Comah_Regs.pdf)

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**Table 1: Options 3-5 summary**

| <b>Function/duty</b>             | <b>Option 3</b>   | <b>Option 4</b>   | <b>Option 5</b>   |
|----------------------------------|---|---|---|
| <b>Notification</b>              | As currently  | As currently  | CCA to host e-notification portal. CCA will notify other CA's<br>Notification Valid for period of one year.<br>Formal check of notification details by CCA.   |
| <b>Inspection</b>                | Plan required, minimum intervals for inspection etc.  | As option 3   | Because MAPP and Notification assessed upfront, potential for reduced inspection time.  |
| <b>Information to the public</b> | No additional. resources devoted by CCA other than oversight of operator.   | As option 3   | CCA to host information portal.<br>Screening system for confidential information.<br>Enhanced information handling systems for confidential information.  |
| <b>Safety report</b>             | As currently but with clearer submission deadlines.   | As option   | As option 3   |
| <b>MAPP</b>                      | MAPP assessed on-site as part of inspection   | As option3  | To be submitted with notification and formally assessed by CCA.   |
| <b>EEP</b>                       | 2 Years to prepare for new establishments.  | As option 3or 5   | 1 year as per current practice.   |
| <b>LUP</b>                       | Operator to provide sufficient information in the safety report - or on request for lower-tier establishments.<br>Increased number of modifications likely to go through the planning system. | Operators produce and supply to the CCA generic LUP advice for their establishments, based on the published guidance of the CCA.<br>Increased number of modifications likely to go through the planning system. | Required inventory and storage location information for LUP to be included in the notification.<br>CCA to set-up formal screening system to decide which changes are significant and must go through the planning process.<br>CCA will increase quantity of generic advice. |
| <b>Cost Recovery</b>             | Annual, reflecting the services provided by the CCA   | Annual, reflecting the services provided by the CCA (likely to be the lowest of the 3 options)  | Annual, reflecting the services provided by the CCA – now including notification and information management functions and LUP as described above.   |

## **2. COSTS, BENEFITS AND IMPACTS**

The specific costs incurred in the implementation of the new regulations will fall on the operators of establishments and the competent authorities and will depend on the extent of the distribution of duties and functions under the different options.

### **2.1 General Costs**

Before addressing the specific costs to the competent authorities and the operators, there are circumstances where costs could accrue to society, for example where the implementation option chosen will have the effect of lessening the protection to the workforce, the environment and to the general public.

These circumstances can be envisaged as:

- Inadequate or inappropriate implementation of the planning aspects, which could lead to subsequent costs following an accident, or for relocation; these costs could be in the ‘millions of euro’ range.
- If the accident risk increases due to poor implementation, for example through inadequate inspection systems or practice by the CCA or inadequate safety management systems in the establishments or inadequate implementation of the external emergency planning aspects by LCAs, this could have the potential to create environmental damage of incalculable cost, possibly in the ‘tens of millions of euro’ range.
- Job losses could occur as a result of loss of competitiveness or unwillingness to invest in what will be perceived to be a poorly regulated environment. National reputational damage could result.
- Inadequate arrangements for the provision of information to the public could lead to less protection for members of the public with longer-term implications for future COMAH establishments following an accident.

### **2.2 Direct Compliance Costs**

Broadly, under whatever option is chosen, costs will fall on the **operators** of establishments to some degree, for certain activities. These activities will be those that require the operator to:

- Make and update notifications to the CCA and other competent authorities
- Prepare and submit the MAPP and the Safety report to the CCA
- Take technical measures (under the general duties) to reduce risk, in compliance with the Directive.
- Provide information to the public in general and to the public likely to be affected by a major accident in particular.

- Provide documents and assessments to the CCA to determine if proposed modifications to the establishment are ‘significant’
- Go through the planning system for approval of proposed significant modifications to the establishment.
- Classify/self-classify dangerous substances (including intermediates and wastes) under the CLP regulations, to determine the appropriate category of dangerous substance for notification.
- Host 1-3 days of annual inspections by the CCA and provide the necessary assistance and information to the competent authority
- Prepare and test internal emergency plans
- Assist the LCA in its preparation and testing of the external emergency plan
- Co-operate with domino sites in informing the public etc.

Penalties imposed by the court arising from prosecution will also be a cost burden on operators.

The HSA has not carried out a formal study on the cost of implementation of Seveso on operators of establishments in this country. However estimates can be made based on the CCA’s experience with Seveso II and using published information from HSE 2014<sup>10</sup>.

Considerable caution should be exercised in extrapolating the UK figures to the Irish situation. In the UK (but not in Ireland), the CA’s charge operators for inspection and safety report assessment. The charge-out rate for these activities is currently £155 per hour. As a result, some costs attributed to the CA in their document are actually costs that ultimately fall on the operators. Furthermore, the document does not address land-use planning costs.

Another point to note is that in the UK the upper-tier establishments make up 37% of all establishments, whereas in Ireland it is 53% - this means proportionately additional costs to the CCA in Ireland for safety report assessment, inspections, emergency planning and information to the public. The HSE 2014 estimates are outlined in the Table 2.

**Table 2: Operator Costs from HSE Seveso III Consultation Document 2014**

| Activity                     | Lower-tier | Upper-tier   |
|------------------------------|------------|--------------|
| Entry Cost                   | £15-23,000 | £100-135,000 |
| Annual compliance cost       | £9-11,000  | £24-29,000   |
| Notification update 2015     | £104-156   | £104-156     |
| Safety report update 2015    |            | £41-51,000   |
| Public information 2015      | £750-4,269 | £750-4,269   |
| Ongoing public info (annual) | £416-502   | £416-502     |

<sup>10</sup> CD 266: Consultation on draft COMAH Regulations 2015 to implement the Seveso III Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances, amending Council Directive 96/82/EC



## 2.3 Enforcement Costs

Broadly, under whatever option is chosen, costs will fall on the **competent authorities** to some degree for the functions and activities described below.

- Set-up of a notification receipt and checking system
- Check and manage the provision of information to the public (including confidentiality).
- Provide Secure IT platform to retain confidential information (HSE 2014 estimates the set-up cost for this and previous 2 bullet points at £400k. Economies of scale will not be directly applicable to these costs, as setting up a system for 93 establishments will not be significantly cheaper than setting up one for 937 establishments)
- Assess the safety report, new and updated – maximum of 5 year intervals
- Assess the MAPP (on-site or in the HSA office)
- Set-up an appropriate inspection and enforcement system
- Perform and report on inspection
- Report to the Commission on implementation
- Develop and provide technical land-use planning advice
- Develop and provide technical guidance to operators on compliance with the regulations
- Assess and test emergency plans (CA and LCAs)
- Prepare legislation and guidance
- Check domino information exchange and provision of information to the public

HSE 2014 estimates costs to the competent authority in relation to safety report assessment as follows (assuming hourly rates of £155 and 7 hour days):

**Table 3: Competent Authority costs in UK**

| CA Function                               | Days       | Cost range (£) per |
|---|------------|--------------------|
| Review of Notification                    |            | 200-700            |
| Safety report assessment, new             | 25-50 days | 27 - 54k           |
| Safety report assessment, update          | 6-20 days  | 6.5 – 21.7k        |
| Safety report redaction (confidentiality) |            | 23 – 29k           |

An internal HSA report from 2010<sup>11</sup> looked specifically at land-use planning costs and also made a broad estimate of the costs of other activities to the CCA. It reported the following cost estimates:

<sup>11</sup> Health & Safety Authority, Cost Recovery under COMAH (Internal report).

**Table 4: HSA estimate of direct labour costs**

| CA Function  | Cost (€)    |
|--|-------------|
| Notification   | 105         |
| Inspection lower-tier (per inspection)               | 700         |
| Inspection upper-tier (per inspection)               | 1,050       |
| Safety report assessment, new                        | 4,900       |
| Safety report assessment, 5-year update              | 980         |
| MAPP assessment                                      | 700         |
| LUP advice (specific) per request [300-350 annually] | 105 – 1,225 |
| LUP advice (Generic) per site <sup>12</sup>          | 4,800       |

The costs in Table 4 are clearly much lower than the UK equivalents in Table 3. The HSA figures are ‘best estimates’ based on direct labour costs, with no contribution to general overheads or specific overheads such as technical training, software for assessment of major accident hazards, tools for inspection and for retaining and managing inspection information and confidential information, and therefore significantly underestimate the real cost.

The current charging system under SI 74 of 2006 is outlined in Table 5 below. Note that the notification charges are waived where there is also a safety report charge.

**Table 5: Current cost recovery charges**

| Activity                               | Cost (€)               |
|--|------------------------|
| Notification (once off)                | 380.92                 |
| Safety report assessment               | 1,396.71 – 18,157.25** |
| Safety report assessment, 5 yr. update | 419 – 4609.15**        |

\*\*Depends on the type of activity – these include Manufacturing, Storage, Inventory < 5 tonnes etc. Just 25% applies to an operator’s second upper-tier establishment

## **2.4 Costs of each option**

The cost of each proposed implementation option will now be set out in more detail.

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<sup>12</sup> This was not estimated in the original document but is included here based on 15 days for a senior inspector.

### **2.4.1 Option1– Maintain the status quo.**

This option will lead to Ireland being open to infringement procedures (and possible fines) by the EU Commission for failure to implement the Directive and result in a loss of competitiveness in the various industry sectors.

Reputational damage will result leading to reduced investment and jobs.

### **2.4.2 Option 2– Amend existing regulations**

The regulations will become unwieldy and difficult to understand and, possibly, to enforce if this option is taken.

The penalties will not be as dissuasive, because penalties under the European Communities Act are lower than under the Chemicals Acts.

There will be no streamlining of inspection or of the interaction with operators, no management of information, no online notification.

There will likely be poorer dissemination of information to the public.

The competent authority will have to operate within the existing inadequate cost recovery system (see section 2.3 above).

Land-use planning controls and processes will be more cumbersome than necessary.

Inspection will be less targeted and sophisticated, and be carried out more frequently than necessary.

This option could also lead to Ireland being open to infringement procedures (and possible fines) by the EU Commission for failure to correctly implement the Directive (considered a more likely event because of the cumbersome and intricate nature of the amending approach) and result in a possible loss of competitiveness in the various industry sectors.

Reputational damage will result leading to reduced investment and jobs.

### **2.4.3 Option 3- Minimal Regulations under Chemicals Acts**

For operators, potential costs compared to the current system will arise for:

- Providing information to public
- Updating notifications in 2015/6
- Updating the MAPP and safety report in 2015/6
- Updating emergency plans in 2015/6
- Providing additional information for LUP

Costs to the CCA will be for:

- Oversight of public information provision
- Processing updated notifications
- Assessment of safety report updates
- Processing confidentiality requests
- Increased inspection for onsite verification of MAPP and notification

### **2.4.4 Option 4 - New Regulations under Chemicals Acts with the operator duties enhanced**

This option shifts some of the technical burden from the CCA back to the operator. In particular, the operator will be required to produce generic technical LUP advice (estimated at €10k every 5 years) for their establishment, based on the published HSA method. Otherwise, it is similar to option 3 above.

### **2.4.5 Option 5 - New Regulations under Chemicals Acts with CCA role enhanced.**

The costs identified for this option will fall (at least initially) on the CCA. These are:

- Information provision to the public will be undertaken by the CCA (and not the operator as under 3)
- An e-notification system will be set up by the CCA with formal checks of notified data
- Assessment and management of confidential information<sup>13</sup>
- The MAPP will be sent to the CCA for assessment (cost to CCA - €200-700 per)
- Operators will provide the information required for the CCA to produce technical LUP advice (as part of the notification process) (as operators already have most of

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<sup>13</sup> HSE 2014 estimates £400k set up costs for this item and the two above )

this information the cost to the operator will be small and there will be some saving to the CCA)

- Cost recovery system will be fair and transparent, reflecting the costs to the CCA with operators paying in line for the actual costs/services provided to them by the CCA

## **2.5 General Benefits**

A good regulatory environment is required for, and is welcomed by, the sectors affected by this legislation. Appropriate land-use planning, including the maintenance of appropriate safety distances, will improve the protection of human health and the environment and allow for the orderly development of establishments and for appropriate developments in their vicinity.

Improved emergency preparedness will mitigate the effects of major accidents, which should be less likely and less severe if they do occur. The costs of major accidents are thus avoided (as an example, it has been estimated that the Buncefield accident in England, in 2005, cost in the region of £1bn<sup>14</sup> ).

Improved business performance and competitiveness, as a result of better safety management systems being put in place, will make for more efficient and better processes and therefore a more sustainable and profitable industry in the long run.

There will be also a better public understanding of the benefits and risk from Seveso establishments.

## **2.6 Benefits of Each Option**

### **2.6.1 Option 1– Maintain the status quo.**

The benefits of this option are that no resource allocation will be required to write the regulations and there will be no change in the chargeable costs to the operator.

### **2.6.2 Option 2– Amend existing regulations**

Minimal resources will be required for this approach.

There will be no change in chargeable costs to the operator

The chance that infringement proceedings will be taken cannot be entirely ruled out.

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<sup>14</sup> <http://www.buncefieldinvestigation.gov.uk/reports/volume1.pdf>,

### **2.6.3 Option 3 - Minimal regulations under Chemicals Acts**

Operators will manage information to the public, which will be overseen by the CCA so as to try to ensure consistency. As this will reduce the CCA costs, it will reduce costs that will have to be recovered from the operator.

There would be some change in the overall costs recoverable from the operators, but the system will be rebalanced to reflect more closely the cost of service provision.

### **2.6.4 Option 4- New regulations under Chemicals Acts with the operator duties enhanced**

Operators will take on the duty to provide generic technical LUP for their establishment to the CCA, which may be more efficient than the CCA doing it. As this will reduce the CCA costs it will also reduce costs to be recovered from the operator.

The CCA will be able to concentrate on the core activities of inspection and safety report assessment, delivering a better, more focused, service.

Other benefits are as outlined for 3 above.

### **2.6.5 Option 5 - New Regulations under Chemicals Acts with CCA role enhanced.**

The MAPP will be sent to the CCA for assessment. As a result, subsequent inspections will be of shorter duration and more focused on the relevant issues, with benefits to both the operator and the competent authority.

Operators will not have to manage the provision of information to the general public (reduced cost) and there will be a consistency in information provision.

Notification, and change to notifications, will be made more quickly and easily through the e-notification system, which will collect all the information required by the CCA.

The CCA will continue to provide technical LUP advice, based on the enhanced data submitted by the operator. It is expected that, as a result, the CCA will be able to increase the quantity of generic LUP advice it provides.

The existing protective EEP timeframes will be maintained.

The CCA will recover costs that will reflect the services provided.

## **2.7 Other Impacts**

### **a) Impacts on National Competitiveness**

Ireland's business and work environment will be improved and the various economic sectors within COMAH (power generation, fuel storage, fertilizer, spirit producers, pharmaceutical and warehousing etc.) can operate and continue to invest within a transparent and appropriate regulatory environment.

Risk-reduction driven innovation and creativity could open up opportunities for safety and environmental professionals to use their experience and expertise in the EU and further afield.

#### **b) Impacts on Socially Excluded or Vulnerable Groups**

No impacts upon these vulnerable groups have been identified

#### **c) Human Health and Environmental Issues**

The legislation is intended to have a positive effect on human health and the environment through the prevention of major accidents involving dangerous substances or their mitigation should they occur.

#### **d) Impacts upon Consumers and Competition**

As it implements a directive, the legislation should lead to no competitive disadvantage within the EU.

It may raise the cost of entry into the sectors covered but these tend already to have high barriers to entry.

The public will have greater access to information and greater confidence and assurance that appropriate systems are in place in relation to major accident prevention.

#### **e) Impacts on the Rights of Citizens**

There will be improved information provision to the public leading to a better public understanding of the benefits and risks from the establishments covered by the Directive. Another positive impact will be the improved access to justice in relation to the process dealing with significant modifications to these establishments.

#### **f) Compliance Burdens**

Compliance costs will include inspection, safety report and MAPP assessment, land-use planning technical advice, information to the public and emergency planning.

Some of these costs are currently recovered from operators but the current system of charges, dating back to 2000, does not reflect the true cost to the central competent authority, as outlined in section 2.4. The extent of costs recoverable from operators will depend on the option chosen.

The Directive requires improved information management and inspection, increased notification scrutiny, more focused inspection interventions all of which will increase the costs to the CCA/operator in ensuring the correct implementation of the Directive.

## **2.8 Discussion, conclusion and preferred option**

A range of options have been identified, from maintaining the status quo (Option 1) to the amendment of the existing regulations to reflect the changes required by the Directive (Option 2) through to the introduction of new regulations under the Chemicals Acts (Options 3 -5).

Option 1, the 'status quo' is not a valid option as the Directive has to be transposed into law by 1 June 2015 and this option will not achieve this objective as it will fall short of the Directive's requirements and will certainly be followed by infringement procedures.

Option 2, which will amend the current regulations to reflect the widespread changes from the Seveso II Directive will be a very unwieldy option and potentially may not be achievable. It will make compliance much more difficult for operators and could lead to widespread confusion. It will increase the administrative burdens on competent authorities and operators and it will not be very efficient. It will leave Ireland open to infringement procedures for a failure to fully implement the Directive if key aspects of the Directive, such as information to the public, are not properly implemented.

Options 3 to 5, requiring implementation under the Chemicals Acts, will conform to the state policy of consolidating chemical legislation, since provision has already been made in the Act for major accident hazard regulations.

However, there are a number of alternative ways to implement the regulations under the Act and these are elucidated as options 3 to 5.

Option 3 reflects the basic implementation under the general option of implementing under the Chemicals Acts. It loses out on the synergy and consolidation possible under option 5 and will leave in place an old-fashioned system that does not take account of new developments, especially in information technology. Operators will notify and update through an unstructured paper system. Because of the update requirements in the regulations, this could be quite onerous on operators. There will also be a reduced EEP protection (2 years to prepare the instead of 1).

Furthermore, under Option 3, the consistency of information provided to the public will be of concern and the management of confidential information could be difficult.

As the CCA will have to assess the MAPP on site as part of the inspection process, this may lead to less focused inspection than would otherwise be possible and it could also prolong inspection.

Option 4 is similar to option 3 but will place the requirement to provide the technical input to land-use planning on the operator.



Option 5 offers the best balance of the protection of the public and the environment, regulatory and competitiveness burden on operators and costs to the competent authorities, while at the same time streamlining the application for both the competent authorities and the operators and providing for the most efficient application of the Directive.

On-line notification will make the preparation amendment and processing of this information much easier.

Sending the MAPP to the CCA as part of the notification process will allow the CCA to assess it more formally prior to inspection. The information obtained from the MAPP should allow the subsequent inspection to focus on the important major accident issues - leading to shorter, more focused inspection.

Some establishments may be over-inspected at the moment, especially the lower-tier establishments; front-loading a formal assessment of the MAPP could assist in setting less frequent inspections for sites at lower risk and shorter inspections for those that are less complex.

The hosting of an information portal by the CCA is seen as the best way of delivering on the significant public information aspects of the Directive and it should also make it easier to maintain confidentiality where appropriate and remove the burden from operators.

Implementing a more formal screening process for significant modifications will give more certainty on those which must go through the planning process and more assurance in relation to the outcome.

Weighing up the relevant factors, option 5 is identified as the preferred option.

### **3.0 CONSULTATION**

The DJEI has been consulted on the general approach to be taken on transposing the Directive.

Informal consultation on this draft RIA will be undertaken with stakeholders prior to the publishing of draft regulations, which will then go to public consultation.

A summary of the views expressed in the consultation process and the responses received will be given in this section.

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## **4.0 ENFORCEMENT AND COMPLIANCE**

Enforcement will reside with the competent authority conducting inspections (the HSA). Inspection plans will be published.

Inspection interval and depth of inspection will be based on a systematic assessment of the hazards at the establishment but it is likely that almost all the upper-tier establishments will be inspected annually and about half the lower-tier establishments, with the remaining lower-tier establishments inspected at either 2 or 3-year intervals, based on the assessed risk.

Significant enforcement measures will be available to the competent authority and the courts will be empowered to impose penalties of €5,000 and/or 12 months imprisonment on summary conviction and up to €3m and/or 2 years imprisonment on indictment as allowed for under the Chemicals Acts.

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## **5.0 REVIEW**

*Mechanisms for periodically reviewing the regulations and performance indicators should be identified.*

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## Appendix 1 – Seveso Industry Type & Prevalence

