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The Town and Country Planning (Miscellaneous Amendment) (Scotland) Regulations 2022

Thank you for your letter of 4 November 2022, in relation to the above Scottish Statutory Instrument (SSI).

This anomaly came to light in 2015 following the coming into force of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 (“the 2015 Regulations”). My officials have since been in dialogue with the UK Government, the devolved administrations and the Health and safety Executive (HSE) as to the need for – and potential effect of – an amendment to the 2015 regulations to clarify this technical matter.

As to potential impact, the Committee may wish to note that the Directive requires management of on-site risks at establishments with hazardous substances. This is provided by the Control of Major Accident Hazards Regulations 2015 (The COMAH Regulations). Both the COMAH Regulations and the 2015 Regulations copy out from the Directive the tables and notes defining substances and their controlled quantities. The wording in the Directive’s notes as regards the addition rule works for the COMAH Regulations – i.e. at establishments where no substance is present at or above its controlled quantity, then where other substances present share risk characteristics with each other (are in the same hazard group), the addition rule applies to those other substances. This, where appropriate, would trigger the requirements of the COMAH Regulations to an establishment and its substances despite no substance being present at or above its controlled quantity.

From discussions with HSE, despite the wording in the notes in the Directive and the COMAH Regulations, hazardous substances consent controls should apply to substances to which the addition rule would apply even where an establishment had another substance(s) at or above their controlled quantity which would need such consent. This is to allow specific consideration of any off-site risks in the event of an accident involving those substances to

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which the addition rule applies. It is, therefore, prudent to implement the SSI to ensure there is clarity and certainty within the 2015 Regulations about how quantities of hazardous substances are calculated and controlled.

The fact that such establishments, and the substances present, would be in the COMAH regime for on-site risk management, and that such sites would require at least one hazardous substances consent under the 2015 Regulations, would in practice have reduced any risk where the addition rule in the 2015 Regulations was not being applied.

The Scottish Government is not aware that this inconsistency has had any practical impact since 2015. The Committee may also wish to note that no substantive comments were raised as a result of targeted engagement with key stakeholders carried out earlier this year to inform them of the forthcoming change

I trust this response is helpful.

TOM ARTHUR

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