



Comhairle Chathair  
Dhoire & Cheantar  
an tSratha Báin

Derry Cittie & Strabane  
District Council

# LOCAL DEVELOPMENT PLAN (LDP) 2032



**Development Management Advice Note (DMAN) 12 – Planning Control for Hazardous Substances**  
**DRAFT SPG - August 2025**

<https://www.derrystrabane.com/subsites/ldp>



## **DERRY CITY AND STRABANE DISTRICT COUNCIL**

### **LOCAL DEVELOPMENT PLAN (LDP) 2032**



### **Supplementary Planning Guidance (SPG)**

### **Development Management Advice Note (DMAN 12) –**

### **Planning Control for Hazardous Substances**

### **DRAFT – August 2025**



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## **1. Introduction**

- 1.1. This guidance has been produced to supplement policies of the Derry City and Strabane District Council (DCSDC) Local Development Plan (LDP) Plan Strategy 2032. This SPG is part of a suite of Supplementary Planning Guidance (SPG). It applies to the Derry City and Strabane District Council area and is intended for use by developers, agents, the public and by planning officers in the preparation and assessment of relevant applications. This advice deals with the planning issues that arise concerning applications relating to hazardous substances. It will give general guidance on hazardous substances controls contained in the Planning (NI) Order 1991 and the requirements to obtain Hazardous Substances Consent.
- 1.2. DMANs represent non-statutory Supplementary Planning Guidance (SPG) that support, clarifies and/or illustrate by example the policies included within the current Planning policy framework, including development plans and regional planning guidance. The information set out in this DMAN should therefore be read in conjunction with the existing Planning policy framework, most notably the Strategic Planning Policy Statement (SPPS) for Northern Ireland and the DCSDC LDP Plan Strategy 2032. It should also be read as complementary to other regionally-retained or emergent SPG, including Development Management Practice Note 6: Hazardous Substance Controls; see: [www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-6-hazardous-substances-controls-v1-feb-2017\\_0.pdf](http://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-6-hazardous-substances-controls-v1-feb-2017_0.pdf)
- 1.3. It should be noted that this SPG is an updated and District-specific replacement for the current DCAN 12: Planning Control for Hazardous Substances, that DFI considers to be 'regional in focus and will be retained unless and until replaced by the Department'; see: <https://www.infrastructure-ni.gov.uk/articles/update-extant-planning-guidance-prepared-doe> Specifically, DCAN 12 was first prepared in 1993 and then updated following the EU Directive and the introduction of the Planning (Control of Major-Accident Hazards) Regulations (NI) 2000. This Council SPG therefore provides updates to include the RDS, the SPPS, the 2011 Planning Act, the Planning (Hazardous Substances) Regulations (NI) 2015, the transfer of planning powers to the Council in 2015 and also the adoption of the Council's own Local Development Plan – LDP 2032.

## **2. Policy Context**

### Regional Planning Policy and Guidance

#### **Regional Development Strategy (RDS) 2035**

- 2.1 The Regional Development Strategy (RDS) 2035 provides an overarching strategic planning framework to facilitate and guide the public and private sectors. It contains regional policy and guidance to provide policy direction in relation to the economy, society and environment and guidance tailored to each component of spatial planning framework. It sets the context in which to make policy and development decisions to achieve sustainable development throughout the region.



### **Strategic Planning Policy Statement (SPPS) for Northern Ireland (2015)**

- 2.2 The Strategic Planning Policy Statement (SPPS) identifies core principles to inform plan-making and decision-taking. It sets out that development for the storage of Hazardous Substances is not a permitted exception in respect of the Flood Risk section of the SPPS.

#### Legislation

#### **Seveso III Directive**

- 2.3 Directive 2012/18/EC, commonly referred to as the Seveso III Directive, came into force on 1<sup>st</sup> June 2015 and is the current European Directive dealing with the control of major-accident hazards involving dangerous substances. It sets the parameters for land use Planning which are intended to prevent major accidents and must be applied in the same way in all member states.
- 2.4 The Planning (Hazardous Substances) (No. 2) Regulations (NI) 2015 (Hazardous Substances Regulations) details the provisions required under the 2011 Act for implementing the European Union (EU) Directive in Northern Ireland; they cover:
- Advice on the meaning and correct use of various aspects of the assessment;
  - What is a hazardous substance;
  - When is a Consent required;
  - The assessment of major-accident hazards;
  - Notifications of major-accident hazards;
  - The implications for land-use Planning;
  - Appeal mechanisms; and
  - Public participation in the process

See: <https://www.legislation.gov.uk/nisr/2015/344/regulation/11>

#### **The COMAH Directive**

- 2.5 The Control of Major Accident Hazards Regulations (NI) 2015 (COMAH Regulations) covers all but the land use Planning aspects of the Seveso III Directive. It is administered jointly by the Health and Safety Executive for Northern Ireland (HSENI) and the Northern Ireland Environment Agency (NIEA). The Directive sets out two levels of qualifying quantities for substances, upper and lower tiers. Additional requirements apply under the COMAH Regulations for upper tier sites as per the Directive.
- 2.6 The COMAH Directive has been implemented in Northern Ireland by The Control of Major Accident Hazard Regulations (NI) 2015. These regulations place a duty on operators who are subject to the regulations to notify whichever competent authority is the body responsible for enforcing the regulations, of their activities. For all hazardous substances including explosives, the competent authority will be the Health & Safety Executive for Northern Ireland (HSENI) and the Northern Ireland Environmental Agency (NIEA).



## **Local Planning Policy**

### **LDP Plan Strategy**

- 2.7 The LDP 2032 Plan Strategy (PS) provides the strategic planning policy framework for the District across a range of topics. It sets out the vision and objectives for this area and strategic planning policies required to deliver the vision. Whilst there is no specific policy for Hazardous Substances, the Council does set out the relevant considerations and objectives in Chapter 33, and General Development Policy GDPOL 1, part xiv, requires that all developments should not have a 'significant adverse impact on human health or the environment by increasing the likelihood of a major accident or significantly increasing the consequences of such accidents'.
- 2.8 In accordance with the requirements of Part 4, Section 14 of The Planning (Local Development Plan) Regulations (NI) 2015, Chapter 33 provides information on Hazardous Substance Consent, COMAH sites and major accidents related to hazardous substances – both in terms of their prevention and the consequences arising from such a circumstance occurring. In addition to the information contained herein, the Council will further meet its obligations under these regulations at Local Policies Plan (LPP) stage, where there will be consideration given to the need to constrain development on land in the vicinity of establishments where hazardous substances are, or may be, present.
- 2.9 The Council's LDP objectives for Hazardous Substances, in accordance with the SPPS, COMAH ( Control of Major Accident Hazards ) directive / Regulations and in consultation with HSENI and NIEA, aims to:
- protect the environment from the adverse effects of hazardous substances;
  - to prevent major accidents which involve dangerous substances; and
  - to limit their consequences for humans and the environment
- 2.10 The LDP Plan Strategy identified that there were currently three COMAH sites within the Derry City & Strabane District, all within Maydown. The businesses on these COMAH sites must ensure that all necessary measures are taken to prevent major accidents involving dangerous substances. They are also required to have controls in place which limit the consequences to people and the environment of any major accidents which occur. Further details on the local COMAH sites can be found in the LDP PS Evidence Base document DS-241 (Section 2) at: [https://www.derrystrabane.com/subsites/ldp/ldp-draft-plan-strategy-\(dps\)/ldp-dps-submission-documents-may-2022](https://www.derrystrabane.com/subsites/ldp/ldp-draft-plan-strategy-(dps)/ldp-dps-submission-documents-may-2022)

### **3. Guide to the Procedures**

#### **Planning Permission for Hazardous Development**

- 3.1 The requirement for Hazardous Substances Consent (HSC) in respect of the presence of a hazardous substance in a controlled amount does not override the need for planning permission if development of land is also involved. This may arise, for instance, where it is proposed to erect buildings for the storage or processing of hazardous substances, or if there is a material change in the use of the land. Where both Planning permission and HSC are required, two separate applications will be necessary and the respective statutory requirements will need to be followed. However, it may not be possible, or practicable, to act upon one authorisation without having the other. As far as possible, related applications for Hazardous Substances Consent and for planning permission will be dealt-with together.
- 3.2 This does not necessarily mean that similar decisions need be given on both applications, as there are likely to be considerations which are material to one application but not to the other. For example, the Council may decide, having considered the potential risks to the local community arising from the proposed presence of a hazardous substance, that there is no good reason for withholding Hazardous Substances Consent. However, in its role as planning authority, the Council may consider that planning permission should be refused for associated development because of a wider planning consideration e.g. the adverse effect of a proposed building on the local scene, or inadequate access arrangements. In such circumstances, it would be perfectly proper for contrasting decisions to be made on the different applications.
- 3.3 HSENI will be consulted, as a statutory consultee, on every application for Hazardous Substances Consent. They have the expertise to assess the risks to nearby residents. NIEA will also be consulted as a statutory consultee, in respect of Hazardous Substances / COMAH sites as they have the expertise to assess risks to the environment.

#### **Hazardous Substances Consent (HSC)**

- 3.4 Hazardous Substances Consent is required for the presence of a hazardous substance on, over or under land unless the aggregate quantity of the substance(s) present is less than the controlled quantity for that substance (Section 108, Planning Act (NI) 2011).
- 3.5 In determining the aggregate quantity of the substance present on land, account is also to be taken of the amount of any hazardous substance(s) held on, over or under other land (or in or on any part of a structure) which is controlled by the same person and which, taken together, are considered by the site operator to comprise a single 'establishment'. Section 108 (1)(b), (c) and (d) refer specifically to other land or structures which are within 500 metres of the land which is the subject of the

application for Consent, and which must always be included in any calculation to establish the aggregate quantity present. However, there is in fact no theoretical limit to the distance which may exist between areas of land which may be considered to constitute a single 'establishment'. In most cases, it should be clear what constitutes the 'establishment'.

- 3.6 The person in control of the land may not necessarily be the same person as the legal owner. For example, two adjoining sites may be under the ownership of two different companies but both may be controlled by the same parent company which is in effective control of operations on both sides; or a site may effectively be under the control of a tenant rather than the landowner.

#### Hazardous Substances and Controlled Quantities

- 3.7 The list of substances and controlled quantities for which Hazardous Substances Consent is required is given in Schedule 2 of The Planning (Hazardous Substances) Regulations (NI) 2015. Hazardous substances are listed in Column 1 of the Schedule and the relevant controlled quantity is listed in Column 2.
- 3.8 The Schedule is in three parts. Part 1 comprises categories of hazardous substances and controlled quantities, Part 2 applies to named substances and controlled quantities and Part 3 relates to substances used in processes.
- 3.9 Part 1 includes all of the categories of hazardous substances specified in Part 1 of the COMAH Regulations (NI) 2015. The controlled quantities which apply are the lower qualifying quantities specified in the COMAH Directive for these categories of substances. Hazardous substances which were formerly subject to Consent at controlled quantities equal to or greater than the relevant qualifying threshold from the COMAH Regulations are included here.
- 3.10 The substances included in Part 2 comprise all of the named substances from Schedule 1 Part 2 of the COMAH Regulations (NI) 2015. The controlled quantity is the quantity specified in Schedule 2 of the Hazardous Substances Regulations at or above which HSC is required, subject to any relevant exemption detailed in Regulation 4. Where a substance named in Part 2 to Schedule 2 to the Hazardous Substances Regulations also falls into a category of hazardous substances in Part 1 to Schedule 2, the controlled quantity in Part 2 must be used to determine if HSC is required. For example, chlorine is a named substance in Part 2 to Schedule 2 with a controlled quantity of 10 tonnes. It also falls within the Part 1 categorisation of substances H2 Acute Toxic and E1 Hazardous to the Aquatic Environment, which has a controlled quantity of 50 and 100 tonnes, respectively. In these circumstances the controlled quantity will always be the controlled quantity denoted in Part 2 Column 2 to Schedule 2 i.e. 10 tonnes in the case of the example.
- 3.11 In circumstances where the substance is not named and it falls into more than one of the categories in Part 1 to Schedule 2, the lowest controlled quantity will apply.



- 3.12 Part 3 to Schedule 2 deals with the situation where hazardous substances may be present in a quantity at or above controlled quantities only as a result of a loss of control of an industrial chemical process (including storage activities). Part 3 Column 1 relates to where it is reasonable to foresee that a substance falling within Part 1 or Part 2 may be generated during a loss of control. It may be difficult to predict the type and quantity of substance which may be generated; however, it is important that they attempt to do so and obtain necessary Consent.
- 3.13 This may, for example, apply to substances W, X and Y where, under normal controlled operating processes, they are used to produce substance Z. If the substances are not covered in Part 1 or 2 to Schedule 2 or are not present on or above their specified control quantity, then Consent would not be needed. If, however, there is a loss of control of substances W, X and Y and they react differently to produce substance S at a quantity on or above its controlled quantity, then Consent will be required for substances W, X and Y. The requirement is for the site operator to obtain Consent for the presence of the substances which are used in that process. The controlled quantity for a process substance is, therefore, the quantity whose presence alone or in combination with other substances used in the process, might lead to a substance within a category in Part 1 or named in Part 2 to Schedule 2 being generated at a quantity at or greater than its controlled quantity.
- 3.14 It is not intended that the Council should grant Consent for substances generated during a loss of control of the industrial chemical process. However, there will be a requirement for the operator to obtain a Consent for the presence of the substance(s) which, in the event of a loss of control, would result in such substances and quantities being generated. To use the example above, a Consent would be required for substances W, X and Y. The controlled quantity for these substances will be the quantity of those substances whose presence might lead to substance S being generated at a quantity equal to or greater than its controlled quantity. It is accepted that it may be difficult for operators accurately to predict the type and quantity of substance which may be generated in the event of a loss of control of an industrial chemical process. But nonetheless it is important that they attempt to do so and, as necessary, obtain a Consent.

#### Aggregate Quantities

- 3.15 Consent is always required when the aggregate quantity of a hazardous substance is present in an amount equal to or greater than its controlled quantity. However, a Consent may also be required even though the amount present is below the controlled quantity for that substance or category of substance. To ensure compliance with the COMAH Directive, the aggregation of all specified hazardous substances present at an establishment in amounts less than the controlled quantity for the individual substances or categories of substances, must be taken into account in determining

whether a Consent is required for some or all of them. (See Note 4 in Part 4 to Schedule 2).

- 3.16 To establish whether a Consent is required in these circumstances, hazardous substances present in amounts less than their controlled quantities will be added together according to an addition rule (Note 5 in Part 4 to Schedule 2). This involves expressing hazardous substances with similar hazards present as partial fractions of the controlled quantities and adding them together. The hazards are grouped into health hazards, physical hazards and environmental hazards and the addition rule must be used to assess each of these hazards. Only substances with similar properties should, therefore, be aggregated, so toxic substances (Health) would not be aggregated with flammable substances (Physical). One substance may be included in more than one calculation if it has multiple hazard properties, for example, a toxic substance with Health and Environmental hazard properties. If the sum is 1 (one) or greater, then Consent is required for each of the substances which have been included in the calculation.
- 3.17 If a substance is named in Part 2 to Schedule 2, then the quantity in Column 2 of Part 2 should be used. For those substances marked with an asterisk (Hydrogen, Natural Gas (including LNG) and LPG), the controlled quantities specified in Note 5 in Part 4 to Schedule 2 should be used as they reflect the lower controlled quantities adopted by the UK for these substances.
- 3.18 Examples of the addition rule are set out below;

Substance/Category	Amount Present	Controlled Quantity <sup>22</sup>	Fraction
Bromine	15 Tonnes	20 Tonnes	15/20
Chlorine	3 Tonnes	10 Tonnes	3/10
Ethylene oxide	2 Tonnes	5 Tonnes	2/5
Propylene oxide	1 Tonnes	5 Tonnes	2/5
H1 acute oxide	1 Tonnes	5 Tonnes	1/5
H2 acute toxic	5 Tonnes	50 Tonnes	5/50
P8 oxidising liquids and solids	3 Tonnes	50 Tonnes	3/50

None of these substances are present in amounts equal to or greater than its individual controlled quantity. However, substances that have similar hazard characteristics have to be considered together under the addition rule.

Bromine, chlorine and the acute toxic substances (H1 and H2) have similar characteristics (Part 1, Section H – Health Hazards) and, therefore, have to be added together. Expressed as fractions of their controlled quantities the sum is:

$$15/20 + 3/10 + 1/5 + 5/50 = 0.75 + 0.30 + 0.20 + 0.10 = 1.35$$

The sum of these fractions is greater than 1, so for each of these four substances a HSC would be required. Any Consent granted by the Council will be in respect of the amount of the hazardous substance present.

Ethylene oxide, propylene oxide and the oxidising substance also have common characteristics (Part 1, Section P Physical Hazards).

They all have physical hazards. Expressed as fractions the addition is:

$$3/50 + 1/5 + 1/5 = 0.06 + 0.2 + 0.20 = 0.46$$

Since the sum is less than 1, there is no need for a Consent for any of these three substances.

#### Applying for Hazardous Substances Consent

- 3.19 Applications will be made to the Derry City and Strabane District Council. An application for Consent has to be made on an Hazardous Substances Consent form (form HSC) which is available on the [Planning portal](#).

#### Determination of Applications by the Council

- 3.20 Under Regulation 13 of the Planning (Hazardous Substances) Regulations (NI) 2015, the Council has 8 weeks from receipt of a valid application to determine it, or give notice that the application has been referred to the Department under section 114 (call in of certain applications for Hazardous Substances Consent to Department).
- 3.21 Before determining an application, the Council is required by Regulation 11 to consult the Department of Agriculture, Environment and Rural Affairs (DAERA), the Health and Safety Executive for Northern Ireland and the Northern Ireland Fire and Rescue Service. The Council will also consult NIEA in respect of COMAH sites, and any other relevant parties. The Council must give consultees not less than 28 days to comment.
- 3.22 The role of HSENI and NIEA is to advise the Council on the risks arising from the presence of hazardous substances. HSENI has the expertise to assess the risks arising to persons in the vicinity from the presence of a hazardous substance; NIEA has the expertise to assess and advise upon the likely risks arising to the environment.
- 3.23 Where an application relates to more than one substance, the Council (planning authority) may make different determinations in relation to each substance (section 110 (3) of the Planning Act (NI) 2011).

- 3.24 When granting Consent, the Council is required to describe the land to which the Consent relates and the substance(s) to which it relates; and to state, in relation to each substance, the maximum quantity of each that may be present at any one time (section 110 (4) of the Planning Act (NI) 2011). Without prejudice to the Council's general power to impose conditions (section 110 (1)), particular provision is made about the conditions that may be imposed (section 110 (5)). It should be noted that any condition relating to how a hazardous substance is to be kept or used may be imposed only if HSENI have advised that any Consent should be subject to such condition(s).

#### Local Development Plan (LDP)

- 3.25 In accordance with the requirements of Part 4, Section 14 of The Planning (Local Development Plan) Regulations (NI) 2015, Chapter 33 of the Council's LDP Plan Strategy provides information on Hazardous Substance Consent, COMAH sites and major accidents related to hazardous substances – both in terms of prevention of major accidents and of limiting the consequences arising from such a circumstance occurring for people and the environment. General Development Policy GDPOL 1, part xiv, requires that all developments should not have a 'significant adverse impact on human health or the environment by increasing the likelihood of a major accident or significantly increasing the consequences of such accidents'. The Council will take into account the siting of establishments where hazardous substances are used or stored, and the development of land within the vicinity of establishments where hazardous substances are, or may be, present.

#### Appeals

- 3.26 Where the Council has determined an HSC, section 115 of the 2011 Act provides a right of appeal to the Planning Appeals Commission (PAC). The applicant may appeal to the PAC regarding a HSC decision, which refuses consent or imposes conditions, which the applicant feels are unnecessary or unwarranted. A request to the PAC must be made in writing and within 4 months from the date of notification of the decision.

The address of the Planning Appeals Commission is: <https://www.pacni.gov.uk/> or 92 Ann Street, Belfast, BT1 3HH.

#### **4. Variation and Revocation of Consents**

Grant of Hazardous Substances Consent without compliance with conditions previously attached (Section 111); or to continue a Consent after change in control of part of the land (Section 116)

- 4.1 Section 111 of the Planning Act 2011 relates to applications for the removal of a condition (or conditions) attached to a previous grant of HSC. Such applications may be made either before or after the original Consent is implemented. For example,



Consent may have been given subject to a condition restricting the storage of a substance to a particular location and it may be desired later on to relocate; or a condition may require the removal of a substance by a certain date and the applicant may subsequently have good reason for continuing to use that substance after that date. In considering such an application, the Council can only consider the conditions - it cannot overturn the original decision. Thus, an operator can apply for a condition to be varied or removed without calling the principle of the Consent into question. If the Council decides that the condition(s) to which the Consent is subject should be varied or removed altogether, it must grant a new Consent accordingly. Where it decides that the condition(s) attaching to the Consent should not be changed, the application will be refused, but the original Consent remains.

- 4.2 By virtue of Section 111 (4) of the Planning Act (NI) 2011, where there is Consent for more than one substance, the Council may only have regard to a condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate. An example may be where a condition relates to the location of another substance on a site and it is desirable to ensure that the two substances are kept apart. A similar situation arises under Section 111(5) where there is more than one Consent available in respect of the same land.
- 4.3 A HSC goes with the identified land. However, provision is also made to take account of changes in the ownership of the land. Section 116(2) of the 2011 Act denotes that a Consent will cease to have effect if there is a change of control of part of the land to which it relates, unless an application for the continuation of the Consent has previously been made to the Council. Under section 116(5), the Council may modify the Consent in a way it considers appropriate or revoke it. In considering such an application, the Council must in accordance with section 116(6) consider the provisions of section 110(2) and any advice given by HSENI. The provisions do not apply to a transfer of land from one part of the Crown to another (section 116(4)).
- 4.4 Regulation 5(3) of the Hazardous Substances Regulations requires that all applications for the continuation of Consent, following a change in control of part of the land, must be made to the Council. Regulation 5(3)(b)–(i) sets out the required information needed to be submitted in support of a change of control application. Regulation 5(3)(c) specifically requires a change of control plan which is defined in regulation 5(4) as a plan of the land to which the application relates drawn to a scale not less than 1:1250, which identifies each area of the site under separate control after the proposed change of control.
- 4.5 Applications to be determined under Section 111 or 116 of the Planning Act 2011 will be made on an HSC form, ticking the relevant type of Consent required under Section C - Hazardous Substances Details. Although a Consent or deemed Consent will already have been granted in these cases, they could give rise to issues of no less significance than new applications for Consent. Therefore, the same publicity

(advertisement by the Council) and consultation procedures as for applications for a new Consent will apply.

#### Revocation or Modification of Hazardous Substances Consent

- 4.6 Section 112 of the Planning Act (NI) 2011 gives the Council the power to make an order revoking or modifying a Hazardous Substances Consent. Whereas paragraph (3) gives a general power to the Council to revoke or modify a Consent where it considers it expedient to do so, paragraphs (1) and (2) set out particular circumstances in which a Consent may be revoked. An important distinction is that with orders made under paragraph (3) (but not orders made under paragraphs (1) and (2)) a person suffering damage as a result is entitled to compensation in the circumstances described at Section 184 of the Planning Act (NI) 2011.
- 4.7 As with Planning permission, HSC provides an entitlement that runs with the land. As a general principle, it is considered that compensation should normally be payable when loss or damage results from a revocation or modification. However, it may be undesirable for a HSC to continue to have effect when it has fallen into disuse, as it could restrict unnecessarily the uses to which neighbouring land can be put. Moreover, a HSC given for the presence of a substance in connection with a particular use of land may not necessarily be apt in respect of some other use. It may therefore be undesirable for a HSC to continue to have effect when there is a material change in the use of the land. Therefore, the general effect of Section 112 (1) and (2) is that where a Consent has not been relied on for 5 years, or the use of the land has changed materially since the Consent was granted, the Consent may be revoked without compensation being payable. The requirement in paragraph (4) for an order to specify the grounds on which it is made will enable a potential claimant to know whether the revocation or modification is one in relation to which compensation may be payable.
- 4.8 Section 113 (3) requires the Council to serve notice of an order on any person who is an owner, occupier or lessee of the land or any other person it considers will be affected. Those served with the notice must be given at least 28 days in which they can request a hearing by the Planning Appeals Commission.

### **5. Fees for Hazardous Substances Consent Applications**

- 5.1 An application for Hazardous Substances Consent must be accompanied by an appropriate fee payment. These are set out in Schedule 2 of the Planning (Fees) Regulations (NI) 2015. The fees should enable recovery of the Council's normal administration costs in handling Consent applications. The level of fees will be reviewed regularly with this objective in mind. Please also refer Planning [fees - explanatory note for applicants 2025](#) which has the most up to date fees to date.
- 5.2 For applications for a Consent up to but not exceeding twice the controlled quantity of a substance, there is a certain fee. For proposals for Consent which exceeds twice the

controlled quantity, there is a higher fee. This is based on the premise that, by and large, the more a proposal exceeds the controlled quantity, the greater the off-site risk that could arise, and more careful consideration is therefore likely to be necessary. For applications for removal of conditions and continuation of Consent where HSC already exists a flat rate applies. A fee shall be payable to the Council in respect of an application for the continuation of Hazardous Substances Consent under section 116 of the 2011 Act. The scale of fees will be reviewed from time to time, as other Planning fees are reviewed.

## **6. Registers of Applications and Consents**

- 6.1 Section 242(1)(a) of the 2011 Act requires the Council to keep a register or registers of any permission, consent or approval. This will include HSC and section 242(3) requires that such a register is available to the public at all reasonable hours. A HSC register will, however, contain details of potentially hazardous substances with a substantive threat to human health.

## **7. Health and Safety Requirements**

- 7.1 By virtue of Section 119 of the Planning Act (NI) 2011, no Hazardous Substances Consent or Contravention Notice may require or allow anything to be done in contravention of any of the 'relevant statutory provisions' or any prohibition notice or improvement notice served under or by virtue of any of those provisions. To the extent that such a Consent or notice purports to require or allow any such thing to be done, it will be void; and it will need to be revoked or modified to render it wholly operative.
- 7.2 The "relevant statutory provisions", 'improvement notice' and 'prohibition notice' are given the same meaning as in the Health and Safety at Work (NI) Order 1978. Both the NIHHS and COMAH Regulations are "relevant statutory provisions".

## **8. Exemptions from Hazardous Substances Consent Requirements**

- 8.1 Section 4 of the Planning (Hazardous Substances) (NI) Regulations 2015 sets out circumstances in which Hazardous Substances Consent is not required, as exceptions to normal requirements.

### **Temporary presence during transportation**

Section 108 (3) of the Planning Act provides that the temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account (for Consent purposes) unless -

- i) it is unloaded; or,

- ii) it is present on, over or under land in respect of which there is a Hazardous Substances Consent for any substance, or in respect of which (not taking account of the substance being transported) there is required to be such a Consent for any substance.
- 8.2 The effect of this is that the temporary presence of hazardous substances at a site should not by itself be sufficient to require a Hazardous Substances Consent, if, excluding the substances held only on a temporary basis, no other substances are present at the site in quantities which require, or as a result of the addition rule, combine to require a Hazardous Substances Consent. However, where a Consent is required for the presence at a site of any hazardous substance (excluding substances being transported) then those substances present on a temporary basis inside the site will also have to be taken into account in calculating the quantity of the substances present at the site.
- 8.3 The term “temporary presence” is not defined in the Planning Act. The question of whether a vehicle’s presence is temporary or not will be a matter of fact and degree, depending on the particular circumstances. The Council may reach the view, for example, that a controlled quantity of a substance has been kept on a vehicle for a sufficiently long period in one particular place for it to amount to a storage use which is outside the purpose of this exemption. Judgement may also be required in considering whether a substance has been “unloaded”. Only the Courts can give an authoritative interpretation of the law on this point. However, the view is taken that unloading will have taken place when a vehicle is divested of its load, even if the substance remains in a container or packaging.
- 8.4 The exemption in Regulation 4 (1) complements that in Section 108 of the Planning Act, by dealing with the situation where a hazardous substance has been unloaded while it is being transported from one place to another. This is intended to cover the situation where a substance has been taken off one vehicle or vessel for the express purpose of transferring it to another. As with the Section 108 (3) exemption, it will be a matter of judgement as to whether the presence is a temporary one. Moreover, there should be a clear intention to transfer the substance to another means of transport (as may be illustrated, for instance, by a transportation contract) as distinct from the situation where a substance has effectively gone into storage.

#### Gas Pipelines

- 8.5 The Hazardous Substances Consent system does not apply to controlling the presence of substances in gas pipelines. Instead, existing controls relating to such pipelines, as set out in the Gas (NI) Order 1996 and the Pipelines Safety Regulations (NI) 1972 will continue to be relied upon. However, substances contained in that part of a pipeline which is on, over or under the site to or from which it leads should be aggregated with other substances on the site for control purposes, because they should be regarded as part of the overall inventory of substances on that site. Similar considerations apply where a pipeline is wholly within a site. In the case of a gas



undertaker's supply pipelines, however, it is considered that it would be impracticable to take account of the gas in a service pipe connected to a consumer's premises. Appropriate exemptions to cover substances in a service pipe or in a pipeline outside of a site to which it has an outlet or inlet are contained at regulation 4(3) of the Regulations.

### Maritime Emergencies

- 8.6 The situation may arise where a ship or other sea-going craft containing a hazardous substance is allowed to enter a harbour in a dangerous condition or where, in the interests of health or safety, the harbour master waives the usual requirements for advance notice. The substance may need to be removed and stored as a matter of urgency. To cater for this, regulation 4(4) of the Regulations exempts from Hazardous Substances Consent requirements for the storage of a substance removed from such a vessel, for a period of up to 14 days from when it is unloaded. This will allow time for suitable alternative storage arrangements to be made, if necessary.

### Waste Landfill Sites

- 8.7 Regulation 4(6) of the Regulations exempts hazardous substances present at waste landfill sites (for the purposes of disposal to waste landfill) from the Consent procedures. The presence of such substances may of course be subject to controls exercised through the waste management licensing system to be introduced by the DAERA Waste Management Team. The exemption does not apply to wastes being disposed of by means of incineration.

### Hazards Created by Ionising Radiation

- 8.8 The Consent procedure does not apply to the presence of a hazardous substance which creates hazards from ionising radiation if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes of Section 1 of the Nuclear Installations Act 1965. Substances present at such nuclear sites which emit ionising radiation and are also capable of falling within one of the categories of substances in Part B of Schedule 1 are exempt from the Consent procedure. However, hazardous substances present at sites licensed under the Nuclear Installations Act 1965 which do not create a hazard through ionising radiation will be subject to Consent if they exceed the controlled quantities – see regulation 4(8) of the Regulations.

### Explosives

- 8.9 Explosives present at factories and magazines controlled by licences issued by the Secretary of State in accordance with the provisions of the Explosives Act 1875 are not included in the list of hazardous substances in Schedule 1. Similarly, explosives

present at ports which are controlled by licences issued by the Secretary of State under the Explosives Acts 1875 - 1970 are excluded from the list.

#### Exemption for Small Quantities of Hazardous Substances ("2% Rule")

- 8.10 Regulation 4(16) of the Planning (Hazardous Substances) (NI) Regulations 2015 provides an exemption under which small quantities of a hazardous substance may be disregarded when calculating the quantity of hazardous substances present at a site. Amounts not exceeding 2% of the relevant controlled quantity of a substance may be disregarded if their location at the site is such that they cannot act as an initiator of a major accident elsewhere on the site. The responsibility for determining whether such small quantities of hazardous substances are in a location which cannot act as an initiator of a major accident elsewhere on a site is, in the first instance, for the site operator. In doing so, they should take into account their responsibilities under the management of Health and Safety at Work Regulations. These Regulations require risk assessments to be made of the danger arising from the presence of these substances at the site and for the risk assessments to be submitted to HSENI. Site visits by HSENI inspectors will seek to ensure the exemption is not being abused.
- 8.11 This exemption does not apply to Chlorine, pressurised LPG, Hydrogen selenide or Selenium hexafluoride (substances numbered 6, 14, 35 and 39 in Part A of Schedule 3). The storage of Chlorine and pressurised LPG, even in such small amounts as 2% of their controlled quantities, is considered by HSENI always to present a significant off-site risk. For both Hydrogen selenide and Selenium hexafluoride, the controlled quantity at which a Hazardous Substances Consent is required is 1 tonne. This is the amount which applying the 2% rule to these substances would allow to be disregarded. Therefore, to maintain existing health and safety standards, it has been decided this exemption should not apply to these substances.

#### Emergencies

- 8.12 Section 118 of the Planning Act (NI) 2011 enables the Council to override hazardous substances control in cases of emergency. Where it is considered necessary for the provision of essential services or commodities for a hazardous substance to be present on, over or under land - in circumstances where Consent would be required – the Council may make a direction that the presence of that substance does not constitute a contravention of hazardous substances control. Such a direction, which may be subject to conditions or exceptions, will be valid for a maximum of three months but may be withdrawn at any time, or renewed. The HSENI, Environment and Heritage Service and District Council will normally be consulted before these powers are used.

#### Crown Land

- 8.13 Like Planning control, hazardous substances control does not apply to the Crown. However, where a Crown body wishes to keep or use a hazardous substance in circumstances which would otherwise have required Hazardous Substances Consent, similar procedures to those pertaining to a HSC application should be followed, but on a non-statutory basis.



- 8.14 The Council may, under Section 217 of the Planning Act (NI) 2011, grant Hazardous Substances Consent in respect of Crown land in anticipation of its disposal. Any Consent granted under this section applies only to the presence of a substance after the land has ceased to be Crown land; or, for so long as it continues to be Crown land, to the presence of a substance by virtue of a private interest in the land.

## **9. Enforcement**

- 9.1 Contravention of hazardous substances control is an offence under Section 117 of the Planning Act (NI) 2011 and under Section 162 of the Planning Act the Council may deal with any contravention of controls by the issue of a Hazardous Substances Contravention Notice.
- 9.2 The procedures for issuing and bringing into effect such notices follow closely those applying to Planning Enforcement Notices. The provisions of Section 138 - 152 of the Planning Act (NI) 2011 relate to Enforcement Notices and appeals have been applied with modifications to hazardous substances – see part 5 of the Planning (Hazardous Substances) Regulations (NI) 2015.