

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (FEES) REGULATIONS
(NORTHERN IRELAND) 2012

S.R. 2012 No. 255

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and Articles 40(2) and (4), 49 and 55(2) of the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”) and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 30 July 2012.

2. Purpose

- 2.1 The Statutory Rule will effect an up-rating of health and safety fees by revoking and replacing the Health and Safety (Fees) Regulations (Northern Ireland) 2010 (S.R. 2010 No.60) (“the 2010 Regulations”).
- 2.2 The Rule will revoke and re-enact current fee setting provisions in nearly all of fixed-fee cases with increased rates. The level of fees is intended to ensure that, so far as possible, full cost recovery is achieved in respect of the specified statutory functions linked to health and safety.
- 2.3 The Rule will continue to provide a single point of reference for health and safety fees.

3. Background

- 3.1 Article 40(2) of the 1978 Order allows for Regulations to provide for fees, fixed or determined under the Regulations, to be payable for or in connection with the performance by or on behalf of an authority referred to in Article 40(3) (which includes the Health and Safety Executive for Northern Ireland (HSENI)) of any function conferred on that authority by or under any of the relevant statutory provisions.
- 3.2 HSENI’s policy is to charge for a range of activities collectively described as “permissioning” work. This allows the duty holder – for example – to trade in a dangerous substance or carry out work in hazardous conditions, once HSENI is satisfied with the control mechanisms in place.
- 3.3 “Permissioning” activities which are charged for include assessing and accepting safety cases, issuing licences, issuing certificates, granting

approvals, granting exemptions from regulations and accepting notifications.

- 3.4 Guidance contained in “Managing Public Money Northern Ireland” requires recovery for chargeable statutory functions. Fees are reviewed annually with a new set of Regulations created to reflect any changes. HSENI consults on proposed changes each year.

4. Content

4.1 The Statutory Rule fixes or determines the fees payable by an applicant to, in most cases, HSENI, in respect of an application made for: —

- a licence under the Petroleum (Consolidation) Act (Northern Ireland) 1929 (1929 c. 13 (N.I.)) and for the transfer of a licence under the Petroleum (Transfer of Licences) Act (Northern Ireland) 1937 (1937 c. 4 (N.I.));
- a licence under the Control of Asbestos Regulations (Northern Ireland) 2012 (S.R. 2012 No. 179) and for the re-assessment of whether to grant an application for an asbestos licence and for amendments to, and replacements of lost, asbestos licences;
- an approval of a scheme or programme under the Freight Containers (Safety Convention) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 2);

and in respect of—

- a notification or application under the Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2001 (S.R. 2001 No. 295).

4.2 The Rule also: -

- fixes fees to be paid in respect of medical examinations and surveillance by an employment medical adviser, which are required under certain of the relevant statutory provisions;
- fixes or determines the fees payable by specified persons in the offshore and gas industries for the performance by HSENI of the functions specified in those provisions and in relation to general health and safety functions at those sites; and
- fixes or determines fees for work done by HSENI in relation to the enforcement of general health and safety functions conferred by the 1978 Order relating to the transportation of gas through “major accident hazard pipelines”, including where such work is not directly concerned with protecting persons from the risks arising from the manner in which gas is conveyed or used.

5. Consultation

- 5.1 A consultation exercise ran from 16 December 2011 to 23 March 2012. There were approximately 600 consultees, including individuals and

bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues (including each member of the Northern Ireland Assembly).

- 5.2 A total of six replies were received with one substantive comment regarding the increase in fees for asbestos licensing. A reply has been sent to the respondent explaining the rationale behind the increase.

6. Equality Impact

- 6.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

7. Regulatory Impact

- 7.1 The impact on business relates to increased costs to licence holders and the potential for these increases to be reflected in their prices. The impact on charities or voluntary bodies is a potential increase in costs where they are customers of licence holders.
- 7.2 The impact on the public sector is nil as the costs of the schemes will be recovered from industry through the fees.
- 7.3 Fees in relation to asbestos licensing will increase above the rate of inflation. HSENI already recovers its costs of initial assessment and grant of licences under the Control of Asbestos Regulations and now proposes to include annual inspection costs in addition to those which are already charged for. A new flat rate fee of £3,236 will cover the cost of both licensing and annual inspection over a three year period.
- 7.4 The additional annual cost to NI firms is estimated as £29K. In arriving at this figure it is assumed that the number of new and renewal applications, reassessments, amendment of condition or duration of licence and amendment or replacement of a licence remain unchanged from the 2010/11 period.
- 7.5 Competent licensed contractors are normally granted a licence for 3 years. At just over a £1,000 per year for a 3 year licence, assuming the applicant is performing as they should be, the industry should have no great difficulty affording this.
- 7.6 Whilst therefore the proposed increases would have implications for individual licensees, it is considered that, overall, the revised fees would not have a major effect on Northern Ireland industry.

8. Financial Implications

- 8.1 The Statutory Rule will have little effect on business as the fees are increased in line with the rate of inflation and/or are necessary to bring the

fees to full economic cost at current levels. There are no cost implications for HSENI.

8.2 Extra costs will be placed on asbestos licence applicants and holders. All or part of these costs could be passed on to clients, through higher contract prices. The extent to which this will happen will depend on the price elasticity of customers' demand for asbestos licence holders' services.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

10. EU Implications

10.1 None. This Statutory Rule does not implement any European Directives.

11. Parity of Replicatory Measure

11.1 In Great Britain the corresponding Statutory Instrument is the Health and Safety (Fees) Regulations 2010 (S.I. 2010/579), which was made on 2 March 2010 and came into force on 6 April 2010.

11.2 Since the same cost factors generally apply in Northern Ireland, the fees contained in the Northern Ireland Statutory Rule are in the main the same as those already in force in Great Britain.

12. Additional Information

12.1 The Statutory Rule contains a saving provision, at regulation 13(3), specifically to provide that amendments made to the Control of Major Accident Hazards Regulations (Northern Ireland) 2000 (S.R. 2000 No. 93) by regulation 12 of the Health and Safety (Fees) Regulations (Northern Ireland 2009 (S.R. 2009 No. 132) continue to have effect.

Department of Enterprise, Trade and Investment
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