

**EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (FEES) REGULATIONS 2006**

2006 No. 336

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Health and Safety (Fees) Regulations 2006 (“the Fees Regulations”) revoke and replace the Health and Safety (Fees) Regulations 2005 (S.I 2005/676). They update the charges made, mainly by the Health and Safety Executive (“HSE”), for the performance of a wide range of statutory functions in areas such as licensing activities, approving equipment and conducting testing associated with the issue of such approvals. HSE also charges for safety case assessment, inspection and approvals in relation to the “permissioning” regimes (involving HSE assessing and approving safety cases) of on-shore major hazards, gas transportation, offshore oil and gas, and rail sectors.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 In three of the large ‘permissioning’ regimes (Offshore, establishments covered by the Control of Major Accident Hazards Regulations 1999 (“COMAH”) and Gas Transportation) the charge out rate per hour has fallen because of efficiency savings. Some fees have been held constant in money terms. Most increases in fees are in line with inflation. This has been welcomed by the industries concerned.
- 3.2 Increases above inflation continue in two schemes where historically the fees had got out of line with costs. A year on year ‘catch up’ exercise has been underway for five years. Continuing this will allow recovery of full costs as required by HM Treasury guidelines. This has been accepted by the industries. The schemes still in ‘catch-up’ from this exercise are: notifications under the Genetically Modified Organisms (Contained Use) Regulations 2000; and dosimetry services for the purposes of the Ionising Radiations Regulations 1999. The first is expected to reach full cost recovery with a 12% increase in 2006/07. Fees under the Notification of New Substances Regulations 1993 (“NONS”), which were in catch up last year, have overall achieved catch up earlier than expected and no increases are proposed this year.
- 3.3 Two new schemes are entering catch up. An increase of 12% in fees has been proposed for approval work under the Health and Safety (First Aid) Regulations 1981. This is because current estimates suggest a growing

shortfall which cannot be justified. The proposed increase will lead to a full cost recovery in 2009/10.

- 3.4 The fees for licensing and registration of explosives had also become out of line with costs in the past. The Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082) (“MSER”) amended the Health and Safety Fees Regulations 2005 so as to begin a process of catch up, with increases of up to 20%. These changes were explained in the MSER Explanatory Memorandum (which can be found at http://www.opsi.gov.uk/si/em2005/uksiem_20051082_en.pdf). This process is continued with revised fees for 2006/07.
- 3.5 The responsibility for health and safety on the railways is being transferred, by another set of proposed Regulations, from HSE to the Office of the Rail Regulator (“ORR”) and is expected to take place on 1 April 2006. However, a charging provision has been included in these Regulations for fees to HSE in case the transfer is delayed.

4. Legislative Background

- 4.1 The Fees Regulations effect annual changes in fees.

5. Extent

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 The Fees Regulations are made under section 43 of the Health and Safety at Work etc. Act 1974. The Health and Safety Commission’s policy is that HSE should 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 HSE is satisfied with the control mechanisms in place.
- 7.2 “Permissioning” activities which are charged for include:
- a) assessing and accepting safety cases;
 - b) issuing licences;
 - c) issuing certificates;
 - d) granting approvals;

e) granting exemptions from regulations; and

f) accepting notifications.

- 7.3 HM Treasury guidance requires recovery of the full economic cost of performing chargeable statutory functions. Fees in the Fees Regulations are reviewed annually with a new set of Regulations created to reflect any changes.
- 7.4 HSE has developed well established mechanisms (eg charging review groups for the large permissioning Schemes) for consulting/advising duty holders each year about proposed changes in Fees. For the large permissioning schemes (Gas Transportation, Offshore and on-shore major hazard (i.e. COMAH) sites) trade associations were advised in writing of the proposed changes and asked to comment on the changes, which were welcomed by the industry. For rail, where a rate has been set as a contingency, industry was advised of the proposed rate in November.
- 7.5 For first aid HSE officials have been seeking a revised means of “approving” first aid training providers in a way that will remove HSE involvement and thus the need for charges. Informal consultation has taken place with Industry.
- 7.6 For schemes such as those covered by NONS, where no increase is proposed, notification with the relevant industry will take place as usual in February. For asbestos, where there is little or no change, industry has already been advised. For the regime under the MSER the industry was consulted on these changes as part of the package when the new regulations were consulted on as a whole.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument. There is no impact on the private or voluntary sectors as fees are reduced, remain the same, increased for inflation or are in ‘catch up’.
- 8.2 There is no impact on the public sector.

9. Contact

- 9.1 Bill Tomkins at the Health and Safety Executive, Tel: 020 7717 6454 or e-mail: bill.tomkins@hse.gsi.gov.uk, can answer any queries regarding the instrument.