

**EXPLANATORY MEMORANDUM TO**

**THE HEALTH AND SAFETY AND NUCLEAR (FEES) REGULATIONS 2016**

**2016 No. 253**

**AND**

**THE PLANT PROTECTION PRODUCTS (FEES AND CHARGES)**  
**(AMENDMENT) REGULATIONS 2016**

**2016 No. 254**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instruments**

- 2.1 The Health and Safety and Nuclear (Fees) Regulations 2016 (“the Fees Regulations”) revoke and replace the Health and Safety and Nuclear (Fees) Regulations 2015<sup>1</sup>. They increase all of the fees charged by HSE and other licensing authorities<sup>2</sup> by 4 per cent and make a small change to allow HSE to recover costs of legal advice in relation to disputes under its Fee for Intervention (FFI) regime.
- 2.2 The Plant Protection Products (Fees and Charges) (Amendment) Regulations 2016 (“the PPP Fees Regulations”) amend the Plant Protection Products (Fees and Charges) Regulations 2011<sup>3</sup> to increase all fees by 4 per cent.

**3. Matters of special interest to Parliament**

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

- 3.1 The Fees Regulations and the PPP Fees Regulations increase all of the existing fees by 4 per cent from 6 April 2016, in order to recover full costs and are reviewed annually. HSE can currently recover the cost of its staff involved in the FFI dispute process, if the dispute is not upheld. The Fees Regulations will enable HSE to also recover the costs of external counsel as well. All the costs of upheld disputes will continue to fall on HSE, not the dutyholder.

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<sup>1</sup> S.I. 2015 No. 363 <http://www.legislation.gov.uk/uksi/2015/363/contents/made>

<sup>2</sup> Other licensing authorities means the Police, Fire and Rescue Service and Local Authorities, who use the Fees Regulations to recover their costs of licensing and enforcement activity.

<sup>3</sup> S.I. 2011 No. 2312 <http://www.legislation.gov.uk/uksi/2011/2132/contents/made>

### *Other matters of interest to the House of Commons*

- 3.2 As these instruments are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 The Fees Regulations and the PPP Fees Regulations are reviewed annually and are amended or replaced where there have been changes, for example, the revocation of associated secondary legislation or changes in HSE's costs, which necessitates a change in fees.
- 4.2 The Fees Regulations revoke and replace the Health and Safety and Nuclear (Fees) Regulations 2015 ("the 2015 Fees Regulations").
- 4.3 The Fees Regulations also draw upon the powers in the Energy Act 2013 to charge for nuclear fees, as the Office for Nuclear Regulation (ONR) was established with fees charging powers under this Act in 2014.
- 4.4 The PPP Fees Regulations amend the Plant Protection Products (Fees and Charges) Regulations 2011.

#### **5. Extent and Territorial Application**

- 5.1 The extent of these instruments is Great Britain.
- 5.2 The territorial application of these instruments is Great Britain.

#### **6. European Convention on Human Rights**

- 6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

#### **7. Policy background**

##### *What is being done and why*

- 7.1 It is the policy of the Government, HSE and the Office for Nuclear Regulation (ONR) to charge fees for a range of activities described as "permissioning work" in order to recover their costs. This allows the dutyholder, for example, to trade in a hazardous substance or carry out work in hazardous conditions, once HSE/ ONR are satisfied with the control mechanisms in place.
- 7.2 Permissioning activities that are charged for include:
- i) assessing and accepting safety cases;
  - ii) issuing licences;
  - iii) issuing certificates;
  - iv) granting approvals;
  - v) granting exemptions from regulations;
  - vi) accepting notifications.

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2013/32/contents/enacted/data.htm>

- 7.3 The charges set out in these Regulations are reviewed annually with the fees charged being amended as appropriate. HSE's policy objective is to set fees to recover the full costs of its regulatory activities where it has been determined that the costs of those services should be passed to the recipient of the service.
- 7.4 HSE delivered a 40% real term reduction<sup>5</sup> in its government funding under the Spending Review 2010 (2011/12 to 2014/15) and reduced fees and charges rates by 5% in real terms across this period, which means HSE rates have been frozen since 2011/12.
- 7.5 HSE's main cost recovery regimes have shown deficits in the last two years. Whilst the appropriate level of regulatory activity has been relatively stable, pay costs (the largest element of the rates) for the specialist staff required to deliver these functions has increased significantly to support recruitment and retention in very competitive markets. It has not been possible to fully offset the impact of these increases on the rates through operating efficiencies and other cost economies. In addition to inflationary pressures for 2016/17, there will also be increased employer national insurance costs (1.8% of pay bill) from April 2016, following removal of the 3.4% National Insurance rebate resulting from changes to the State Pension.
- 7.6 HSE introduced FFI in October 2012 and has always had a proportionate dispute process. An independent review of FFI<sup>6</sup>(which included consultation with businesses) concluded that, although unpopular with some stakeholders, FFI has proven effective in achieving the overarching policy aim of shifting the cost of health and safety regulation from the public purse to those businesses that break health and safety laws.
- 7.7 While the review was broadly content with the operation of the scheme, there have been a small number of appeals on the process, and HSE is considering how best to provide greater transparency and independence to the disputes process. This may increase the likelihood that HSE will need to appoint external counsel to advise it in disputed cases. HSE can currently recover the cost of its staff involved in the dispute process, if the dispute is not upheld. The Fees Regulations will allow HSE to also recover the costs of external counsel. All the costs of upheld disputes will continue to fall on HSE, not the dutyholder.

### *Consolidation*

- 7.8 A fundamental review of cost recovery by HSE during 2016-17 will determine whether HSE's Fees and Charges Statutory Instruments are consolidated in the future.

## **8. Consultation outcome**

- 8.1 Informal consultations with industry stakeholders, for example Cost Recovery Review Groups, highlighted that the increase was generally considered reasonable in light of the financial pressures, accepting that an increase in rates would not be popular. Industry groups made some suggestions about

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<sup>5</sup> <http://www.hse.gov.uk/aboutus/reports/ara-2014-15.pdf#page=41>

<sup>6</sup> <http://www.hse.gov.uk/fee-for-intervention/independent-ffi-review-panel-final-report-2014.pdf>

alternative models of charging and would generally welcome greater certainty about the level of costs that businesses can expect in advance of each year. These concerns will be considered as part of an ongoing fundamental review of cost recovery by HSE.

- 8.2 No changes to nuclear fees levels are introduced in these Regulations, and industry consultation has been deemed unnecessary, as ONR will conduct a thorough review of these fees next year.

## **9. Guidance**

- 9.1 HSE's website provides guidance on all fees and charges, as well as the relevant disputes procedures.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is £0.4million per annum.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 HSE's policy is to recover the full cost of services it provides. HSE is concerned with securing the health, safety and welfare of persons at work. This includes protecting the public against risks to their health or safety arising out of or in connection with the activities of persons at work. In general, the standards and behaviours at work required by law are the same regardless of the size of a business.
- 11.3 It would be inappropriate to treat small businesses differently in these circumstances and HSE calculates fees and charges that are commensurate with the level of work involved. This includes hourly rates, where appropriate which mean that the total sum charged often depends on the levels of complexity and risk of the business concerned.

## **12. Monitoring & review**

- 12.1 The Fees Regulations are reviewed annually and updated if necessary. In preparing proposals for changes in rates charged, HSE takes informal industry soundings of those affected. For example, for larger schemes, Cost Recovery Review Groups (CRRGs) are consulted at meetings in the autumn of each year about proposed changes (and given an opportunity to consider the proposals and respond) before formal proposals are presented to the HSE Board and then Ministers.
- 12.2 In accordance with BIS/ BRE guidance, a sunset clause is included in these Regulations, such that they will automatically expire five years after coming into force.

12.3 ONR was an in-house agency of HSE, prior to its establishment as a statutory corporation on 1 April 2014. ONR's intention is to develop a separate set of fees regulations covering all of its activities over the next year, to be in place for October 2017. This will separate nuclear fees regulations from health and safety fees in future. In terms of health and safety fees that apply on nuclear sites, HSE and ONR will continue to review fees regulations to ensure that they remain fit for purpose.

### **13. Contact**

13.1 Andrew Holding at the Health and Safety Executive (Tel: 0151 951 4002 or e-mail: [andrew.holding@hse.gsi.gov.uk](mailto:andrew.holding@hse.gsi.gov.uk)) can answer any queries regarding the instrument.