

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SAFETY (FEES) (AMENDMENT) REGULATIONS**  
**(NORTHERN IRELAND) 2014**

**S.R. 2014 No. 280**

**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 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 12 December 2014.

**2. Purpose**

- 2.1 The Statutory Rule will introduce a new charge for those who notify the Health and Safety Executive for Northern Ireland (HSENI) of their intention to operate an onshore borehole. Onshore borehole operators would pay the costs incurred by HSENI in the assessment of the notification.
- 2.2 The Statutory Rule amends the Health and Safety (Fees) Regulations (Northern Ireland) 2012.<sup>1</sup>

**3. Background**

- 3.1 Given the potential for major hazard incidents, operators of onshore boreholes and others entitled to drill boreholes are subject to the requirements of regulation 6 of the Borehole Sites and Operations Regulations (Northern Ireland) 1995<sup>2</sup>. This requires a notification to be sent to HSENI before borehole construction, intervention or abandonment operations commence.
- 3.2 HSENI assesses these notifications to ensure adequate design, that the risks to employees and the public are properly understood and managed and then verifies that they are operated safely through inspection.

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<sup>1</sup> S.R. 2012 No. 255

<sup>2</sup> S.R. 1995 No. 491

#### **4. Consultation**

- 4.1 A consultation exercise ran from 12 May 2014 to 4 August 2014. 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).
- 4.2 A total of five replies were received with one consultee raising several technical issues which have now been satisfactorily addressed with the company concerned.

#### **5. Equality Impact**

- 5.1 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.

#### **6. Regulatory Impact**

- 6.1 An assessment of the costs associated with the introduction of the proposed charges is attached to this memorandum (Annex).
- 6.2 Overall the annual cost to NI business is estimated at £100K. In arriving at this figure HSENI examined the number of notifications and site-visits over the last 3 years (2011 - 2013) for which statistics are available and forecast that there will be an average of 200 borehole notifications during 2014 and for each subsequent year.

#### **7. Financial Implications**

- 7.1 Extra costs will be placed on the onshore borehole operators as detailed above. There are no cost implications for HSENI.

#### **8. Section 24 of the Northern Ireland Act 1998**

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

#### **9. EU Implications**

- 9.1 None. This Statutory Rule does not implement any European Directives.

## **10. Parity of Replicatory Measures**

10.1 In Great Britain the corresponding provisions can be found at regulation 22 of and Schedule 17 to the Health and Safety (Fees) Regulations 2012<sup>3</sup>, which were made on 25 June 2012 and came into force on 1 October 2012.

10.2 The amount of fee is not specified in the Statutory Rule but shall not exceed the sum of the costs reasonably incurred by HSENI. Equivalent arrangements apply in Great Britain.

## **11. Additional Information**

11.1 None.

Department of Enterprise, Trade and Investment  
5 June 2014

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<sup>3</sup> S.I. 2012/1652

**NORTHERN IRELAND COSTS ANALYSIS****Health and Safety (Fees) (Amendment) Regulations  
(Northern Ireland) 2014****PROPOSAL**

The Health and Safety Executive for Northern Ireland (HSENI) proposes to introduce charges for the assessment of onshore borehole notifications by amending the Health and Safety (Fees) Regulations (Northern Ireland) 2012 (S.R. 2012 No. 255) (“the 2012 Regulations”).

The proposed Regulations will be known as the Health and Safety (Fees) (Amendment) Regulations (Northern Ireland) 2014.

**REASON FOR PROPOSED NEW CHARGES**

The proposals will enable HSENI to put in place a regime to recover the costs of its activities with respect to the assessment of notifications of onshore boreholes. It will also ensure compliance with the guidance contained in ‘Managing Public Money Northern Ireland’<sup>4</sup>, which refers to full cost recovery for chargeable statutory functions.

The proposals do not introduce any new health and safety requirements for dutyholders. However, they transfer the cost burden from the taxpayer to those that operate onshore boreholes

**DETAIL**

Given the potential for major hazard incidents, operators of onshore boreholes and others entitled to drill boreholes are subject to the requirements of regulation 6 of the Borehole Sites and Operations Regulations (Northern Ireland) 1995 (S.R. 1995 No. 491). This requires a notification to be sent to HSENI before borehole construction, intervention or abandonment operations commence.

HSENI assesses these notifications to ensure adequate design, and then verifies that they are operated safely through inspection.

HSENI proposes to recover its costs for the time spent in assessing notifications submitted under the provisions of regulations 6(1), 6(2), 6(3), 6(4) and 6(5) of the Borehole Sites and Operations Regulations (Northern Ireland) 1995. This includes time spent on the following activities:

- desktop assessment work;

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<sup>4</sup> See <http://www.dfpni.gov.uk/afmd-mpmni>

- on-site verification inspection work;
- meetings (wherever they take place);
- telephone conversations; and
- report writing.

## **PROPOSED NEW CHARGES**

It is normal policy, all other things being equal, for Northern Ireland health and safety fees and charges to be maintained in parity with those charged in Great Britain (GB) for corresponding services.

The amount is not specified in the proposed Regulations but shall not exceed the sum of the costs reasonably incurred by HSENI.

The charge is calculated based on the time spent on the particular cost recoverable activity, multiplied by a pre-determined hourly rate. The current cost recovery rate for boreholes notification work is £166 per hour.

## **CURRENT CHARGES**

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.

"Permissioning" activities which are currently charged for include assessing and accepting safety cases, issuing licences, issuing certificates, granting approvals, granting exemptions from regulations and accepting notifications.

The proposed new charges are therefore analogous to some of the "permissioning" regimes already in place.

## **EFFECTIVE DATE**

The proposed new charges would apply in respect of each application for approval on or after the date of coming into operation of the proposed Regulations.

## **COMPARISON WITH GREAT BRITAIN**

Charges for the assessment of onshore borehole notifications were introduced in GB in 2012. The proposed Northern Ireland charges are identical to those charged in GB for similar services since 1 October 2012.

## IMPACT ON INDUSTRY

The charges for boreholes notification work will be payable by those who are dutyholders under regulations 6(1), 6(2), 6(3), 6(4) and 6(5) of the Borehole Sites and Operations Regulations (Northern Ireland) 1995.

Full economic costs will be recovered from industry.

The annual cost to NI business is estimated as £100K. In arriving at this figure HSENI examined the number of notifications and site-visits over the last 3 years (2011 - 2013) for which statistics are available.

Year	2011	2012	2013	Total
Number of notifications	143	468* (This figure included 338 for January 2012)	45 (up to 14/11/13)	656

\*Note - Letters were sent out in August 2011 reminding companies of the need to notify Boreholes to HSENI hence sudden increase in 2012.

Although the future activity levels of onshore borehole work are extremely difficult to anticipate due to uncertainties around this particular sector, it is thought there will be an increase in borehole activity in the future. HSENI currently forecast that there will be an average of 200 borehole notifications during 2014 and for each subsequent year.

HSENI estimates that 600 hours will be spent on borehole activity during 2014 and each subsequent year.

Overall it is considered that the proposed new charges would not have a significant effect on NI industry. A full impact assessment is not produced.

HSENI  
May 2014