

Title: Replacement of Health and Safety and Nuclear (Fees) Regulations 2015 with the Health and Safety and Nuclear (Fees) Regulations 2016.

Amendment of the Plant Protection Products (Fees and Charges) Regulations 2011

IA No: HSE0106

Lead department or agency:

Health and Safety Executive

Other departments or agencies:

Impact Assessment (IA)

Date: 12 February 2016

Stage: Validation

Source of intervention: Domestic

Type of measure: Secondary legislation

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Summary: Intervention and Options

RPC Opinion: Awaiting

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2014 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£3.67 million	£3.67 million	£0.40	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The Health and Safety Executive recovers its costs for a variety of statutory functions and sets rates which seek to recover the full cost of performing these functions. During the past two years, HSE has not recovered the full costs of the cost-recoverable activities it undertakes and this situation will worsen without intervention. HSE is planning to undertake further efficiency savings to close the deficits on the various regimes, but it will also be necessary to increase rates to offset the effect of pay inflation.

In addition, HSE introduced Fee for Intervention (FFI) in 2012 and is considering changes to the FFI dispute process, to improve its perceived transparency and independence. This might increase the likelihood that HSE will need to appoint external counsel for the relatively few dispute cases. The proposed amendment would enable HSE to recover the additional costs associated with this where the dispute is not upheld. Where it is upheld all costs would continue to fall on HSE.

What are the policy objectives and the intended effects?

The policy objective is that HSE sets fees and charges to recover full costs of its regulatory activities which have been determined to be cost recoverable.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: 'Do nothing'. The Health and Safety and Nuclear (Fees) Regulations 2015 and Plant Protection Products (Fees and Charges) Regulations 2011 would remain in force, without amendment. This would not allow HSE to achieve full cost recovery. HSE would continue running a deficit on activity under the relevant regimes and would be unable to recover costs of legal advice received during FFI disputes.

Option 2 (Preferred Option): To:

1. Increase all fees and charges by 4%, where legislative change is required to do so; and
2. Introduce provision for HSE to charge for the cost of legal advice during FFI disputes (where the dispute is not upheld).

A 4% increase in rates is the maximum which HSE considers to be acceptable to the industries it regulates; this is broadly supported by feedback from industry representatives, where it has been discussed with them.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 6 April 2019

Does implementation go beyond minimum EU requirements?				No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes		Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/a		Non-traded: N/a

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Justin Tomlinson

Date: 2/03/16

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years 10	Net Cost (Present Value (PV)) (£m)		
			Low: Nil	High: Nil	Best Estimate: Nil

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Cost
Low	Nil	0	Nil		Nil	
High	Nil		Nil		Nil	
Best Estimate	Nil		Nil		Nil	

Description and scale of key monetised costs by 'main affected groups'

This option continues with the status quo and would lead to no additional costs or benefits

Other key non-monetised costs by 'main affected groups'

This option continues with the status quo and would lead to no additional costs or benefits

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition) (Constant Price)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	Nil	0	Nil		Nil	
High	Nil		Nil		Nil	
Best Estimate	Nil		Nil		Nil	

Description and scale of key monetised benefits by 'main affected groups'

This option continues with the status quo and would lead to no additional costs or benefits

Other key non-monetised benefits by 'main affected groups'

This option continues with the status quo and would lead to no additional costs or benefits

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: Nil	Benefits: Nil	Net: Nil	N/A	N/A

Summary: Analysis & Evidence

Policy Option 2

Description: Replace Health and Safety (Fees) 2012 Regulations with Health and Safety and Nuclear (Fees) 2015 Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 3.67

COSTS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Cost
Low	Nil	0	Nil		Nil	
High	Nil		Nil		Nil	
Best Estimate	Nil		0.43		3.67	

Description and scale of key monetised costs by 'main affected groups'

Businesses will face an additional cost of £407,000 per annum from the 4% increase in fees and charges. They will also face an additional cost of £19,000 per annum from the introduction of HSE recovering legal costs of FFI disputes that are not upheld. It has been estimated that there will be no one-off familiarisation costs, as there is no change in duties, the 4% increase applies to existing fees, and the change to recovering costs of FFI disputes will in practice affect only a very small number of businesses.

Other key non-monetised costs by 'main affected groups'

None identified.

BENEFITS (£m)	Total (Constant Price)	Transition Years	Average (excl. Transition)	Annual (Constant Price)	Total (Present Value)	Benefit
Low	Nil	0	Nil		Nil	
High	Nil		Nil		Nil	
Best Estimate	Nil		Nil		Nil	

Description and scale of key monetised benefits by 'main affected groups'

None identified.

Other key non-monetised benefits by 'main affected groups'

None identified.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

Estimates of the impact on business of the 4% increase of fees and charges under Health and Safety and Nuclear (Fees) Regulations 2016 and Plant Protection Products (Fees and Charges) Regulations 2011 are based on HSE forecast income for 2016/17. In addition, we have held these forecasts constant over the ten-year appraisal period. Historical evidence suggests that the level of total annual income has remained relatively stable over time, and any fluctuations only minor. Accordingly, this is deemed a simplifying and proportionate assumption.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.40	Benefits: Nil	Net: -0.40	No	N/A

Evidence Base

1. Problem under consideration

Health and Safety and Nuclear (Fees) Regulations 2015 and Plant Protection Products (Fees and Charges) Regulations 2011

1. HSE charges dutyholders for a wide variety of statutory functions through the Health and Safety and Nuclear (Fees) Regulations 2015 (the “Fees Regulations”), which provide the legislative basis for the cost recovery of most of HSE’s chargeable activities. The regulatory activities are set out in other secondary legislation and include health and safety inspections and investigations, enforcement, licensing and product approvals.
2. The fees rates are set out within the Fees Regulations, with the exception of COMAH¹, Offshore² and Fee for Intervention (FFI)³ regimes. Under these regimes, the rates are separately determined and published following discussion with industry cost recovery review groups, which include representation from the main industry associations. Changes to these rates do not require amendment to regulations. This impact assessment focuses on fees changes that require legislative change.
3. HSE also regulates the storage, transport and safe use of pesticides, the fees for which are included in the Plant Protection Products (Fees and Charges) Regulations 2011.
4. The Regulations cite three main powers: section 2(2) of the European Communities Act 1972; section 43 of the Health and Safety at Work Act 1974; and section 101 of the Energy Act 2013. Annex 1 sets out each of HSE’s fees against the power under which they are made.
5. HSE successfully delivered a 40% real term reduction in government funding in the SR10 period (2010/11 to 2014/15) and complied with the condition on all non-economic regulators to reduce fees and charges rates by 5% in real terms. Spending Round 2013 continued this control and, in effect, HSE rates have been frozen since 2011/12.
6. HSE’s main cost recovery regimes have shown deficits in the last two years. The main reason for these deficits is that, whilst the level of cost-recoverable regulatory activity has been relatively stable, pay costs (by far the largest element of the rates) for the specialist staff required to deliver these functions have 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, there will also be increased employer national

¹ See: <http://www.hse.gov.uk/comah/>

² See: <http://www.hse.gov.uk/offshore/>

³ See: <http://www.hse.gov.uk/fee-for-intervention/>

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. As a consequence, HSE needs to increase rates as part of a series of measures designed to fully recover costs. Further efficiency savings will also be delivered to allow HSE to close the deficits on the various regimes.
8. HSE has no power to set cost recovery rates in its own right and therefore recommends cost recovery rates to the Secretary of State for Work and Pensions who, if content, makes the Health and Safety (Fees) Regulations.

Fee For Intervention (FFI) dispute process

9. HSE introduced Fee For Intervention (FFI) in October 2012 with a proportionate dispute process. An independent review of FFI concluded it has proven effective in delivering the overarching policy aim and was broadly content with the operation of the scheme. There have subsequently been a small number of appeals in relation to the process. HSE is considering how best to improve the transparency and independence of the dispute process. It is anticipated that this may increase the likelihood that HSE will need to appoint external counsel for the relatively few dispute cases. The proposed amendment would enable HSE to recover the additional costs associated with this where the dispute is not upheld. Where it is upheld all costs would continue to fall on HSE.

2. Rationale for intervention

10. Government intervention is necessary in order to ensure that the Health and Safety Executive is able to recover the full costs of regulatory activities which have been determined to be cost recoverable. It is necessary to make these changes via regulatory intervention, since changes to fees must be prescribed in regulations.

3. Policy objectives

11. The policy objective is to set fees and charges which recover the full costs of HSE's regulatory activities which have been determined to be cost recoverable.

4. Description of options considered (including do nothing)

12. Given that changes to fees must be prescribed in regulations, and that most reflect changes in other secondary legislation, there are no viable alternatives to regulation.

Option 1: Do Nothing (Baseline)

13. Under the 'Do Nothing' baseline the Health and Safety and Nuclear (Fees) Regulations 2016 would remain in force and the Plant Protection Products (Fees and Charges) Regulations 2011 would remain in force, without amendment. Fees provisions would remain unchanged. HSE would be unable to recover the cost of legal advice received during the disputes process.

Option 2 (preferred)

14. Under the preferred option, the Health and Safety and Nuclear (Fees) Regulations 2016 would revoke and replace the Health and Safety and Nuclear (Fees) Regulations 2015, increasing all fees and charges by 4% and introducing provision for HSE to charge for the cost of legal advice during FFI disputes (where the dispute is not upheld).

5. Research undertaken to inform this IA

15. Given the limited nature of the changes proposed, HSE has taken a proportionate approach to this impact assessment. HSE's Finance Team holds detailed historical data on the income received from fees and charges raised under the Fees Regulations. This data has been used to estimate the costs to business of the proposed increase in the fees. There will be no change in administrative or other requirements to firms as a result of the proposed changes, so historical fees and charges data held by HSE provides a sufficient basis to estimate business impacts.
16. Meetings were held with cost recovery review groups from the COMAH and Offshore oil and gas industries during October and November 2015 to discuss the proposals. Changes to fees under these regimes are not assessed in this impact assessment as they do not require regulatory change; however, the magnitude of changes discussed with stakeholders was the similar to the fees increases accounted for in the current assessment. Feedback from the cost recovery review groups showed that, while not all welcomed the increase to the fees, the majority of stakeholders understood the rationale behind the proposed increase (i.e. to enable HSE to fully recover its costs) and broadly accepted the proposal.

6. General Assumptions

17. Given that the policy changes have no identifiable end date, costs and benefits are assessed over a 10 year appraisal period, starting in 2016. Where costs/benefits arise in the future, a discount rate of 3.5% in accordance with the HM Treasury (HMT) Green Book.⁴
18. All costs and benefits are calculated for Great Britain in 2016 prices, unless stated otherwise.
19. Estimates of the costs to business associated with the 4% increase in fees and charges are based on estimates from the HSE Finance Team on forecast income for the year 2016/17. These have been held constant over the course of the appraisal period, although they may be sensitive to any changes in the level HSE activity. Given that HSE activity typically fluctuates from year-to-year, the overall effect of which is only minor, this is deemed a proportionate and simplifying assumption.

⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220541/green_book_complete.pdf.

20. Estimates are presented to three significant figures throughout the analysis, unless stated otherwise. Because of this, there will be some rounding error present and estimates may not sum; however, the underlying analysis – including assessment of the EANCB – has been performed using unrounded values.

7. Analysis of Costs and Benefits

Option 1 – Do nothing (Baseline)

21. Under Option 1, the Health and Safety (Fees) Regulations 2012 would remain in force. Fees provisions would remain unchanged, and any changes to other secondary legislation and Biocidal Products (Fees and Charges) Regulations 2013 would not be reflected. As this represents the baseline, there would be no additional costs and/or benefits.

Option 2 - Replacement of the Health and Safety and Nuclear (Fees) Regulations 2015 with Health and Safety and Nuclear (Fees) Regulations 2016 and amendment of the Plant Protection Products (Fees and Charges) Regulations 2011

7.1 Costs to business

Increase of fees and charges by 4%

22. Option 2 proposes to increase fees and charges set out in Health and Safety and Nuclear (Fees) Regulations and the Plant Protection Products (Fees and Charges) Regulations by 4%.⁵
23. As can be seen in Table 1, there will be an estimated additional cost to business of approximately £113,000 per annum associated with an increase in HSE's fees and charges, which are included in the Health and Safety and Nuclear (Fees and Charges) Regulations.
24. The annual increase has been estimated using 2016/17 forecast incomes for the respective fees and charges included in the Fees Regulations, and increasing them by 4%. Based on accounts data held by HSE, we expect the additional cost per business to be between £11 and £560 with an average of £110.
25. HSE data suggests that there are approximately 11,200 retailers of explosives that hold licences. The current cost of a licence is £329, and a license lasts for a maximum of 5 years. In order to estimate the additional costs associated a 4% increase in the explosives licence, it is assumed that the 11,200 eligible businesses will apply for these licences evenly over this period, equivalent to 2,240 businesses per annum. Under the proposal, the cost per licence would increase to around £342. Based on 2,240 businesses paying an additional £13 per licence, this leads to an additional total annual cost to business of around £29,500.

⁵ HSE is also increasing fees under COMAH, Offshore, and FFI regimes by 4%. These do not require changes to regulation, so are not assessed in this IA.

26. The annual cost to other government agencies in respect of licensing of petroleum is based on data from the 2015 Petroleum Review's annual *Retail Marketing Survey*⁶, which provides information on the number of licensed sites, and the maximum annual fee incurred by businesses, which is £120. Based on 8,600 licensed sites paying £120 per year, this gives a total cost to business per year under the current regime of approximately £1 million. Under the proposal, this fee would be increased by 4%, to approximately £125, leading to an additional total cost to business of around £41,300 per annum.
27. There will be an estimated cost to business of approximately £223,000 per annum associated with HSE's increase in fees and charges which are included in the Plant Protection Products (Fees and Charges) Regulations 2011. The annual increase has been estimated using 2016/17 forecast income and increasing it by 4%. Based on accounts data held by HSE, we expect the additional cost per business to be between £614 and £2,500, with an average of £775.

Table 1: Breakdown of industry fees and charges using 2016/17 forecasts and the annual increase from the 4% increase to fees and charges

To whom the fees and charges are affecting	Annual Cost - 2016/17 forecasts	Annual Increases from the 4% increase in fees and charges
Health and Safety Nuclear (Fees) Regulations 2016 (HSE charges):		
Gas Safety (assessment of notifications)	£394,000	£15,800
Explosives Licensing	£255,000	£10,200
Genetically Modified Organisms (Contained Use) notifications	£135,000	£5,400
Boreholes (assessment of notifications)	£48,900	£2,000
Radiation/ Ionising Radiation	£110,000	£4,400
Asbestos Licensing	£767,000	£30,700
Biocidal Products approvals/ authorisations	£1,120,000	£44,800
<i>Total under Health and Safety Nuclear (Fees) Regulations 2016</i>	£2,830,000	£113,000
Increase in charges where the work is undertaken by other government agencies for the whom the Fees Regulations provide the statutory basis of their charges:		
Fees payable to Explosive Licensing authorities	£737,000	£29,500
Fees payable to the petroleum enforcement authorities for a licence or certificate to store or keep petroleum	£1,030,000	£41,300
<i>Total to other government agencies</i>	£1,770,000	£70,800
Plant Protection Products (Fees and Charges) Regulations 2011 relating to the storage, transport and safe use of pesticides	£5,577,000	£223,000
Total cost to all business	£10,180,000	£407,000

Note: totals may not sum due to rounding.

⁶ <https://www.energyinst.org/information-centre/ei-publications/petroleum-review/retail-marketing-survey-2015>

28. HSE have modelled each cost recoverable regime to ensure that the costs are relevant to the activities, avoiding the risk of cross-subsidisation between different regimes and duty holders. HSE forecast that a 4% increase will not result in a surplus position for any regime.

Costs of the introduction of recovery of legal costs for FFI disputes which are not upheld.

29. The number of FFI disputes has been relatively stable over the last few years, with an average of just under 25 per annum since the introduction of FFI in 2012. HSE does not expect this level to increase considerably in the coming years, and so this figure is used to forecast the costs associated with FFI disputes going forward.
30. Based on historical experience, HSE estimates the average dispute will involve around 7 hours of legal counsel's time (this comprises preparation and travel time as well as the actual length of the case). The Government Legal Department publishes information on panels and rates on behalf of the Attorney General's (AG) Office. The regional panel rate for an officer with ten or more years' experience is stated as £110 per hour. This value is used as the full economic cost of time when calculating the costs associated with FFI disputes below.
31. Based on an average dispute involving around 7 hours of legal counsel's time, at a cost of £110, this gives an average cost of around £770 per dispute. Across all 25 cases, this gives a total annual cost of legal advice for FFI disputes of around £19,000. Under the proposal, this cost will be recovered from businesses via a charge.
32. It is important to note that only the costs of disputes that are not upheld are eligible to be passed on to industry. Some of the estimated 25 disputes per year will be upheld. In these instances, HSE will continue to incur the costs of any legal advice sought. Given that there is some uncertainty over the proportion of disputes that will be upheld in the future, we have accounted for the full £19,000 estimate of the costs to business (i.e. assumed that all costs of legal advice for FFI disputes will be recovered from businesses).

Administration and Familiarisation costs

33. The proposal to increase fees and charges by 4% only relates to existing charges and the only change involved will be an increase in the face value of the fee charged to businesses in the invoice received. Businesses should not need to do anything differently to comply. Therefore, the proposal is not expected to increase the administrative cost to business.
34. HSE also expects that familiarisation costs associated with the proposed changes will be negligible. Again, where existing fees and charges are increasing, the only impact on businesses will be a change in the fee invoiced. Further, HSE is using its regular communications with affected industries through

a variety of industry working groups to inform stakeholders of the change, and information regarding the increase will be published on the HSE website.

35. Where the change relates to recovering the legal costs of FFI disputes, HSE will engage with industry via a number of channels, such as trade associations, in order to communicate changes, and it is expected that this will increase awareness of the cost of disputes. As above, however, the impact on businesses will only be felt when they receive the relevant invoice, and they will not need to do anything differently from what they do today to comply.

Total costs to business

36. Total estimated net costs of this proposal are as follows:
- Recurring annual costs to business as a result of a 4% increase in fees and charges of around £407,000, or £3.5 million over 10 years.
 - Recurring annual costs to business as a result of HSE introducing recovery of legal costs for FFI disputes which are not upheld in the region of £19,000, or £0.16 million over 10 years.
37. The changes to fees and charges are out of scope of One-In-Two-Out (OITO) framework, according to Section 1.9 of the Better Regulation Framework Manual.⁷

7.2 Benefits

38. The proposed changes are not expected to have any impact on current levels of health and safety. This is because there would be no change in the statutory health and safety requirements on dutyholders, or the level of HSE regulatory activity.

8. Direct costs and benefits to business

39. Total annual costs to business are estimated to be £0.43 million, with a ten year net present value of £3.67 million. This includes the additional costs of the 4% increase in fees and charges and the legal costs of FFI disputes. There are no benefits to business occurring from the change.
40. Applying the methodology set out in the Better Regulation Framework Manual, the Equivalent Annual Net Cost to Business (EANCB) over a ten-year appraisal period is estimated to be £0.40 million (in 2014 prices).
41. The above EANCB relates to the costs to business of the increase in fees and charges, which are out of scope of the OITO framework (see paragraph 37 above).

9. Summary and preferred option

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211981/bis-13-1038-better-regulation-framework-manual-guidance-for-officials.pdf

42. The preferred option 2 is to increase fees and charges set out in the Health and Safety and Nuclear (Fees) Regulations 2015 and Plant Protection Products (Fees and Charges) Regulations 2011 by 4% and implement provision for HSE to pass on the costs of legal counsel involvement in FFI disputes, where a dispute is not upheld.
43. Total annual costs to business of this option are estimated to be £0.43 million, with a ten-year net present value of £3.67 million.
44. The EANCB is £0.40 million. As discussed in paragraph 41, this is out of scope of the OITO framework.

ANNEX 1: HEALTH AND SAFETY EXECUTIVE FEES BY THE POWER UNDER WHICH THOSE FEES ARE MADE

Fees made under section 43 of the Health and Safety at Work Act 1974
Fees for applications for approval under the Agriculture (Tractor Cabs) Regulations 1974
Fees for application for approval under the Freight Containers (Safety Convention) Regulations 1984
Fees for various applications under the Control of Asbestos Regulations 2012
Fees for examination or surveillance by an employment medical adviser
Fees for medical surveillance by an employment medical adviser under the Control of Lead at Work Regulations 2002
Fees payable in connection with the Ionising Radiations Regulations 1999 and the Radiation (Emergency Preparedness and Public Information) Regulations 2001
Fees payable in relation to the Explosives Regulations 2014 and the Acetylene Safety (England and Wales and Scotland) Regulations 2014
Fees payable in relation to the Petroleum (Consolidation) Regulations 2014
Fees for application for or changes to an explosives licence under Part 9 of the Dangerous Substances in Harbour Areas Regulations 1987
Fees payable in respect of offshore installations
Fees payable in respect of gas safety functions
Fees for applications for approvals under the Offshore Installations and Pipeline Works (First-Aid) Regulations 1989
Fees for notifications under the Borehole Sites and Operations Regulations 1995
Fees for intervention
Fees made under section 2(2) of the European Communities Act 1972
Fees for notifications and applications under the Genetically Modified Organisms (Contained Use) Regulations 2014
Fees Payable for activities under the Biocides Regulation and the 2013 Biocidal Products and Chemicals Regulations
Fees made under section 101 of the Energy Act 2013
Fees payable in relation to nuclear installations

Plant Protection Products (Fees and Charges) Regulations 2011**Fees made under section 2(2) of the European Communities Act 1972**

Fees for application and evaluation of a plant protection product for authorisation

Fees for application and evaluation of an active substance, safener or synergist

Fees for official recognition of a test facility or organisation

Fees related to application for approval of basic substances

Import tolerance fee