

EXPLANATORY MEMORANDUM TO
THE CONTROL OF MAJOR ACCIDENT HAZARD (AMENDMENT)
REGULATIONS 2008

2008 No. 1087

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 Control of Major Accident Hazard (Amendment) Regulations 2008 amend paragraph (2A) of regulation 22 of the Control of Major Accident Hazard Regulations 1999 (S.I.1999/743) (“COMAH”).
- 2.2 Paragraph (2A) was inserted into regulation 22 of COMAH by the Health and Safety (Fees) Regulations 2008 (S.I.2008/736) (“the 2008 Fees Regulations”) to enable the Health and Safety Executive (“HSE”) to recover costs for the enforcement of general health and safety functions at certain COMAH establishments that are required to have a safety report. Unfortunately due to last minute changes there was an error in the drafting and the word “installation” was used instead of “establishment” and the phrase “safety case” was used instead of “safety report”.
- 2.3 These Regulations correct those errors by amending the wording in regulation 22(2A) of COMAH. This gives effect to the original intention of the 2008 Fees Regulations as set out in paragraph 6 of the Explanatory Note to those Regulations and the basis on which cost recovery was discussed with industry in 2007 and early 2008 prior to the Regulations coming into force and subsequent guidance.

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

- 3.1 These regulations breach the “21 day rule” by being laid on 17th April and coming into force on 18th April. The rule is breached to ensure that the 2008 Fees regulations are corrected as soon as possible to reflect what was proposed to industry and individual duty holders by way of charges and to enable HSE to recover those charges.

4. Legislative background

- 4.1 Section 43(2) of the Health and Safety at Work etc. Act 1974 provides a power, exercisable by the Secretary of State, to make regulations providing for such fees as may be fixed by or determined under the regulations to be payable for or in connection with the performance by authorities (including HSE), of any function conferred on the authority by or under any of the “relevant statutory provisions”. The relevant statutory provisions are defined in section 53 of the Health and Safety at Work Act 1974.

5. Territorial Extent and Application

- 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

Policy

- 7.1 The Health and Safety Executive’s policy is that cost recovery should be made for a range of activities including the enforcement of general health and safety in relation to high hazard industries.

Consultation

- 7.2 Section 50(3) of the Health and Safety at Work Act exempts HSE from an obligation to consult in relation regulations made under section 43(2). However in practice HSE has developed well established mechanisms (such as charging review groups) for discussing annually proposed changes in fees with relevant trade associations and duty holders. The Health and Safety Executive wrote to individual duty holders last October about the proposed extension of cost recovery to enforcement of general health and safety regulations at COMAH sites. It was made clear to those affected that where a COMAH site required a safety report, fees for general health and safety would apply to the whole COMAH establishment. “Safety report” and “establishment” are terms defined in COMAH.

Guidance

- 7.3 Guidance has been provided to COMAH duty holders affected by the 2008 Fees Regulations and the purpose of these regulations is to ensure the necessary corrections are made so that the changes to COMAH correspond with that guidance.

Consolidation

- 7.4 There are no plans to consolidate the Control of Major Accident Hazard Regulations 1999 at this time.

8. Impact

- 8.1 No Impact Assessment has been prepared for this instrument which is for making corrections to reflect what was intended S.I. 2008/736 should provide for.
- 8.2 The impact on the public sector is to enable the Health and Safety Executive to recover fees as originally intended by the Health and Safety (Fees) Regulations 2008.

9. Contact

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