

**EXPLANATORY MEMORANDUM TO**  
**THE CONTROL OF MAJOR ACCIDENT HAZARDS (AMENDMENT)**  
**REGULATIONS 2009**

**2009 No. 1595**

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.

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

**2. Description**

- 2.1 These regulations are made for the avoidance of doubt about whether amendments made to the Control of Major Accident Hazards Regulations 1999<sup>1</sup> (“COMAH”) by the Health and Safety Fees Regulations 2008<sup>2</sup> (“the Fees Regulations 2008”), are in force. Those provisions allow HSE to recover its costs in enforcing general health and safety at certain establishments covered by COMAH.

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

- 3.1 The 21 day rule has been breached to put beyond doubt as quickly as possible the legal position with respect to cost recovery under COMAH. In particular, it is necessary to clarify that the Health and Safety Fees Regulations 2009<sup>3</sup> have not changed the position from what it was understood to be by COMAH establishments and HSE since the amendments were introduced in April 2008, as reflected in HSE’s published guidance.
- 3.2 The consequence of delaying the instrument to comply with the 21 day rule would be to prolong the uncertainty for operators and HSE. The delay would also significantly increase the potential financial shortfall to HSE. It is estimated that the income recoverable under this provision is approximately £180,000 per year.

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<sup>1</sup> S.I.1999/743.

<sup>2</sup> S.I. 2008/736.

<sup>3</sup> S.I. 2009/515

#### **4. Legislative background**

- 4.1 Section 43(2) of the Health and Safety at Work etc. Act 1974 enables the Secretary of State to make regulations that provide for HSE to recover costs incurred by it in carrying out its functions under health and safety regulations.
- 4.2 The Fees Regulations 2008 amended regulation 22 of COMAH to enable HSE to recover the costs of carrying out specified general health and safety enforcement work at certain COMAH establishments. The amendment was further amended by the Control of Major Accident Hazards (Amendment) Regulations 2008<sup>4</sup>
- 4.3 The Health and Safety (Fees) Regulations 2009 revoked the Fees Regulations 2008 including the provision amending COMAH.
- 4.4 It has become apparent that there is legal uncertainty regarding the effect of revoking an amending provision on the amendment it has effected. Accordingly, to avoid uncertainty for operators of establishments affected by the amendment and to put beyond any doubt that HSE can recover its costs, the Control of Major Accident Hazards (Amendment) Regulations 2009 clarify the situation by reviving, in so far as they were revoked, the amendments introduced by the Fees Regulations 2008 as subsequently amended.

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

- 5.1 This instrument applies to Great Britain.

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<sup>4</sup> S.I. 2008/1087

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

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

## **7. Policy background**

- 7.1 HSE introduced cost recovery for the enforcement of general health and safety provisions at certain COMAH establishments in 2008. The changes were notified to the industry prior to their introduction and HSE guidance on cost recovery under COMAH was updated and publicised to reflect the changes. HSE began recovering its costs under this provision from 17<sup>th</sup> April 2008.
- 7.2 HM Treasury guidance requires full cost recovery for chargeable statutory functions. Fees are reviewed annually with a new set of Health and Safety Fees Regulations made each year to implement any necessary changes.
- 7.3 HSE has developed well established mechanisms including cost recovery review groups for high hazard industries subject to specific cost recovery regimes such as COMAH through which duty holders are advised each year about proposed changes in fees and their views sought. These mechanisms were employed prior to the introduction of the new cost recovery provisions in 2008.
- 7.4 These regulations are made for the avoidance of doubt about the status of the cost recovery provisions introduced into COMAH in April 2008 to clarify the position is as was originally intended by those amendments and explained to COMAH duty-holders at the time and in HSE guidance.

## **8. Consultation outcome**

- 8.1 There has been no consultation on this instrument because it is made for the avoidance of doubt and makes no change to the legal position previously communicated.

## **9. Guidance**

- 9.1 Guidance on regulation 22 is contained in “Cost recovery for COMAH Activities - A guide” available on HSE’s website ([www.hse.gov.uk/charging/comahcharg/comahch1.htm](http://www.hse.gov.uk/charging/comahcharg/comahch1.htm)) and is consistent with these regulations.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is none beyond that introduced by the original amendments in April 2008.
- 10.2 The impact on the public sector is none beyond that introduced by the original amendments in April 2008.
- 10.3 Impact Assessments are not attached to this memorandum because there will be no new impact on business beyond that contained in the amendments to COMAH introduced in April 2008.

## **11. Regulating small business**

11.1 This instrument applies to small businesses. but only where those businesses are operators of establishments which store sufficient quantities of specified dangerous substances that they are required to prepare a safety report under regulation 7 of COMAH. Further, the provisions do not apply to businesses for which the storage of such substances is ancillary to the main activity at the site.

11.2 No additional measures have been taken to minimise the impact of the requirements on firms employing up to 20 people, as these regulations do not impose new burdens but merely remove legal doubt about cost recovery provisions introduced in April 2008.

## **12. Monitoring & review**

12.1 Cost recovery is reviewed by HSE annually in consultation with industry.

## **13. Contact**

Kathleen Wooley, Financial Accounting and Advice, HSE 6.4. Redgrave Court, Merton Road, Bootle. L20 7HS Tel; 0151 951 4447 can answer any queries regarding the instrument.