

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (FEES) REGULATIONS 2009
2009 No. 515

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. Purpose of the instrument

- 2.1 The Health and Safety (Fees) Regulations 2009 (“the Fees Regulations”) revoke and replace the 2008 Fees Regulations (S.I. 2008 No. 736). They update charges made, mainly by the Health and Safety Executive (HSE), for performing a wide range of statutory functions in areas such as licensing activities, approving equipment and conducting testing associated with the issue of such approvals. HSE also charges for safety case assessment, inspection and approvals in relation to the regulatory regimes (involving HSE assessing and approving safety cases) of on-shore major hazards, gas transportation, offshore oil and gas.
- 2.2 The Fees Regulations propose the following changes (other than changes in the amounts charged):
- A new fee to recover the costs of operating the Central Index of Dose Information (CIDI) Please see paragraph 7.6 for further information on these charges;
 - A new fee to recover the cost of changing details on a certificate of approval under the Ionising Radiation Regulations 1999 (IRR) and the Radiation (Emergency Preparedness and Public Information) Regulations 2001 (REPPiR);
 - Changes to the fees charged for the granting of Explosives Certificates under the Control of Explosives Regulations 1999 (to reflect changes to those regulations that will be introduced by the Miscellaneous Amendments and Revocations Regulations also due to come into force on 6th April 2009.

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

3.1 Increases above inflation continue in two schemes where, historically, charges had been set below full cost. A catch-up exercise has been underway since 2001 and continuing this will allow HSE to move towards full cost recovery as required by HM Treasury's Managing Public Money. The schemes currently in catch-up are:

a) Approval of dosimetry services (e.g. provision of dose meters, biological monitoring etc) under IRR; and

b) Licensing to store and register explosives under the Manufacture and Storage of Explosives Regulations 2005.

3.2 The proposed hourly rate for cost recovery in the offshore oil and gas sector is £235 per hour, an increase of 10.3% on the current rate of £213. This level of increase anticipates the impact of the current pay negotiations (which include above inflation increases to recruit and retain offshore inspectors).

4. Legislative Context

4.1 The Fees Regulations are being made to effect an annual increase of the fees charged and introduce charging for the three areas set out in paragraph 2.2.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy background

• What is being done and why

7.1 HSE's policy is that it should 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 HSE is 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.
- 7.3 HM Treasury guidance requires full cost recovery for chargeable statutory functions. Fees in the Fees Regulations are reviewed annually with a new set of regulations made to implement any changes.
- 7.4 HSE already recovers the costs for the approval of companies which can provide dosimetry services under the IRR and REPIR . However, there is currently no provision to recover the costs for the work involved in changing the details on the certificate of approval e.g. a change of company name or address. It is proposed to do this from 6 April 2009. It is anticipated that the additional cost to industry will be less than £5k per annum, based on historical volumes of applications.
- 7.5 Changes to the Control of Explosives Regulations 1991 (COER) provide that explosives licences and explosives certificates can be issued for up to 5 years rather than three years. This is reflected in the Fees Regulations by providing for fees for the new licences and certificates and consequential reductions in other fees. Fees in connection with these regulations are retained by police forces and not HSE.
- 7.6 The estimated cost of operating the CIDI database during 2009/10 is £105k or £3.50 per active radiation worker. The primary purpose of the database is to store ionising radiation personal dose summaries for GB workers who either are or have ever been designated as classified radiation workers. Employers will be charged on the basis of the annual dose summaries submitted, not for storing records of employees who may be retired or left a company. The first fees will become payable no later than 31 March 2010 and companies have therefore been given at least twelve months notice of HSE's intention in this respect.

8. Consultation outcome

- 8.1 Under the Health and Safety at Work etc. Act 1974, HSE does not have an obligation to consult on the introduction of these regulations. However, in practice HSE has developed well established mechanisms (e.g. charging review groups for the large permissioning schemes) for

consulting/advising duty holders each year about proposed changes in fees. Relevant trade associations were informed in November 2008 about the proposed increases in fees in the Offshore, COMAH (Control of Major Accident Hazards) and Gas Transportation industries.

- 8.2 For other schemes like Asbestos and First-Aid, relevant industries are notified once any changes have been agreed, usually in February each year.
- 8.3 HSE published a consultative document on the proposals included in the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009. Changes to fees under COER were included within this exercise. The Explanatory Memorandum accompanying the Health and Safety (Miscellaneous Amendments and Revocations) Regulations 2009 provides details of the outcome of that consultation exercise.
- 8.4 Duty holders were consulted about the proposals to charge for operating the CIDI database and the new fee under IRR/REPPIR. No comments were received.

9. Guidance

- 9.1 HSE publishes cost recovery guides for the large schemes on its web site.

10. Impact

- 10.1 A full Impact Assessment was not prepared for the proposed changes on the basis that the impact on the voluntary sector will be nil and the impact on the private sector will be negligible.

11. Regulating small business

- 11.1 It is HSE policy to recover the full cost of permissioning work from duty holders. Where a licence is granted, a safety case assessed and accepted or a notification received and assessed, the duty holder gains specific economic advantage - generally they can carry out hazardous activity lawfully. It would be inappropriate to treat small employers differently in these circumstances.

12. Monitoring & review

- 12.1 These regulations are replaced by new Fees Regulations each year. In preparing proposals for changes in rates charged or proposals for new cost recovery schemes, HSE consults those affected informally. For example, for larger schemes Charging Review Groups (CRGs) are consulted at meetings in the Autumn of each year about proposed changes (and given an opportunity to consider the proposals and

respond) before they are made to the HSE Board and then Ministers. Generally, the impact of the current regulations are also considered by CRGs.

13. Contact

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