EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (APPLICATIONS FOR CONSENT) (AMENDMENT) (ENGLAND AND WALES) REGULATIONS 2017

2017 No. 196

AND

THE ELECTRICITY (NECESSARY WAYLEAVES AND FELLING AND LOPPING OF TREES) (CHARGES) (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2017

2017 No. 195

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instruments

2.1 These instruments amend the existing fees payable for applications to the Secretary of State under the Electricity Act 1989 for consent for overhead electric lines, necessary wayleaves and tree lopping and felling orders in England and Wales.

2.2 Their purpose is to implement HM Treasury's policy on charges (set out in Chapter 6 of "Managing Public Money") by recovering the Department's IT management costs for providing the electronic IT portal service ("the Portal") used by electricity licence holders to make such applications.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The existing fees will be increased by £202.50 for each type of application. This has been calculated to be the average increase required to recover the operational costs of the Portal based on the annual management charge (estimated to be £128,000 per annum ex. VAT) and the average annual number of applications for the years 2011 to 2015. The reasons for implementing this increase now are explained in section 7 below.

3.2 There are no current plans for further fee increases in future. The level of applications will be kept under review to ensure the new fees achieve the Department's aim of full cost recovery.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The existing fees for each type of application are set out in The Electricity (Applications for Consent) Regulations 1990 (S.I. 1990/455) and The Electricity (Necessary Wayleaves and Felling and Lopping of Trees) (Charges) (England and Wales) Regulations 2013 (S.I. 2013/1986).

4.2 These instruments amend these fees for applications made on or after 6 April 2017.

5. Extent and Territorial Application

5.1 The extent of these instruments is England and Wales.

5.2 The territorial application of these instruments is England and Wales.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Responsibility for management of the Portal was transferred from the Department of Energy and Climate Change (now the Department for Business, Energy and Industrial Strategy) to the Oil and Gas Authority in April 2015.

7.2 Historically, payment of service management costs was borne by departmental central funds and was not passed on to electricity licence holders through application fees. The Oil and Gas Authority is now a company that is recharging these management costs directly to those departmental teams that use the Portal to provide electronic application services to the energy industry.

7.3 The amendment to the existing application fees will enable the Department to recover the management costs now charged to them directly by the Oil and Gas Authority. Amending the application fees to pass these management costs through to industry applicants is in line with HM Treasury's requirement for Departments to implement full cost recovery wherever possible.

Consolidation

7.4 There are no plans to consolidate the existing regulations as this is not considered necessary since the only amendments made are to the fees payable.

7.5 The small number of electricity licence holders who will be affected by this proposal have been made aware of the new fees and the date on which they will come into force through the consultation described below.

8. Consultation outcome

8.1 A targeted informal consultation on the Department's proposals was conducted from 16 December 2016 until 13 January 2017. This approach was considered to be appropriate given the very limited nature of the proposals (i.e. an increase to existing fees affecting a small number of electricity licence holders) and the Department's aim to achieve full cost recovery as early as possible.

8.2 A consultation letter was sent from a senior Civil Servant to the seven affected licence holders. Although not directly affected by the proposals, seven chartered surveyors and property compensation agents were also offered the opportunity to comment given their interest on behalf of relevant landowners.

8.3 The Department received six responses in total. All respondents agreed in principle that the Department should recover the IT management costs being recharged by the Oil and Gas Authority and the majority agreed that the proposal to apply a uniform fee increase for all types of application, and the way in which the increase had been calculated, was fair and reasonable.

8.4 Some licence holders suggested modifications to the proposals including:

- Imposing a more modest increase to application fees for consent for overhead electric lines since these may ultimately be passed on to customers.
- Dividing the costs of the Portal equally between electricity licence holders on a "per licence" basis payable annually. This would provide greater certainty and prevent a disproportionate amount of the recharge being met by licence holders who are required to make high volumes of applications for necessary wayleaves to retain electric lines as a result of the activities of land agents in their area.
- Making landowners or occupiers responsible for some or all of the increased fee in the case of applications for necessary wayleaves relating to their land.

8.5 The Government considers it appropriate that the method of recovering the costs of the Portal should be linked to actual of use of the Portal by electricity licence holders who are responsible for making applications and that it should aim to recover these costs in full. The current approach of increasing existing fees on an average cost basis is considered to be the best way to achieve this. It is an operational decision for electricity licence holders how they wish to manage any additional administrative costs which arise within the existing regulatory framework.

8.6 A letter has been sent to all consultees by a senior Civil Servant summarising the issues raised during the consultation and the Government response. Details of these instruments and the date on which they come into force have also been provided.

9. Guidance

9.1 Guidance was issued by the former Department for Energy and Climate Change on applications for consent for electric lines and on applications for necessary wayleaves and tree lopping and felling orders under the Electricity Act 1989.

9.2 Because these amendments affect only the application fees payable, the Department does not intend to issue further specific guidance. It is anticipated that the existing guidance will be reviewed within the next 12 months and will be updated to reflect the new application fees.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to the additional administrative costs to a small number of electricity licence holders resulting from the increase in application fees. The costs of the proposed changes will fund existing regulatory activities and will not expand the scope of regulatory activity currently undertaken.

10.2 There is no impact on the public sector.

10.3 As the cost to business is expected to be £128,000 per year, a full Impact Assessment has not been produced.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 There is no requirement to impose a review under section 28 of the Small Business, Enterprise and Employment Act 2015 as the only effect of these instruments is to amend existing charges. However, application levels will be kept under review as part of the normal business of Government to ensure the new fees achieve the Department's aim of full cost recovery.

13. Contact

13.1 Denise Libretto at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 5678 or email: denise.libretto@beis.gov.uk can answer any queries regarding the instrument.