EXPLANATORY MEMORANDUM TO

THE HEALTH AND SAFETY AND NUCLEAR (FEES) (AMENDMENT) AND GAS SAFETY (MISCELLANEOUS AMENDMENT) REGULATIONS 2024

2024 No. 322

1. Introduction

1.1 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 His Majesty.

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

2. Declaration

2.1 Viscount Younger of Leckie, Parliamentary Under Secretary at the Department for Work and Pensions confirms that this Explanatory Memorandum meets the required standard.

2.2 David Murray, SCS2, Director of Finance and Corporate Services at HSE confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Dave Thomas at HSE, Telephone: 0203-028-3151 or email: dave.thomas@hse.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes amendments to enable HSE and the Office for Nuclear Regulation (ONR) to recover costs for a variety of statutory functions by detailing when a fee is payable and the various rates or charges that are applicable.

4.2 This instrument introduces a 5% inflationary increase to fees that were fixed or determined by the Health and Safety and Nuclear (Fees) Regulations 2022[1] ("the Fees Regulations 2022") to maintain full cost recovery; introduces full cost recovery regimes in four key sectors (see paragraph 5.2 for further information); and makes a minor amendment to the Gas Safety (Management) Regulations 1996[2] ("GSMR 1996") to clarify a date in the transitional provisions in regard to biogas and gas made from biogas.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is Great Britain.

[1] Health and Safety and Nuclear (Fees) Regulations 2022: https://www.legislation.gov.uk/uksi/2022/1378/contents/made

[2] Gas Safety (Management) Regulations 1996: https://www.legislation.gov.uk/uksi/1996/551/contents/made

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. Policy Context

What is being done and why?

5.1 In line with Government policy, this instrument introduces an inflationary increase to fees that were fixed or determined by the Fees Regulations 2022. This is to allow HSE, ONR and other specified licensing authorities to ensure full cost recovery consistent with the guidance in Managing Public Money[3]. Such increases, to keep pace with actual costs of service delivery, are made frequently.

5.2 This instrument also introduces full cost recovery regimes to four key sectors which are either high hazard, critical national infrastructure and / or emerging technologies: oil, gas and chemical pipeline systems; onshore oil, gas and geothermal exploration and production; wind and marine energy (renewables) and explosives. Full cost recovery in these sectors is required to fund specialist resources required to implement risk-based regulation of these sectors.

5.3 An ambiguity regarding the date in the transitional provisions concerning biogas or gas made from biogas in GSMR 1996 is also clarified by this instrument.

What was the previous policy, how is this different?

5.4 The Fees Regulations 2022 enable HSE, ONR and other specified licensing authorities to charge fees for a range of activities referred to in those Regulations in order to recover their costs. This allows the duty holder to carry out activities such as trade in hazardous substances or to carry out work in high hazard conditions once HSE, ONR or other specified licensing authorities have approved the control mechanisms in place. The Regulations also enable HSE, ONR and other specified licensing authorities to recover costs where there has been a material breach of Health and Safety Law via a mechanism known as Fee for Intervention[4].

5.5 The type of regulatory work charged for includes activities such as assessing and accepting safety cases, issuing licenses, issuing certificates, granting approvals and accepting notifications, as well as work in connection with material breaches by duty holders.

5.6 The Fees Regulations 2022 were amended by the Health and Safety and Nuclear (Fees) (Amendment) Regulations 2023[5] ("the Fees Regulations 2023") to increase some of the fees that were fixed or determined in the Fees Regulations 2022 by 2%, and enabled HSE and ONR and other specified licensing authorities to recover their costs associated with applications under regulation 7(2) of the Ionising Radiations Regulations 2017[6]. They were also amended by the Gas Safety Management (Amendment) Regulations 2023[7] ("GSMR 2023") in respect of the descriptions of certain gas safety functions.

5.7 This instrument:

[3] Managing Public Money: https://www.gov.uk/government/publications/managing-public-money
[4] Fee for intervention (FFI): https://www.hse.gov.uk/fee-for-intervention
[5] Health and Safety and Nuclear (Fees) (Amendment) Regulations 2023: https://www.legislation.gov.uk/uksi/2023/247/made
[6] Ionising Radiations Regulations 2017 https://www.legislation.gov.uk/uksi/2017/1075/regulation/7/made
[7] Gas Safety (Management) (Amendment) Regulations 2023: https://www.legislation.gov.uk/uksi/2023/284/made

- applies an inflationary increase of 5% to fees and charges determined by the Fees Regulations 2022"). This increase affects sectors that cut across a wide range of work activities in Great Britain.
- introduces full cost recovery regimes to four key sectors which are either high hazard, critical national infrastructure and / or emerging technologies: oil, gas and chemical pipeline systems; onshore oil, gas and geothermal exploration and production; wind and marine energy (renewables) and explosives. Full cost recovery in these sectors will fund specialist resources required to implement risk-based regulation of these sectors. HSE already cost recovers for a number of regulatory areas as set out in the Fees Regulations 2022; this instrument extends cost recovery to include the key sectors mentioned here, for the first time.
- includes a minor drafting amendment to GSMR 1996 which will clarify a date in the transitional provisions concerning biogas or gas made from biogas. GSMR 2023 Regulation 10 (2) (b) currently specifies the transitional provision for biogas or gas made from biogas as "before or after 6th October 2024." This instrument will amend the transitional provision to "before, on or after 6th October 2024."

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the Fees Regulations 2022 (as amended by the Fees Regulations 2023). The legislative context of this instrument is detailed in Section 5 of this Explanatory Memorandum.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes; there are no alternatives that allow HSE, ONR and other specified licensing authorities to enforce cost recovery regimes.

7. Consultation

Summary of consultation outcome and methodology

7.1 HSE meets regularly with industry stakeholders with Cost Recovery Review Groups (e.g. onshore chemicals and offshore oil and gas sectors) to discuss changes to the hourly rates and associated regulatory intervention plans.

7.2 HSE conducted a twelve week public consultation from 12 June to 4 September 2023 on the introduction of full cost recovery regimes to the four key sectors detailed in paragraph 5.2. The consultation and HSE's consultation response are available on the HSE Consultation Hub[8]. HSE received 38 responses to this consultation and the majority of respondents (73%) were in agreement or neutral about the proposals. The only exception was for the wind and marine energy (renewables) sector for which 22 responses were received, and an equal number of respondents agreed and disagreed with the proposal.

7.3 The main concern expressed by industry was that the risk profile of the wind and marine energy (renewables) sector does not warrant full cost recovery as this could stifle growth. HSE's view is that full cost recovery is warranted for this sector; HSE adopts a full life cycle approach to the regulation of wind and marine energy

[8] Consultation on proposed changes to cost recovery: https://consultations.hse.gov.uk/hse/consultation-on-proposed-changes-to-cost-recovery/

(renewables) and intervenes at times of higher risk in the wind and marine asset lifecycles.

7.4 HSE has consulted with ONR about the amendments implemented by this instrument. ONR were in agreement with all of HSE's proposals.

7.5 The Secretary of State considers that no consultation of any other bodies was required by section 101(6)(b) of the Energy Act 2013[9] before the making of these Regulations.

8. Applicable Guidance

8.1 Charging guides for each of the new full cost recovery regimes will be available on HSE's charging web page[10] from 1 April 2024.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because provisions and their impacts which impose, abolish, vary or are in connection with any tax, duty, levy or other charge are not in scope of the definition of 'Regulatory Provision' provided in section 2.3 of the Better Regulation Framework guidance[11].

Impact on businesses, charities and voluntary bodies

9.2 The impact on businesses, charities or voluntary bodies resulting from the 5% inflationary increase to fees and charges is estimated to be around £120,000 per annum, calculated based on fees and charges recovered from industry in 2022/23.

9.3 The impact on businesses, charities or voluntary bodies resulting from the introduction of full cost recovery to four key sectors is estimated to be around £1.1m per annum, based on HSE modelling of fee rates and volume of regulatory activities. There are potential increases in future years in line with increased operation of emerging technologies.

9.4 The minor drafting amendment to GSMR 2023 will not result in a cost to business as it does not change what already takes place in practice and serves to remove ambiguity and provide legal certainty.

9.5 The total impact on business, charities or voluntary bodies is estimated to be £1.2m.

9.6 This instrument impacts small or micro businesses. HSE is concerned with securing the health, safety and welfare of persons at work. This includes protecting the public against risks to their health and safety arising out of or in connection with the activities of persons at work. In general, the standards and behaviours at work required by law are the same regardless of the size of the business. It would be inappropriate to treat small businesses differently in these circumstances. HSE calculates fees and charges that are commensurate with the level of work involved. This includes hourly rates, where appropriate, which mean that the total sum charged often depends on the level of complexity and risk of the business rather than its size.

9.7 The impact on the public sector is considered to be negligible. A very small percentage of fees come from other public sector bodies, and this is a very small

[9] Section 101(6)(b) of the Energy Act 2013: https://www.legislation.gov.uk/ukpga/2013/32/section/101
[10] HSE Charging activities: https://www.hse.gov.uk/charging/
[11] Section 2.3 of the Better Regulation Framework guidance, page 6: https://www.gov.uk/government/publications/better-regulation-framework

percentage of the total income from the Health and Safety and Nuclear (Fees) (Amendment) and Gas Safety (Miscellaneous Amendment) Regulations 2024.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation includes an annual review to consider all fees and charges continue to allow for the recovery of all costs of the regulatory services that are in scope.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015[12], Viscount Younger of Leckie has made the following statement:

"A review clause is not required in the Health and Safety and Nuclear (Fees) (Amendment) and Gas Safety (Miscellaneous Amendment) Regulations 2024 because the instrument is not in scope of the definition of 'Regulatory Provision' provided in the Better Regulation Framework guidance"

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument does not make any increases to existing charges or fees above inflation and the increases are consistent with maintaining cost recovery. An annual review will take place to consider whether there should be any further increases and whether cost recovery regimes should be introduced in other key sectors regulated by the Health and Safety Executive and the Office for Nuclear Regulation.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is made, in part, under paragraphs 1, 5(2)(b) and 7 of Schedule 4 of the European Union (Withdrawal) Act 2018[13]. and therefore relates to the withdrawal of the United Kingdom from the European Union. This instrument is not being made to address a deficiency in retained EU law; it relates to the withdrawal of the United Kingdom from the European Union because it provides for the charging of fees for the exercise of functions by the relevant authority under retained EU law. This instrument is being made under European Union (Withdrawal) Act 2018.

[12] Small Business, Enterprise and Employment Act 2015: https://www.legislation.gov.uk/ukpga/2015/26/contents/enacted

[13] European Union (Withdrawal) Act 2018: https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted