EXPLANATORY MEMORANDUM TO

THE HEALTH AND SAFETY AND NUCLEAR (FEES) REGULATIONS 2015

2015 No. 363

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. Purpose of the instrument

2.1. The Health and Safety and Nuclear (Fees) Regulations 2015 ("the Fees Regulations") revoke and replace the Health and Safety (Fees) Regulations 2012[1]. They reproduce all of the charges except for the removal of certain charges (paragraphs 7.5 and 7.6), to reflect changes to other secondary legislation.

2.2. The Fees Regulations also revoke the Biocidal Products (Fees and Charges) Regulations 2013[2], consolidating the fees elements of those regulations (which are to remain), but not the annual charge provisions (which are being withdrawn).

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

3.1. The Fees Regulations do not increase any of the existing fees.

3.2. Regulation 21 clarifies how activities for which biocidal products fees are payable will be calculated on a daily basis per person. This meets the need for clarification identified in JCSI's report of 23 October 2013[3] (published on 29 October 2013) on the Biocidal Products (Fees and Charges) Regulations 2013.

4. Legislative Context

4.1. The Health and Safety (Fees) Regulations are reviewed annually and are replaced where there have been changes, for example, the revocation of associated secondary legislation or changes in HSE's costs, which necessitates a change in fees.

4.2. The Fees Regulations consolidate two Statutory Instruments: the Health and Safety (Fees) Regulations 2012 ("the 2012 Fees Regulations") and the Biocidal Products (Fees and Charges) Regulations 2013, as well as amendments that have been made to the 2012 Fees Regulations. They reproduce most charges from the 2012 Fees Regulations and incorporate existing fees currently included in the Biocidal Products (Fees and Charges) Regulations 2013.

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[1] S.I. 2012 No. 1652 http://www.legislation.gov.uk/uksi/2012/1652/contents/made
[2] S.I. 2013 No. 1507 http://www.legislation.gov.uk/uksi/2013/1507/contents/made
[3] JCSI report http://www.publications.parliament.uk/pa/jt201314/jtselect/jtstatin/67/6702.htm

4.3. In addition, the Fees Regulations now draw upon the powers in the Energy Act 2013 to continue charging for nuclear fees, as the Office for Nuclear Regulation (ONR) was established with fees charging powers under this Act in 2014.[4]

5. Territorial Extent and Application

5.1. This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1. 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. It is the policy of the Government, HSE and ONR to charge fees for a range of activities described as "permissioning work" in order to recover their costs. This allows the dutyholder, for example, to trade in a hazardous substance or carry out work in hazardous conditions, once HSE/ ONR are 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 (Managing Public Money, chapter 6[5]) requires full cost recovery for chargeable statutory functions. The charges set out in these Regulations are reviewed annually with a new set of regulations made if necessary to implement any changes. There are no fee increases proposed for existing fees.

7.4. The fee elements currently in the Biocidal Products (Fees and Charges) Regulations 2013 will be consolidated into these Regulations, whilst the requirement for businesses to pay an annual flat rate charge is removed.

7.5. Fees in relation to approvals under the Health and Safety (First Aid) Regulations 1981[6] and Notifications of Tower Cranes[7], which were payable under the 2012 Fees Regulations, are no longer included because the legislation on which

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[4] http://www.legislation.gov.uk/ukpga/2013/32/part/3/enacted
[5] https://www.gov.uk/government/publications/managing-public-money
[6] S.I. 1981 No. 917 http://www.legislation.gov.uk/uksi/1981/917/contents/made
[7] S.I. 2010 No. 811 http://www.legislation.gov.uk/uksi/2010/811/contents/made

they were based was revoked[8] [9] in 2013 (and the 2012 Fees Regulations were amended accordingly).

7.6. HSE will no longer approve explosives for use in certain mines and, consequently, there will be no fees payable.

7.7. The Petroleum (Consolidation) Regulations 2014[10] came into force on 1st October 2014 and have replaced the previous licensing system with a new system of certificates. The cost to industry for certificates is the same as for licences and the system of licence transfers upon a change of operators is also removed.

7.8. The Explosives Regulations 2014[11], the Acetylene Safety (England and Wales and Scotland) Regulations 2014[12] and the Genetically Modified Organisms (Contained Use) Regulations 2014[13] came into force on 1st October 2014. They are consolidating regulations and revoke other regulations relating to explosives, acetylene and genetically modified organisms respectively. They also amend the 2012 Fees Regulations. The Fees Regulations reflect these amendments, but make no changes to the fees charged.

7.9. In respect of dosimetry services, the Fees Regulations will introduce a de-minimis provision, whereby HSE will not invoice companies whose total charge would be lower than the amount of £25. This will reduce the number of invoices by approximately 65% for a reduction of around £5,000 in the total value billed, which was in the region of £90,000 in 2013-14**.**

7.10. These Regulations also incorporate nuclear fees regulations, as ONR was incorporated as a statutory body with its own fees powers (separate from those of HSE) in April 2014. ONR's fees are now created in these Regulations under the Energy Act 2013, but otherwise remain unchanged from the 2012 Fees Regulations.

- Consolidation

7.11. No consolidation is necessary, as these regulations repeal the previous Fees Regulations setting fees and charges payable to the Health and Safety Executive. The Fees Regulations are reviewed annually and are revoked and replaced when it is necessary to make changes.

8. Consultation outcome

8.1. Our informal consultations with industry stakeholders, for example Cost Recovery Review Groups, have highlighted no concerns about changes which are to be introduced in the Fees Regulations in relation to fees to be recovered under the Health and Safety at Work etc. Act 1974.

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[8] S.I. 2013 No. 1512 http://www.legislation.gov.uk/uksi/2013/1512/contents/made
[9] S.I. 2013 No. 448 http://www.legislation.gov.uk/uksi/2013/448/made
[10] S.I. 2014 No. 1637 http://www.legislation.gov.uk/uksi/2014/1637/contents/made
[11] S.I. 2014 No. 1638 http://www.legislation.gov.uk/uksi/2014/1638/contents/made
[12] S.I. 2014 No. 1639 http://www.legislation.gov.uk/uksi/2014/1639/contents/made
[13] S.I. 2014 No. 1663 http://www.legislation.gov.uk/uksi/2014/1663/contents/made

8.2. Biocides industry stakeholders were notified of the planned changes to the fees and charges for biocidal products. Respondents indicated that our estimated administrative savings from withdrawal of the biocidal products annual charge were reasonable and raised no queries about the consolidation of the biocidal products fees into these Fees Regulations.

8.3. No changes to nuclear fees levels are introduced in these Regulations, and industry consultation has been deemed unnecessary, as ONR will conduct a thorough review of these fees next year.

9. Guidance

9.1 HSE's website provides guidance on all fees and charges, as well as the relevant disputes procedures.

10. Impact

10.1. An impact assessment of the effect that the fees introduced by these Regulations will have on the costs of business and the voluntary sector is published alongside the instrument at www.legislation.gov.uk.

10.2. Removal of the biocidal products annual charge will result in an 'out' under One In, Two Out (OITO) of an estimated £22,000. When this is added to savings from the value of the charge itself, the impact of its removal is likely to represent an equivalent annual net saving to business of £0.4 million.

10.3. As there is no increase in other fees from the 2012 Fees Regulations, there is no additional impact on business or civil society organisations.

11. Regulating small business

11.1 Changes in the Fees Regulations are either de-regulatory or consolidate existing regulations and there is no additional burden on small business.

12. Monitoring & review

12.1. The Fees Regulations are reviewed annually and updated if necessary. In preparing proposals for changes in rates charged, HSE takes informal industry soundings of those affected. For example, for larger schemes, Cost Recovery Review Groups (CRRGs) are consulted at meetings in the Autumn of each year about proposed changes (and given an opportunity to consider the proposals and respond) before formal proposals are presented to the HSE Board and then Ministers.

12.2. In accordance with BIS/ BRE guidance, a sunset clause is included in these Regulations, such that they will automatically expire five years after coming into force.

12.3. ONR was an in-house agency of HSE, prior to its establishment as a statutory corporation on 1 April 2014. ONR's intention is to develop a separate set of fees regulations covering all of its activities over the next year, to be in place for April 2016. This will separate nuclear fees regulations from health and safety fees in future. In terms of health and safety fees that apply on nuclear sites, HSE and ONR will continue to review fees regulations to ensure that they remain fit for purpose.

13.Contact

13.1. Andrew Holding at the Health and Safety Executive (Tel: 0151 951 4002 or e-mail: andrew.holding@hse.gsi.gov.uk) can answer any queries regarding the instrument.