EXPLANATORY MEMORANDUM TO

THE HEALTH AND SAFETY AND NUCLEAR (FEES) REGULATIONS 2022

2022 No. 1378

1. Introduction

1.1 This explanatory memorandum has been prepared by 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. Purpose of the instrument

2.1 This instrument revokes, and replaces, the Health and Safety and Nuclear (Fees) Regulations 2021[1] ("the Fees Regulations 2021"), as amended by the Chemicals (Health and Safety) Trade and Miscellaneous Amendments Regulations 2022[2] ("the Amendment Regulations"). It does so for the purpose of correcting a number of errors in, and made in connection with, the Fees Regulations 2021 and the Amendment Regulations.

3. Matters of special interest to Parliament

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

3.1 The regulations are made affirmative.

3.2 These regulations are to be made on 19th December 2022 and laid on 20th December 2022 and come into force on 21st December 2022. These regulations need to come into force with the least possible delay because at 11pm on 31 December 2022, one of the relevant enabling powers (paragraph 1 to Schedule 4 of the European Withdrawal Act (EUWA) 2018) will expire. Failure to make the instrument before the relevant power expires would make it impossible to re-instate the provisions for fees charged for certain functions the Health and Safety Executive (HSE) carries out following EU exit and an amendment to primary legislation would be required.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

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

5. European Convention on Human Rights

5.1 The Minister for Social Mobility, Youth and Progression has made the following statement regarding Human Rights:

"In my view the provisions of The Health and Safety and Nuclear (Fees) Regulations 2022 are compatible with the Convention rights."

[1] https://www.legislation.gov.uk/uksi/2021/33/contents
[2] https://www.legislation.gov.uk/uksi/2022/1037/contents/made

6. Legislative Context

6.1 This instrument revokes and replaces the Fees Regulations 2021, as a number of errors were made in, and in connection with, those Regulations. This instrument also revokes regulation 14 of the Amendment Regulations in consequence of the revocation of the 2021 Fees Regulations.

6.2 This instrument enables, in most cases, the Health and Safety Executive (HSE) and the Office for Nuclear Regulation (ONR) to continue to recover fees and charges. There are no changes to the amounts of the fees or charges which may be recovered.

6.3 The changes are being taken forward urgently as the relevant powers in paragraph 1 of Schedule 4 to the European Union (Withdrawal) Act 2018 expire on 31st December 2022.

7. Policy background

What is being done and why?

7.1 The instrument revokes and replaces the Health and Safety and Nuclear (Fees) Regulations 2021 ("the Fees Regulations 2021") to address various errors made in, and in connection with, those Regulations and the Chemicals (Health and Safety) Trade and Miscellaneous Amendments Regulations 2022 ("the Amendment Regulations").

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The Fees Regulations 2021, as amended by the Amendment Regulations, were intended to enable the Health and Safety Executive (HSE) and the Office of Nuclear Regulation (ONR) to charge fees for a range of activities detailed in those Regulations in order to recover their costs. In particular, provisions were included that enabled HSE to recover fees in connection with certain functions it carries out following EU Exit. These functions relate to biocides and chemicals.

Why is it being changed?

7.3 It has recently become apparent that an error was made in the preamble to the Fees Regulations 2021 and in the preamble to the Amendment Regulations. Neither preamble cites paragraph 1 of Schedule 4 to the European Union (Withdrawal) Act ("EUWA") 2018[3] but both should have done so.

7.4 Paragraph 1 of Schedule 4 to EUWA 2018 enables provision to be made for the charging of fees in connection with functions which are, following EU Exit, carried out by the HSE in relation to biocides and chemicals.

7.5 Following on from this, it has become apparent that this error meant that paragraph 3 of Schedule 4 to EUWA 2018 was not complied with before the relevant provisions in the Fees Regulations 2021 and the Amendment Regulations were made. Paragraph 3 of Schedule 4 to EUWA 2018 requires Treasury consent to the making of regulations under paragraph 1 of that Schedule.

7.6 HM Treasury have confirmed that if consent had been sought at the time, it would have been granted. However, both of the errors above may raise doubt as to HSE's

[3] https://www.legislation.gov.uk/ukpga/2018/16/contents

ability to continue to recover the affected fees. So, the Department considers it appropriate to take steps to ensure that HSE's ability to recover its costs in relation to the specific biocides and chemicals related functions is beyond doubt.

7.7 A number of technical drafting errors have also been identified in the Fees Regulations 2021. The Department considers that it is appropriate to also correct these errors to ensure the accuracy and clarity of this new instrument. The errors corrected include, in particular:

- an incorrect cross-reference in regulation 12(2)(b) of the Health and Safety and Nuclear (Fees) Regulations 2021 ("the Fees Regulations 2021"). That provision referred to regulation 9(3) of those Regulations, instead of regulation 9(4);
- an error in the definition of "nuclear provisions" in regulation 16 of the Fees Regulations 2021. That definition did not reflect the amendments that had been made to the Energy Act 2013[4] by the Nuclear Safeguards Act 2018[5];
- the omission from regulation 22 of the Fees Regulations 2021 of a provision to make clear how terms used both in that provision or Schedule 16 to the Regulations and Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures[6] are to be interpreted.

7.8 In light of the above, the Department is adopting the free issue procedure in relation to this instrument. The Department confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument

What will it now do?

7.9 This instrument enables the HSE and the ONR to continue to recover fees and charges for the functions they carry out.

7.10 For the avoidance of doubt, the amounts of the fees and charges which may be recovered under this instrument are identical to the amounts of the fees and charges which could be recovered under the Fees Regulations 2021.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is being partly made under paragraphs 1 and 7 of Schedule 4 to the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under sections 43 and 82 of the Health and Safety at Work etc. Act 1974[7] and sections 101 and 113 of the Energy Act 2013.

[4] https://www.legislation.gov.uk/ukpga/2013/32/contents
[5] https://www.legislation.gov.uk/ukpga/2018/15/contents
[6] https://www.legislation.gov.uk/eur/2008/1272/contents
[7] https://www.legislation.gov.uk/ukpga/1974/37/contents

9. Consolidation

9.1 There are no current plans for consolidation of the Chemicals (Health and Safety) Trade and Miscellaneous Amendments Regulations 2022 ("the Amendment Regulations").

10. Consultation outcome

10.1 The Secretary of State consulted the Office of Nuclear Regulation (ONR) before making these Regulations. The ONR had no comments on the proposed approach.

10.2 The Secretary of State considers that no consultation was required by section 101(6)(b) of the Energy Act 2013 before the making of these Regulations. As these Regulations correct errors in the Health and Safety and Nuclear (Fees) Regulations 2021 ("the Fees Regulations 2021") and the Amendment Regulations , and do not otherwise make substantive changes to the provisions of those Regulations, the Secretary of State is of the view that there was no other person who it would have been appropriate to consult before making these Regulations.

11. Guidance

11.1 The Health and Safety Executive's (HSE)[8] and the Office of Nuclear Regulation's (ONR)[9] website provides guidance on all fees and charges, as well as the relevant query and dispute process.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies because there are no new fees or charges being introduced by this instrument compared to the Fees Regulations 2021.

12.2 There is no, or no significant, impact on the public sector because there are no new fees or charges being introduced by this instrument compared to the Fees Regulations 2021.

12.3 A full Impact Assessment has not been prepared for this instrument because provisions imposing, abolishing, varying or in connection with any tax, duty or levy or other charge are excluded from the definition of regulatory provisions and therefore do not require an impact assessment.[10] There are no new duties or charges for duty holders compared to what is already happening in practise. This instrument ensures that HSE can continue charging fees on the same basis as set out in the Fees Regulations 2021. By correcting the errors made in the Fees Regulations 2021 and the Amendment Regulations, this instrument provides clarity and certainty going forward both for HSE, ONR and businesses. However, the benefits from that increased clarity and certainty are not easily quantifiable.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

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[8] https://www.hse.gov.uk

[9] http://www.onr.org.uk/

[10] https://www.gov.uk/government/publications/better-regulation-framework

13.2 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.

13.3 It would be inappropriate to treat small businesses differently in these circumstances and 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.

14. Monitoring & review

14.1 These Regulations are reviewed annually and include a statutory review clause. The first statutory review must be carried out by 21st December 2027.

15. Contact

15.1 Dave Thomas at the Health and Safety Executive Telephone: 0203-028-3151 or email: dave.thomas@hse.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Murray, Director of Finance and Corporate Services at the Health and Safety Executive can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mims Davies, Minister for Social Mobility, Youth and Progression at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocation ns are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Urgency

1.1 The Minister for Social Mobility, Youth and Progression, Mims Davies, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view by reason of urgency, it is necessary to make the Health and Safety and Nuclear (Fees) Regulations 2022, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

1.2 This is for the reasons given in sections 7.1 to 7.11.