EXPLANATORY MEMORANDUM TO THE

HEALTH AND SAFETY (FEES) REGULATIONS 2005

2005 No.676

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. Description

2.1 The Health and Safety (Fees) Regulations 2005 ("the Fees Regulations") revoke and replace the Health and Safety (Fees) Regulations 2004 (S.I 2004/456). They update the charges made, mainly by the Health and Safety Executive ("HSE"), for the performance of 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 main "permissioning" regimes (involving HSE assessing and approving safety cases) of on-shore major hazards, gas transportation, offshore oil and gas, and rail sectors.

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

3.1 Most increases in fees are at or near the rate of inflation including three of the four "permissioning" regimes. For the fourth regime – the relatively small gas transportation scheme - an increase of 5.5% is proposed. This above inflation rise is explained largely because the rate now includes an element of cost for more highly paid pipeline inspectors.

3.2 Other proposed increases in fees are at or near the rate of inflation, except for the asbestos licensing scheme and three other cases where historically the fees had got out of line with costs. The schemes still affected by this misalignment are fees connected with: Ionising Radiations; Genetically Modified Organisms; and Notifications of New Substances. For these three a year on a year catch-up exercise has been underway for four years, capping rises to 20% - the industries concerned have accepted this. For some other schemes catch-up was completed in 2004/05; for these three full recovery of economic cost will be achieved by 2009. For the asbestos licensing scheme increases of about 10% are proposed. The increase will allow for full cost recovery (as required by HM Treasury Guidelines in relation to fees), which has not been achieved in the past.

3.3 HSE's function on classification of explosives under regulation 3 of the Classification and Labelling of Explosives Regulations 1983 (S.I. 1983/1140) changed in 2004 (by virtue of an amendment made by S.I. 2004/568, regulation 61 and Schedule 12). HSE now approves the classification rather than

undertaking the classification work itself. The fee for classification in 2004/05 was £57 per hour; the new fee for approval of classification is £58 per hour.

4. Legislative Background

4.1 The Fees Regulations effect an annual uprating in fees.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The Fees Regulations are made under section 43 of the Health and Safety at Work etc. Act 1974. The Health and Safety Commission's policy is that HSE 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 which are charged for include:

a) assessing and accepting safety cases;

b) issuing licences;

c) issuing certificates;

d) granting approvals;

e) granting exemptions from regulations; and

f) accepting notifications.

7.3 HM Treasury guidance requires recovery of the full economic cost of performing chargeable statutory functions. Fees in the Regulations are reviewed annually with a new set of Regulations created to reflect any changes.

7.4 The industries covered in the four major "permissioning" regimes, as well as the asbestos industry, were consulted on these changes and made little comment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. There is no impact on the private or voluntary sectors as fees are increased for inflation or are in 'catch up'.

8.2 There is no impact on the public sector.

9. Contact

9.1 Bill Tomkins at the Health and Safety Executive, Tel: 020 7717 6454 or e-mail: bill.tomkins@hse.gsi.gov.uk, can answer any queries regarding the instrument.

16 March 2005